



Hacettepe University Graduate School Of Social Sciences

Department of Human Rights

**DENIAL OF JUSTICE: THE CASE STUDY OF VICTIMS OF
GROSS HUMAN RIGHTS VIOLATIONS IN BOSNIA AND
HERZEGOVINA**

Haris SUBAŠIĆ

Doctorate Thesis

Ankara, 2020

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ACCEPTANCE AND APPROVAL

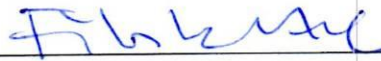
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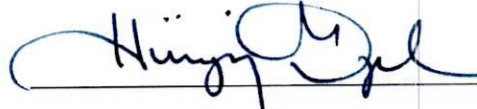
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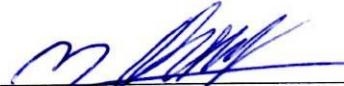
Prof. Dr. Harun TEPE (Advisor)



Prof. Dr. Filiz KARTAL



Prof. Dr. Hüseyin ÖZEL



Doc. Dr. Murat ÖNSOY

I agree that the signatures above belong to the faculty members listed.

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ETİK BEYAN

Bu alıřmadaki bütn bilgi ve belgeleri akademik kurallar erevesinde elde ettiđimi, grsel, iřitsel ve yazılı tm bilgi ve sonuları bilimsel ahlak kurallarına uygun olarak sunduđumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduđumu, tezimin kaynak gsterilen durumlar dıřında zgn olduđunu, Tez Danıřmanının Prof. Dr. Harun TEPE danıřmanlığında tarafımdan retildiđini ve Hacettepe niversitesi Sosyal Bilimler Enstits Tez Yazım Ynergesine gre yazıldıđını beyan ederim.



Haris Subařić

Haris SUBAřİĆ

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I owe incommensurable gratitude to my late father Edib, mother Asija and brother Adis for their enormous love, good faith and unequivocal support during my academical life in Turkey as well as to the rest of my close family.

I dedicate the PhD dissertation to all innocent sufferers of the unintelligent and petrifying Bosnian war.

ABSTRACT

SUBAŠIĆ, Haris. Denial of Justice: The Case Study of the Victims of Gross Human Rights Violations in Bosnia and Herzegovina, Ph.D Dissertation, Ankara, 2020.

The dissertation attempts to examine issues of whether the entity governments of Republika Srpska are responsible for gross human rights violations and denial of justice to non-Serb persons. It finds that Republika Srpska governments are importantly ethically and legally responsible for the massive crimes and denial of justice conducted against non-Serbs in Bosnia and Herzegovina. The International Criminal Tribunal for the former Yugoslavia established beyond a reasonable doubt that Republika Srpska government is responsible for the ethnic cleansing campaign in Prijedor and Srebrenica genocide carried out against non-Serbs. However, the entity governments officially deny both the ethnic cleansing in Prijedor and Srebrenica genocide through interpretative denials of non-Serbs' human sufferings as "Serbian defensive-liberation war" and "mass crime". Consequently, many survivors' human rights to full reparations, such as public and factual acknowledgement of serious mass crimes and recovering of human dignity are violated systematically. Denial of moral responsibility for the mass crimes by the governmental officials and supporters, such as regular humiliation of victims, nationalistic moral relativism or righteousness of ethnic purity negate the victims' rights to remembrance and equal human treatment. Nationalistic and racial ideological remnants of "Great Serbia" and "Islamophobia" are still present within public pillars and affairs of the entity which hinder adequate redress. Except for the restitution, rehabilitation, satisfaction, compensation and non-repetition are worryingly unaddressed based on empirical research. Denial of justice in a strictly legal sense witness about discriminatory reparation laws, sham judicial proceedings, inadequate material compensations, rehabilitation programs, memorialisation and commemoration events. Historically, denial of justice to victims of mass crimes leads to further resentments and conflicts. Recommendations about adequate respect and protection of the victims' human rights are to be found in human rights education and mainly within an application of normative standards provided by Basic Principles and

Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law instrument which sets a victim-centred approach and international legal principles for creation of good redress politics by governments.

Keywords

Denial, Human Rights, Universality, Victims, War Crimes, Reparations, Srebrenica.



ÖZET

SUBAŠIĆ, Haris. Adaletin İnkârı: Bosna Hersek'te Ağır İnsan Hakları İhlallerinin Mağdurlarına Yönelik Vaka Çalışması, Doktora Tezi, Ankara, 2020.

Tez, Sırp Cumhuriyeti devletinin Sırp olmayan bireylere yönelik insan hakları ihlallerinden ve adaletin inkârından sorumlu olup olmadığını incelemektedir. Bosna Hersek'te Sırp olmayanlara karşı yürütülen büyük çaplı suçlardan ve adaletin inkârından Sırp Cumhuriyeti devletinin etik ve yasal olarak önemli ölçüde sorumlu olduğu tespit edilmiştir. Eski Yugoslavya Uluslararası Ceza Mahkemesi, Sırp Cumhuriyeti devletinin Srebrenica'da gerçekleştirilen soykırımdan ve Prijedor'daki etnik temizlik kampanyasından sorumlu olduğuna dair şüphelere yer bırakmamıştır. Bununla birlikte taraf devletleri, Sırp olmayan bireylerin acılarının "Sırp Savunma - Kurtuluş Savaşı" ve "kitlesel suç" şeklinde yorumlayıcı inkârları yoluyla Prijedor'daki etnik temizliği ve Srebrenica soykırımı resmen inkâr etmektedir. Sonuç olarak, ciddi kitlesel suçların kamuoyu tarafından ve olgusal olarak kabulü ve insanlık onurunun geri kazanılmasını da içeren, hayatta kalan birçok kişinin tam tazminat insan hakları sistematik olarak ihlâl edilmektedir. Devlet memurları ve destekçileri tarafından mağdurların düzenli olarak aşağılanması, milliyetçi ahlaki görecelik veya etnik saflığın doğruluğu gibi toplu suçlara yönelik ahlaki sorumluluğun inkârı, mağdurların anma ve eşit insan muameleleri haklarını ortadan kaldırmaktır. "Büyük Sırbistan" ve "İslamofobi"nin milliyetçi ve ırksal ideolojik kalıntıları, tarafların kamu destekçileri ve ilişkileri içinde hâlâ mevcuttur. Deneysel araştırmalara dayanarak, geri iade dışında rehabilitasyon, memnuniyet, tazminat ve yeniden tekrarlamama hakları endişe verici bir şekilde dikkate alınmamaktadır. Yasal anlamda adaletin kesin olarak inkârı ayrımcı tazminat yasalarına; sahte yargı işlemlerine; maddi tazminatların, rehabilitasyon programlarının, anma ve kutlama etkinliklerinin yetersizliğine tanık olmaktadır. Tarihsel olarak, kitlesel suçların mağdurlarına yönelik adaletin inkârı, daha fazla kızgınlık ve çatışmaya yol açmaktadır. Mağdurların insan haklarına yeterli saygıya ve bu hakların korunmasına yönelik öneriler, esas olarak insan hakları eğitiminde ve hükümetler tarafından iyi tazminat politikalarının oluşturulması için mağdur merkezli bir yaklaşım ve uluslararası yasal

ilkeler koyan Uluslararası İnsan Hakları Hukuku ve Uluslararası İnsancıl Hukuk'un Ciddi İhlallerinin Mağdurlarına Yönelik Tedavi ve Tazminat Haklarına İlişkin Temel İlkeler ve Kılavuzlar tarafından sağlanan normatif standartların bir uygulamasında bulunabilmektedir.

Anahtar Sözcükler

İnkâr, İnsan Hakları, Evrensellik, Mağdurlar, Savaş Suçları, Tazminatlar, Srebrenica.



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ABBREVIATIONS

ACHR	The American Convention of Human Rights
AfCHPR	African Charter on Human and Peoples' Rights
AfCHR	African Commission on Human Rights
AfCtHPR	African Court on Human and Peoples' Rights
ARS	Army of Republika Srpska
ATCA	Alien Tort Claims Act
B&H	Bosnia and Herzegovina
BPJVC	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees
DDR	Disarmament, Demobilisation and Reintegration
DPA	Dayton Peace Agreement
ECHR	The Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
FB&H	Federation of Bosnia and Herzegovina
GHRV	Gross Human Rights Violations
HRC	United Nations Human Rights Committee
HRE	Human Rights Education
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICMP	International Commission on Missing Persons

ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IBHR	International Bill of Human Rights
IDP	Internally Displaced Person
IFOR	Implementation Force
LPCVW	Law on the Protection of the Civil Victims of War
LRCDW	Law on the Realization of Rights for Compensation of Material and Non-Material Damages which Occurred during War Activities from 20 May 1992 till 19 June 2016
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OHR	Office of the High Representative
OSCE	Organization for Security and Co-operation in Europe
POW	Prisoners of War
PTSD	Post-Traumatic Stress Disorder
RDC	Research and Documentation Center
SANU	Serbian Academy of Sciences and Arts
SDS	Serbian Democratic Party
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNBPGRV	United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law
UNCC	United Nations Compensation Commission
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
USA	United States of America

WSV	World Society of Victimology
WWII	World War Second
YPA	Yugoslav People's Army



INTRODUCTION

The war in the former Yugoslavia that broke up 28 years ago brought enormous human sufferings to former neighbours, friends, colleagues, partners, children, and still unborn. It changed everyone's life as if everyone has lost something. 23 years after the bloodiest of all conflicts in the Bosnia has ended, dozen of thousands of the survivors of serious human rights violations still look for humanity, dignity, justice, liberty, equality, the very meaning of their tormented lives.

The thesis examines the particular problem related to gross human rights violations (GHRV) that are upheld by the official denial politics of actually and formally administered GHRV against individual victims and survivors of mass war crimes in the non-state entity of Republika Srpska in Bosnia and Herzegovina (B&H). The research covers 23 years, that is from 1996 when the B&H war ended until 2019. As a specific context for the point at issue, it will confront the impact of the government of Republika Srpska's systematic politics of denial of the Srebrenica genocide and the Prijedor ethnic cleansing campaign, as GHRV that occurred during the war in B&H. This negation politics are based and governed by normative cultural relativism, criminal ideology, and the subsistence of an inadequate domestic legal framework, which as such infringe rights of individual survivors of severe mass crimes about respect, protection, and realisation of their rights to effective remedies, and both material and non-material reparations. Further, such disproving politics of GHRV are also heartening resentments among similar perpetrators and survivors of such horrible mass crimes, which further are hindering any chance of truthful reconciliation at the individual and societal level of B&H and thus threatening, even more, perseverance and sustainability of national and international peace. The thesis aspires, on the one hand, to address the importance of adequate respect and safeguarding of rights of the individual sufferers of gross breaches of international human rights law. On the other hand, it attempts to highlight the danger of denial politics of severe war crimes endowed in normative cultural relativism, criminal ideology, and inadequate domestic remedies for the achievement of individual victims' rights for full reparations and meaningful peace in B&H.

The research project is relevant because it provides evidence to disapprove politics of denial of GHRV as well as it ensures arguments to corroborate victim-centered approach about respect and protection of individual victims' human rights to remedies and reparations. Further, it is also substantial because it provides new information about the on-going profound negation politics of GHRV in B&H and new data from field-trips about both protected and denied forms of individual victims' human rights to remedies and reparations in Prijedor and Srebrenica. The study brings about improved solutions regarding recognition along with safeguarding of individual victims' rights to remedies and reparations in B&H by applying the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law's* (UNBPGRV) victim-centred approach and its normative standards about various existing transitional justice programs, inadequate legislatures, and denial politics. It will also empower and educate individuals and victims' organisations about their entitled human rights to remedies and reparations guaranteed as such in global human rights law, which in final contributes to a long-term culture of peace and culture of human rights instead of resentments and conflicts between citizens in B&H. This work develops a unique interdisciplinary study considering advocacy and protection of victims' human rights by combining philosophy, genocide studies, legal perspective, empirical data and political theories. Accordingly, it improves existing literature and understandings about victims' human rights which may be based on just few perspectives about it.

The thesis' aims are related to identification and demystification of the political strategies of negation politics of GHRV driven by the entity government of Republika Srpska, and establishing sufficient theoretical and practical grounds for affirming the universal acknowledgement as well as safekeeping of individual victims' rights and preserving of long-term peace in B&H. Therefore, the study endeavours to provide answers to three main research questions, the working hypothesis, general theoretical arguments, and proposed solutions as follows: Is the government of Republika Srpska responsible for GHRV? What are the factors that explain violations of individual victims' human rights to a remedy and reparations? Finally, what are the optimal solutions for better adherence as well as assurance of individual victims' human rights

to remedies and reparations after events of the GHRV in B&H? The working hypothesis is that the government of the Republika Srpska violates individual victims' human rights to a remedy together with reparations after the occurrence of GHRV. This assumption is supported by numerous numbers of evidence of breaches of individual victims' rights to a remedy and reparations, for instance, denial of The International Criminal Tribunal for the former Yugoslavia's (ICTY) historical record about the mass crimes, inadequate redress for the individual victims of GHRV at the national along with entity levels and political and cultural strategies of denial founded in normative cultural relativism around narrative of "Serbian defensive-liberation war" in Prijedor and Srebrenica, which are examined in the thesis. Solutions for the mentioned problems are to be found within the application of the UNBPGRV victim-centered approach and human rights education which fosters human rights and peace cultures.

The first three parts of the thesis explore the theoretical part, and in the last fourth chapter, the case study is analysed. The first theoretical part of the project analyses John Finnis, John Rawls, Jack Donnelly, and İoanna Kuçuradi's theories of the human rights universality. Accordingly, we will be able to justify individual victims' human rights to reparations and remedies where they are violated or non-existent, particularly considering the doctrine of cultural relativism. In the second chapter, a phenomenon of denial is examined from various perspectives such as psychoanalysis, sociology, genocide studies, and its adverse implications such as genocides by the victims of mass crimes whose justice has been denied. Further, it also provides a solution to the problem of genocide denials, such as the establishment of the liberal democracy which is assumed to be the best political order for the safeguarding of rights of human beings and peaceful co-existence of all citizens. Furthermore, the third chapter provides definitions of the key terms (for example, victims, remedies in global human rights law, reparation theories, transitional justice, victim-centred approach, peacebuilding) and accordingly provides explanations of the main theoretical concerns and answers to the research mentioned above questions of the thesis. The thesis uses the following data-gathering techniques: document analysis, legal analysis, content analysis, discourse analysis, and questionnaire. The study uses qualitative data, primary and secondary research. The academical and news articles and reports about the activities of the government of

B&H, and the government of the entity of the Republika Srpska about the reparations of the victim's rights are also examined.

The last part of the thesis is the case study which correctly explains the national context about the reasons as well as after-effects of the Bosnian war, ICTY criminal pursuit of serious crimes together with the creation of historical records which are denied at the entity level. Further, the state's level of the protection of the victim's rights, and the entity's legal, administrative measures about UNBPGRV are examined, compared, and evaluated. The chapter shows the results of the conducted questionnaires with 45 victims of GHRV in Srebrenica and Prijedor (for example, the former detainees, raped women, families of disappeared, killed, tortured, and wounded persons). Also, the questionnaires are done with representatives of the victims' organisations and five governmental officials from these local communities to gather data, compare and evaluate them based on various forms of victims' human rights which might be respected, protected, violated or denied considering full and adequate reparations: restitution forms; rehabilitation forms; satisfaction forms, compensation forms; and non-repetition forms.

Consequently, if overall answers given by individual victims are certainly more affirmative than negatory then, we should arrive at the attainment that the entity establishment of Republika Srpska adequately respects and protects individual victims' human rights to remedies and reparations in Prijedor and Srebrenica and vice versa. These results are further analysed in comparison with existing transitional justice and peace-building programs in B&H. Consequently, transitional justice programs are also examined and evaluated based on a victim-centred approach to protection of individual victims' human rights to remedies and reparations (mentioned above) about GHRV. Consequently, answers to these issues should provide another level of the case study to respond to the research questions of the thesis. Since the mass crimes as of their enormous appearances require an extended period to be remedied, especially if they are objects of the politics of denial, the thesis proposes a long-time plan of action considering recognition together with safeguarding of individual victims' entitlements to remedies and reparations. For example, the thesis suggests a victim-centred approach

for various public programs and policies as well as human rights education for creating sustainable human rights and peace culture.



CHAPTER 1.: THE UNIVERSALITY OF HUMAN RIGHTS

The first chapter will analyse John Finnis, John Rawls, Jack Donnelly and Ioanna Kuçuradi's theories of the human rights universality both as philosophical justification that would support rights universality generally, and provide concrete solutions regarding acknowledgement along with safeguarding of individual victims' entitlements to remedies and reparations. Having said that, we will be able to proceed further throughout the first chapter and later throughout the other parts of the thesis to challenge the doctrine of cultural relativism which both requires considerateness for different cultures, while evaluating the model of the *Universal Declaration of Human Rights* (UDHR) as having no normative force or demanding its associated practices to be assessed by the particular culture's standards absolutely. Accordingly, this moral doctrine supports different politics of denial of individual victims' human rights to remedies and reparations that are cultures of repression and injustice in a broader sense. Therefore, since human rights are both legal (practical efficiency of human rights) and moral (moral claims of legal recognition of human rights) rights, I argue that Finnis's theory of ontological universality of human rights will provide us with better substantive moral justifications and claims for legal recognition of individual victims' human rights to remedies and reparations where they do not exist or are violated than other three normatively thin human rights theories.

1.1. GROUNDING HUMAN RIGHTS IN JOHN FINNIS'S THEORY OF THE ONTOLOGICAL UNIVERSALITY OF HUMAN RIGHTS

After horrors of World War Second (WWII) that "disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind" (UDHR pmbl, para. 2), UDHR was adopted by the United Nations (UN) as a normative global pillar and barrier against state's tyranny and repression averse to its citizens. It also laid in hindsight a foundation "for all contemporary human right conventions and declarations" by setting ethical and normative standards for subsequent developments in international human rights, but also customary international law, many constitutional developments, national institutions, laws, and statutes (Andreassen, 2009: 248).

However, the UDHR did not set a definite single philosophical or religious basis about the origins of human rights because of political aspirations for worldwide consensus about the validity of rights of the UDHR, but instead it stated that humans have human rights simply by being born as human beings, which is a matter of moral intuition, leaving questions about the Declaration's philosophical foundations of modern human rights to an idea of overlapping justifications. Notably, overlapping justifications means: "mutual respect across fundamental divides or an acceptance of a plurality of incompatible justifications" (Andreassen, 2009: 249).

Accordingly, we will assume that Finnis's theory of the ontological universality of human rights fairly corresponds with the ethical and normative standards of the UDHR. Particularly, in an article titled *Natural Law Theories* Finnis asserts that the UDHR actually links classical philosophical Greek along with Roman juridical treatment of fairness with modern jurisdictional ascription of rights of human beings as if that, "All human beings are born free and equal in dignity and rights" (Universal Declaration of Human Rights [UDHR], art. 1), which resembles Roman juridical saying about justice that "by nature, from the outset, all human beings were born free and equal", as standard and ground for law (*ius*) which treated human beings as persons – substances of a rational nature – who are inherently subjects of rights and not its objects. Ancient Greek philosophy, Roman legal and moral thought, and Judeo-Christian manuscripts, on which Finnis grounds his human rights theory, represent an important ethical tradition of natural law doctrine which influenced our present thinking about human rights and modern emphasis on reason (Finnis, 2007).

Nevertheless, what does natural law mean? Patrick Hayden takes a contemporary historic approach to philosophical foundation of human rights, not ontological in *The Philosophy of Human Rights*. According to Hayden:

In its basic form, natural law theory holds that there are immutable 'higher laws' of nature (both human nature and the universe in general), which often are thought to exist as part of the law of God. These laws constitute moral norms or prescriptions about right conduct. Through their use of reason, a common faculty endowed to all human beings, humans are able to access and act in accordance with the universal values of natural laws, thereby bringing about the moral and political order required for the common good. Natural law thinkers thus hold that human beings share a common ability to distinguish right from wrong and that humans can deduce rules of moral conduct consonant with the universal nature of right and wrong. While the early natural law thinkers did not have at least any clearly defined notion of human rights, they did lay the groundwork for thinking about the

essence of being human as a moral good, often formulated around the concept of justice (2001: 3-4).

Moreover, Finnis argues in the publication titled *Natural Law and Natural Rights* that the term “human rights” is a contemporary idiom for “natural rights” which as vocabulary and grammar of rights has been derived from the language of lawyers and jurists but it is firmly influenced by its origins, that is natural law (Finnis, 2011b: 198). For example, Finnis merely illustrates grammar of rights by stating that:

Just as a notion of ‘Trinity’ occurs in the New Testament without the term Trinity or any verbal equivalent, so the notion of universal human rights has been present in ‘pre-modern’ and ‘Roman Catholic’ thought, expressed in statements ... that all human beings are protected by the duties of justice, duties that are owed to, for example, the new-born child who might by custom be left to die on the mountainside (2015: 218).

Therefore, what does Finnis mean by rights of human beings? The rights of human beings are:

Human or natural rights [that] are the fundamental and general moral rights [absolute rights or negative duties of respect for *not* deliberately damaging or ending one's person fundamental aspects of his/her flourishing, for example, the right to life]; particular or concrete moral rights ... derived from the general forms of moral, i.e. human rights [positive duties to promote the well-being of one's person, for example, the obligations of parents to their children to nurture, protection, support, education, and so on] (Finnis, 2011b: 198-199, 2011a: 7-8).

Andrew Fagan in his article titled *Human Rights* categorises Finnis’s theory of human rights in the interest theory resolution to the philosophical justification of rights of human beings. The interest theory holds that the main performance of the rights of humans is protection of common substantial interests (the biological and sociological necessities) which represent the central ground upon which they can be morally justified. For example, each one of us might have an *interest* in respect to our security which as such helps us to ground our claims to the right. This substantial interest may further demand derivation of other corresponding rights as requirements for security such as the right to food or liberty from illegal imprisonment. Consequently, the human rights universality is founded on essential attributes for our human well-being that we all share (Fagan, n.d.). Likewise, Finnis argues that human rights serve to secure “basic forms of human good”, as if safeguarding fundamental interests for human well-being, and these essential prerequisites for human flourishing provide the basis for human rights as the grounds to justify our claims to the corresponding human rights, both claim rights or liberty rights kind. Finnis differs seven “basic forms of human good”, that is,

life (the capacity for one's life development), knowledge (its acquisition), play (the capacity for play enjoyment), aesthetic experience, sociability and company, pragmatic good reasoning (the sufficiency for reasonable as well as intelligent thinking process), and spiritual-mindedness (the sufficiency for prayerful life) (Fagan, n.d.; Finnis, 2011b: 81-89).

However, Finnis does not explicitly define "basic forms of human good" (Finnis, 2011a: 17-151). According to Robert P. George, the basic human goods are: "The basic goods of human nature are the goods of a rational creature — a creature who, unless impaired or prevented from doing so, naturally develops and exercises capacities for deliberation, judgment, and choice. These capacities are God-like" (George, 2008: 176). Nevertheless, Finnis instead explains how we can come to know them by our understanding of the human nature (Finnis, 2011a: 4). Finnis asserts that to know human nature is to know many and varied objects that match human acts and to take on those acts is to know what human beings can do (their capacities) and to know what humans can do is to know human nature.

Finnis's study further proceeds to make the main point about basic goods:

In doing so, one is enriching one's understanding of the basic elements in human flourishing, [a] the basic goods that have made sense of one's reasonable actions ... and [b] the directiveness (normativity) they [basic goods] have for one's practical reasoning, deliberations, and choices. ... [such as] the good of knowledge and truth ... friendship ... practical reasonableness itself ... In every case, one understands these goods as *good for me and anyone like me* ... [that is] in reflection, as [good to] 'any human person' (2011a: 5).

Moreover, George's study gives us a clear account on human nature:

Theorists of natural law understand human fulfillment — the human good — as variegated. There are many irreducible dimensions of human well-being. This is not to deny that human nature is determinate. It is to affirm that our nature, though determinate, is complex. We are animals, but rational. Our integral good includes our bodily well-being, but also our intellectual, moral, and spiritual well-being (2008: 172).

That is to say, human beings are rational animals whose the authority or power of human reason has control over human passions and desires in human actions and not vice versa as Hume or Hobbes claim. Therefore, Finnis argues that humans/subjects throughout their human actions in relation to their objects (trans-material spiritual objects of human actions, such as friendship), come to realize that they/humans possess some capacities (practical reasoning, deliberations and choices) naturally, and thus

come to know that they are rational animals/creatures by nature; and that in relations to these “basic goods” which are objects of their intended actions, they found in them as such the basic elements of human flourishing/development which give sense to their actions as well as normative directiveness that they have for their capacities as being good for them/persons and everyone else. Consequently, essential human goods are considered to be the self-evident to human beings for their flourishing within the realm of the practical reasonableness (which details how to act). On the contrary, for Finnis, the basic human goods are not derived from the law of God or controversial metaphysical assertions, that is these objective goods cannot be rejected rationally. Therefore, what does Finnis’s theory of modern natural law entails briefly?

Mainly, for Finnis, the very notion of the comprehensive as well as unchangeable fundamentals of natural precept is composed of the basic human goods (mentioned above) and nine requirements of practical reasonableness (which for a mature, educated and reasonable man/woman guide their participation in other basic human goods and their ways of the personal flourishing). These requirements of practical reasonableness are: 1) the good of pragmatical sound judgment designs our quest for goods; 2) one comprehensible projection of life; 3) reasoned preferences among values; 4) no irresponsible partiality between persons; 5) disengagement and undertaking of one’s big life picture; 6) the restrained importance of consequences – performance but within reason; 7) appreciation for any fundamental worth in any deed; 8) the public good’s requirements; and 9) respecting one’s moral conscience (Finnis, 2011b: 100-126). In following Finnis’s principle of natural law, one is following the command of the right reason which involves moral necessities that enable him/her to flourish at the individual and about common level. However, those who do not respect the objective basic human goods are merely wrong. Alternatively, they are not able to develop themselves fully.

Further to this, what are relations between the basic human goods and the common good, law, and governments? For Finnis, choosing and acting on the intelligible basic goods provides flourishing for persons and their communities. When individuals try to promote or benefit from the essential human goods, they also ensure a common good. In one sense, this means that participants’ good purposes are mutually advanced. In other broader sense, it means that the general political good of the state designates supporting

the rights of all its members against dangers of injustice both inside and outside that community (Finnis, 2011a: 1). For Finnis, natural law theorists comprehend the role of law as a remedy against evils such as anarchy (lawlessness) and tyranny (bad forms of law and legality). The state governments and law carry on their activities essentially for the common good of the citizens of a specific territory for the wellbeing and interests of all inhabitants equally and fairly. Therefore, society should have a political authority (government) as a remedy against anarchy, impoverishment and injustice in society. However, he refers to Aristotle to point out that governments should be rather in compliance with the law, because 1) laws are rather products of reasons than desires; 2) rulers can reign in the interests of parts of society and not for the common good; 3) there should be an equal political participation of mature citizens in the government; 4) without legal regulation it would be impossible to provide rotation of public offices and their holders. Therefore, he gives previousness to the rule of law as a remedy over threats posed by potential adventurous rulers and governments on the behalf of the public good of inhabitants. However, on account of law, he asserts that it should be composed of both positive law (made and part of official practice, such as human-made legislatures) and natural law (rationally necessary for ensuring a minimum of human flourishing at least, such as human rights). It is because positive law can provide social facts for the creation of laws, but without sound reasons of having morally necessary rights for all men, such a legal system can be unjust (Aristotle, 350 B.C./2015, in Finnis, 2015).

Apart from Finnis's idea of the natural law, what does Finnis's theory of the ontological foundation of human rights mean? According to Finnis, the ontological basis of rights of a human being represents:

One's identity (as a person with interests that are truly intelligible goods) all the way back to one's beginning as a pre-implantation embryo (with the radical capacities whose ultimate objects — those same intelligible goods — one now participate in and deliberately intends) is the ontological foundation of one's human rights, because it is the foundation of one's judgment that 'I matter' and of one's duties to respect and promote one's own good, and therefore of one's judgment that 'others matter' and of one's duties to other persons to respect and promote their good. For they too have such identities (all the way back, and all the way forward to the end of their lifetimes), such radical capacities, and intelligible forms of flourishing (and harm) of just the same kind as one's own. Just as immaturity and impairment do not, in one's own existence, extinguish the radical capacities dynamically oriented towards self-development and healing, so they do not in the lives of other human persons. *There* is the ontological unity of the human race, and radical equality of human

persons which, taken with the truths about basic human goods, grounds the duties whose correlatives are human rights — duties *to*, responsibilities *for*, persons (2011a: 7).

On the contrary, according to David Wong, normative cultural relativism as a type of the doctrine of cultural relativism asserts that, “it is wrong to pass judgement on others who have substantially different values, or to try to make them conform to one’s values, for the reason that their values are as valid as one’s own” (Wong, 1991: 442). Namely, John J. Tilley defines cultural relativism as: “(...) it’s a *cultural* brand of moral relativism, a brand that ties morality to elements of culture (e.g., customs) as opposed, say, to personal likes and dislikes“ (Tilley, 1998: 272). However, even though, normative cultural relativism assume toleration of different cultures instead of cultural hegemony, it also asserts that every moral judgement is not universally valid but culturally relative. This might mean that since there are no universally valid moral judgements this may lead to inasmuch genocides as being completely coherent with intolerant relativism, as Jack Donnelly in an article titled *Universality* points out: “If any culture’s values tell me that others are inferior, there is no standard by which to challenge this” (Donnelly, 2009: 267). Apparently, normative cultural relativism is not compatible with the notion that all individual humans have universal human rights which is based on their capacities to make autonomous moral choices, the notion which is supported by Finnis’s ontological deliberations about human beings as persons – substances of a rational nature – who are inherently subjects and not objects of rights, capable of practical reasoning, deliberations and choices. Consequently, normative cultural relativism as such might serve as moral ground for realization of the certain criminal ideologies of utopian homogenous communities, politics of denial of weighty rights misdemeanours (genocides and various mass crimes), and related negation politics of individual victims’ rights to remedies and reparations for GHRV.

However, Michael Freeman in his book titled *Human Rights* criticises Finnis’s concept of human rights. For Freeman assertions about objective goods are either controversial or too vague. Besides, those who might agree about the existence of the objective goods, they might disagree about the particular list of the objective goods. Further, Freeman is also sceptical about Finnis’s reconciliations between the common good and individual rights as if being not demonstrated adequately as such (Freeman, 2017: 83). Likewise, Donnelly points out that an ontological universality understood as a single

transhistorical foundation of human rights as having a timeless and spaceless validity of being a part of “the moral fabric of reality”, might be partially true and compatible with overlapping consensus universality. Namely, Finnis’s theory of rights of humans could participate in Donnelly’s idea of rights of human beings as “political conception of justice” because it sets limits to the acceptable and lawful conducts of the governments. However, he further stresses out that a single philosophical account of the source and subsistence of human rights cannot be broadly mesmerising (Donnelly, 2009: 265).

Further to this, how can we justify individual victims’ human rights to remedies and reparations based on Finnis’s theory of human rights? There are at least three ways within Finnis’s thesis of human rights which allow justifications of individual victims’ rights to remedies and reparations. The first way is the existence of the transhistorical basic human goods in every moral fabric of society (for example, life, knowledge, friendship, practical reasonableness, and religion). These basic goods represent fundamental interest for anyone’s human well-being in one society (and for society as the whole) that is secured morally and legally by human rights. If some members of that community are denied participation in these basic human goods for various unsound reasons, then injustice is done toward that person/victims. It is because they are necessary for their well-being as well as about other members of that society who might enjoy those essential goods for their well-being that this denial of the basic goods seems unfair to the victim(s), and in that case, the victims need to be compensated for that injustice.

The second way to justify individual victims’ human rights to remedies and reparations is through the *correlativity of duties and rights*. It means that the correct equivalent of Y’s duty to X is X’s (claim) right, and not Y’s autonomy right to act on her duty. Because, justice regards what another person holds “the right from, or against me”, that is “what I owe to another person” (Finnis, 2015: 215, 2011b: 199-202). For example, persons, or the state’s government and legislature have duties of respect and/or promotion of a person’s well-being, as if to prevent threats to the lives of persons, or any other correlative duty to any other absolute or derived corresponding human rights based on the viewpoint of the others to whom something is owed or due (justice) (Finnis, 2011a: 2). Accordingly, this Finnis’s principle of the correlativity of duties and

rights considering individual victims' human rights to remedies and reparations in cases where they are denied, violated, or non-existent is sufficient ground for their justification because that is violator's duty due to something that is owed or due to the victim(s).

The third way to justify individual victims' human rights to remedies and reparations lies in Finnis's concept of retributive justice and punishment. Finnis's concept of retributive justice and punishment for wrongdoings is not the same as Kant's negative retributive justification for punishment based on "principle of equality" (Murtagh, n.d.) (murder gets death penalty), but a desert-focused retributivism (impersonal justice), where punishment is required on behalf of the entire society and not a particular victim in order to repair any serious agitation of a country's moral order and to reconstitute equilibrium of economic and social relationships in society (Kramer, 2013: 182). According to Finnis, the justification for punishment is grounded on the evidence that, "(...) the law-abiding [citizens] have the right that government and law nullify the advantage he [the offender] gained by his lack — indeed, abandonment — of the self-restraint needed to respect the demands implicit in the law's definition of offences" (Finnis, 2011a: 12). Finnis's desert-focused retribution theory is retribution justice theory about reparations for sufferers of rights infringement. The theory includes the punishment of the perpetrator, and deterrence for justice disturbance in a liberal democracy, situated upon the idea of the weight of cost-benefit actions of rational actors (Schleker, 2009: 330). Finnis's theory of justice and punishment also includes civil (besides the criminal ones mentioned above) vindications of the rights of victims to compensations.

In sum, John Finnis defines rights of human beings like a latest idiom for natural rights whichever are both fundamental moral rights (negative duties not to damage fundamental aspects of one human being's flourishing) and particular moral rights (positive duties to promote a person's well-being). International human rights are imitative of the natural law doctrine, that is specifically from Roman juridical saying about justice that "by nature, from the outset, all human beings were born free and equal" (Finnis, 2015) as standard and ground for the law (*ius*) which treated human beings as persons (substances of a rational nature). Notably, natural law doctrine

influenced our present thinking about human rights and modern emphasis on reason. Further, Finnis argues that human rights serve to secure “basic forms of human good”, as if safeguarding fundamental interests for human well-being, and these essential prerequisites for human flourishing provide the basis for human rights as the grounds to justify our claims to the corresponding human rights, both claim rights or liberty rights kind. Therefore, the human rights universality is founded on essential attributes for our human well-being that we all share. He differs seven “basic forms of human good”, that is, life (the capacity for one’s life development), knowledge (its acquisition), play (the capacity for play enjoyment), aesthetic experience, sociability and company, pragmatic good reasoning (the sufficiency for reasonable as well as intelligent thinking process), and spiritual-mindedness (the sufficiency for prayerful life).

Finally, there are at least three ways within Finnis’s philosophy of rights of humans which permit us to justify individual victims’ entitlements to remedies and reparations. The first way is the existence of the transhistorical basic human goods in every moral fabric of society (for example, life, knowledge, friendship, practical reasonableness, and religion). It is because they are necessary for their well-being as well as about other members of that society who might enjoy those essential goods for their well-being that this denial of the basic goods seems unfair to the victim(s), and in that case, the victims need to be compensated for that injustice. The second way to justify individual victims’ human rights to remedies and reparations is through the correlativity of duties and rights. For example, persons, or the state’s government and legislature have duties of respect and/or promotion of a person’s well-being, as if to prevent threats to the lives of persons, or any other correlative duty to any other absolute or derived corresponding human rights based on the viewpoint of the others to whom something is owed or due (justice). The third way to justify individual victims’ human rights to remedies and reparations lies in Finnis’s concept of retributive justice and punishment. This theory is multifold as including the punishment of the perpetrator, and deterrence for justice disturbance in a liberal democracy, situated upon the idea of the weight of cost-benefit actions of rational actors. Finnis’s theory of justice and punishment also includes civil (besides the criminal ones mentioned above) vindications of the rights of victims to compensations. Therefore, Finnis’s theory of ontological universality of human rights provides us with substantive moral justifications and claims for legal recognition of

individual victims' human rights to remedies and reparations where they do not exist or are violated.

1.2. JOHN RAWLS THEORY OF UNIVERSALITY OF HUMAN RIGHTS

How does John Rawls define human rights? John Rawls does not offer a specific definition of human rights in his published works. Nevertheless, Rawls's doctrine of rights of human beings presented in his published works allows us to infer his elaborate account of multiple human rights roles, which can be understood as: a proper branch of the *rights* of members of societies, as *principles* overseeing relations between peoples, and *norms* that command the conduct of governments. Mainly, we shall examine Rawls's concept of rights of human beings in *The Law of Peoples* to understand his doctrine better.

Namely, Donnelly compares Rawls's idea of overlapping compromise between dissimilar and all-encompassing doctrines as if a “political understanding of fairness”¹ in national liberal democratic societies, to human rights becoming an “international political conception of justice” among different comprehensive positions in the international community. The political understanding of fairness addresses just the political structure of liberal democratic society free from any comprehensive doctrine as far as possible (Donnelly, 2009: 265). Donnelly's understanding of Rawls's human rights scheme is in line with Rawls's constructivist liberal theory of justice which to be complete needs to be constructed from domestic liberal justice (*Political Liberalism*) outward to a law of peoples at the international level and further toward local justice of the particular societies. Notably, Rawls constructs and extends his theory of justice from national liberal society to international and local subjects for their representatives in alike original positions to negotiate fair conditions of the basic political structures which are subjects of justice. Therefore, to understand the law of peoples and human rights scheme set therein we need to examine the main ideas of *Political Liberalism* briefly, that is stability and legitimacy of domestic liberal justice, from which they are developed.

¹ Originally named by Rawls “a political conception of justice”. The dissertation uses the phrases interchangeably.

In the construction of the political conception of justice at the domestic level, stability and legitimacy play unique roles. They are intertwined together. Stability means the sufficiency of the fairness idea to reproduce sustention by itself. Notably, if a country's fundamental construction was adequately arranged by the moderate official idea of fairness which was approved by the equal and free nationals who hold diverse fair-minded opinions, then a legitimate's society's stability would be ensured (Chen, 2008: 43-46; Rawls, 1971: 145). Further, Rawls's *Political Liberalism* contains triple principal characteristics of the official idea of fairness: 1) it is restricted to the fundamental model of country; 2) it is a freestanding conception (no reliance on comprehensive doctrines), and 3) it originates from fundamental conceptions which are present in general civil sphere of a democratic order (Chen, 2008: 46-47; Rawls, 1996: 11-15, 175). Fundamental model includes the essential public establishment which allocates basic entitlements along with moral obligations as well as advantages based on social cooperation (Rawls, 1996: 258). Simultaneously, Rawls uses tools of the social agreement, for instance, ideal position along with “veil of ignorance“ to be an exemplary replica which enables just as well as sound requirements constituent of the principles which can be chosen by parties in relation to administering the underlying model (Chen, 2008: 48; Rawls, 1971: 102-171). A society is understood to be well-ordered if it is ruled by a shared comprehension as well as admittance of tenets of justice being persuasively realised in the country's establishment and routine as well as that might function like a groundwork for resolving disagreements between residents.

A political conception of justice is freestanding as if asserting no particular ends of life. The liberal conception of justice should satisfy the liberal standard of lawfulness which means that official authority is legitimate on condition that it functions alongside the constitution, whereas each rational or reasonable resident as its essential is able to approve it by ordinary sound reason (Chen, 2008: 50; Rawls, 1996: 137). The standard of liberal lawfulness is based on reciprocation as if it means for citizens to acknowledge reasonably divergence about all-encompassing doctrines while living together through collaboration (Chen, 2008: 50; Rawls, 1996: 137). If a lasting democracy endures it would mean that residents may agree on a political understanding of fairness, as corresponding justice ensures a sufficient and the most reasonable basis for social cooperation in democracy. Therefore, the goal of *Political Liberalism* is to restrict

liberalism only to political sphere in a well-founded as well as fair country. However, Rawls points out that the principle notions for the creation of a political understanding of fairness are present within the public sphere of such country. The public sphere consists of the governmental establishment, constitutionality, democratic practices, judicial precedents, and historical materials which inform general knowledge (Chen, 2008: 52-53; Rawls, 1996: 14). Citizens have implicitly shared understandings of political beliefs and the meaning of the constitutional rights that constitute a political conception of justice. Public sphere represents exclusive and understandable authority of doctrine. If the political conception of justice stands free from every all-encompassing doctrine, reasonable residents are able to go along with it, and such understanding can serve as the basis for legitimate coercion.

For Rawls, the constructivist liberal theory of justice can become universal in its approach if it is projected to international and local levels (Rawls, 1999: 85). Notably, it means construction of the basic international structure, moral agents and international normative order in the law of peoples. Global community is designed as a society of peoples. Rawls differs five types of different regimes in the society of peoples, that is 1) liberal democratic society with free and equal citizens, a fair social scheme of cooperation and well-ordered society; 2) decent country that respects human rights, a well-minded comprehension of fairness, as well as peace in the company of the neighbours; 3) considerate absolutist regimes that perceive rights of human beings but the citizens do not participate in political processes significantly; 4) burdened societies which cannot become well-ordered by their efforts because of unfavourable conditions; and 5) outlaw countries that infringe citizens' human rights and lead aggressive wars against other states (Rawls, 1999: 4).

Analogously, the political understanding of fairness between countries should be build upon public sphere's notion of reasonableness, to ensure stability considering the good cause instead of proposing, for instance, a way of life in the construction of the peoples' law. Because, Rawls's peoples' law represents a projection of the liberal standard of fairness externally to international cohesion among countries. However, the law has to be created as if all peoples can accept it. Namely, the political understanding of fairness should be determined by the public sensibleness agreeable to every individual in a

community of nations as being sound as well as just. Therefore, the public sensibleness with respect to global fairness entails foremostly that countries make compromises with each other and subsequently proceed to establish public principles of fairness jointly. Decent countries' fundamental construction and public lawfulness are supported by their residents and they demonstrate the country's specific political culture. In the case that peoples' law demands from decent countries to abide by the liberal standard of fairness as well as it requires for their residents to be equal and free (a foreign notion to decent societies), consequently peoples' law would both transgress the liberal standard of legality, and fall short to offer a tolerant political expectation. Therefore, an extension of political justice principles toward the global realm establishes the peoples' law at which point, by analogy, a fair, accomplished country turns into a fair community of orderly countries (Chen, 2008: 55-58; Rawls, 1999: 61). Accordingly, preserving common respect between countries forms a substantial element of the fundamental construction (Chen, 2008: 58; Rawls, 1999: 62).

Moreover, moral agents of a law of peoples are peoples and not individuals or citizens like in a domestic liberal democracy. Notably, the international fundamental arrangement functions like an equitable projection of global collaboration between peoples regarded as equal and free, and not as if a cosmopolitan view of the "citizens of the world" being equal and free. Therefore, an individual is not the moral agent of fairness, but a people understood as a whole domestic society. Further, moral agents of the basic structure are not even states because Rawls's concept of peoples tries, by contemporary developments of global law and practice, to emphasize a moral character of peoples with principled reasons for actions, and on the other hand, he attempts to limit traditional Westphalian rights of the states to lead their wars or to have unconstrained internal autonomy or sovereignty (Rawls, 1999: 23-27). For instance, Rawls creates specifically the prescriptive view of "decent people" representing a non-liberal country that matches with minimum requirement of lawfulness in a law of peoples as if arranged with three criteria: 1) country is obliged to respect rights of human beings; 2) a decent society is obliged to enforce legal obligations along with duties on its citizens; and 3) members of legal system must believe in administration of a good idea of justice (Rawls, 1999: 65-67). In addition, the idea of decency is the principle requirement for membership in international community because, on the one

hand, such society possess a satisfactory model of collaboration around the common conception of good justice which is acceptable to liberal societies, and on the other hand, the liberal society must respect non-liberal decent peoples for the sakes of construction of a society of peoples, out of respect for the liberal principle of legitimacy, and avoid resentments and bitterness (Rawls, 1999: 61).

In comparison with the political understanding of fairness at the liberal democratic society, political understanding of fairness in the international community led by common reason is the one that every member of a community of peoples is capable of welcoming as fair as well as reasonable, whereas international justice standards represent terms and conditions of mutually acceptable commitments and concerns among peoples. Particularly, Rawls points out the following normative principles of the international community which comprise the peoples' law upon which liberal along with non-liberal peoples commonly agree:

- 1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
- 2) Peoples are to observe treaties and undertakings.
- 3) Peoples are equal and are parties to the agreements that bind them.
- 4) Peoples are to observe a duty of non-intervention.
- 5) Peoples have the right of self-defence but no right to instigate war for reasons other than self-defence.
- 6) Peoples are to honour human rights.
- 7) Peoples are to observe certain specified restrictions in the conduct of war.
- 8) Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime (1999:37).

Liberal together with decent societies welcome the peoples' law like a collection of principles considering the rule of a community of nations. Societies' honouring of human rights is one of those principles. Human rights principle appears as a precondition of every system of social cooperation. For instance, every accomplished country that represents a model of fair-social collaboration has to recognize fundamental rights of human beings because without their protection cooperative social practices would be replaced by mere force or domination. Therefore, recognition regarding the rights is a condition of legitimacy imposed by the peoples' law for every political order as a requirement to be recognised like a part of a fair political community of nations. Individuals are able to make a plea to the peoples' law so that the regime's injustice would be evaluated by the law. Disagreements across nations and cultures on the various concepts of domestic justice should be managed only within the framework

of the conception of minimum decency which supports basic human rights upon which agreements can be reached (Rawls, 1999: 78).

Further, for Rawls, “human rights proper” represent a unique kind of rights. He designates “human rights proper” as enlisted in the UDHR's Articles 3-18 narrowly because other rights might presuppose particular kinds of institutions (such as democratic, social and economic) and these requirements might not be tolerable to peoples who do not cultivate such values in their public spheres. Notably, the human rights are composed of the rights recognised by decent along with liberal societies. They are also the rights of such importance that require humanitarian interventions in the cases of their infringements. He enlists the following entitlements: the right to life (related to the provisions for survival along with safety), and to liberty of thought and conscience together with freedom from exploitation (for instance, slavery or coercive occupation). Further, the list also includes individual property and equality rights (alike cases to be dealt with evenly) (Chen, 2008: 67; Rawls, 1999: 65). However, Rawls rejects the freedoms of expression, media along with opinion in Article 19. Further, he disregards the freedoms of organization along with assemblage in Article 20. Rawls also excludes the entitlements to education in Article 26 and democratic participation in Article 21. Further, economic along with social rights, for instance, the entitlements to personal well-being along with social assistance in Article 25, and the prohibition of gender and racial discrimination are kept out. The human rights proper list has a particular function in Rawls’s understanding of global fairness by limiting the possible motivations considering the conducts of wars and by restraining government’s national sovereignty (Chen, 2008: 68-70; Rawls, 1999: 80).

Namely, “human rights proper” are formed from implicit notions found within the public culture of international collaboration. They are based on freestanding vindication and appear as a matter of contingent compromise between the world's different political cultures. They are therefore prescriptions that manage the behaviour of national authorities and that any person from different cultures can accept. Rawls's constructive method to rights of human beings is informative in that rights of humans represent a genuine subcategory of the very rights owned by the citizens of decent and liberal societies. Rights role is thus in the public assistance of decent along with liberal

countries' commitments to ensure such a global order in which they manage to progress (Chen, 2008: 69-70; Rawls, 1999: 80-81). Therefore, Rawls creates rights of human beings standards like a significant component of the civility idea together with a worldwide broadening of the domestic liberal idea of fairness. The civility idea provides a norm considering partnership in a community of developed nations as if regulates affairs between countries for the good reason.

The human rights understanding acts like a lowest point of departure that blameworthy country must respect if it is not to be faced with a justified intervention of liberal and decent societies to reestablish their legitimacy in a community of nations. Therefore, their content is set on not by different views of human nature but their actual role in international practices. It is because, in a pluralistic world composed of different cultures, not every people can agree on a specific moral conception of person or individual. Therefore, human rights doctrine should be primarily institutional as it is applicable to the fundamental arrangement of the international community of nations. Countries which thus grant to honour human rights principle get own facts from the backing of peoples and not from the backing of persons (unacceptable to decent peoples). Accordingly, in Rawls's deliberation of rights of human beings, humanitarian interference is not aimed to help individuals but to bring troublesome along with distressed societies to the point of legality to perform their roles within the peoples' law. Namely, violations of the fundamental rights of human beings are understood to play the part in a vital danger to worldwide peace along with stability. Therefore, an outlaw state must honour human rights based on understandings that societies which contravene the rights might be terrible to different countries, not persons (Rawls, 1999: 99).

Nevertheless, what does universality of human rights mean for John Rawls? Further, how is the universality of human rights conceived? John Rawls offers an understanding of the rights universality in *The Law of Peoples*. Mainly, his view of limiting global lawfulness is accompanied by the so-called "the fact of reasonable pluralism" in a community of nations. Namely, since a society of peoples cannot agree uniquely on any fundamental concept on principles of natural law or human dignity, they can agree on tenets of fair social cooperation. Consequently, human rights gain their justification not

from God or human nature but a constructivist procedure of justification. Rawls points out that to justify human rights we need to analyse their actual role in international relations and upon these outcomes designate their nature and content. Human rights thus have freestanding justification as being a section of an worldwide agreement staged by the conditions of common reason within the international community. Accordingly, for Rawls, his human rights scheme can avoid to be particularly politically parochial, liberal, or socialist and thus exclude ethnocentrism while providing consensus agreeable to all various cultures (Rawls, 1999: 31-32).

Notably, human rights idea's widespread conscientious strength extends to the sum of peoples, even though they might not be accepted locally. Namely, liberal and decent societies go along with the peoples' law by reason of a collection of prescripts considering the ruling of worldwide community under fair together with reasonable conditions. They also have opportunities to keep out outlaw societies from original position, participation in a community of nations as well as intervene to bring them to the level of legitimacy justly in the cases of aggressive and dangerous activities. Accordingly, the peoples' law consolidates universal or general pertinency of human rights to outlaw states. Further, human rights honoured by liberal societies (a proper subset of citizens' broader rights) and decent societies (a part of communal good understanding of justice) are universal in a sense that since the rights are deep-seated in the peoples' law, they carry widespread conscientious force which applies equally to all peoples locally, being also legally binding as such, regardless of their existent or non-existent legal codifications in such societies (Rawls, 1999: 81).

Some critics reject Rawls's understanding of rights of human beings written in *The Law of Peoples* because the author does not specify the grounds for the rights but a restricted human rights list and because Rawls's human rights framework is not thick to echo human rights politics and movement presented after WWII. For example, Grace Y. Kao stresses out:

Rawls's approach includes a refusal to specify what it is about us as human beings that would morally require others to come to our aid in cases of systematic and egregious violations of our rights and a refusal to provide explicit protections against legal discrimination based on categories such as religion, race, or sex (2011: 76).

Similarly, Michael Freeman in the article *Philosophy* points out that Rawls excludes the forbidding of gender and racial discrimination and social along with economic human rights enlisted by the international law because for Rawls they represent somewhat liberal aspirations or presuppose existence of the particular institutions than universal human rights per se. Additionally, Freeman refers to some philosophers who argue that the collection of human rights enshrined in current international human rights law are stronger actual arguments than Rawls's arguments about a law of peoples created for tolerating non-liberal decent peoples who do not respect such rights (Freeman, 2009: 232). We may also add another critique of Rawls's deliberation of rights of human beings as not being by the mainly individualistic understanding of human rights provided by the international law. However, in turn, this may cause lots of impracticalities in ensuring effective implementation, protection and enjoyment of human rights standards locally and worldwide.

Moreover, Rawls does not address victims' human rights explicitly, nor he offers any reparational scheme for victims of GHRV within, for example, retributive or restorative kinds of justice in this regard. However, Rawls partially addresses unjust human sufferings. Notably, according to Rawls:

Two main ideas motivate the Law of Peoples. One is that the great evils of human history—unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder—follow from political injustice, with its cruelties and callousness. ... The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear. I connect these ideas to the idea of a realistic Utopia (1999: 6-7).

According to Leif's article about John Rawls:

The most important feature of the "realistic utopia" that Rawls envisages in *The Law of Peoples* is that the great evils of human history no longer occur. The most important condition for this realistic utopia to come about is that all societies are internally well-ordered: that all have just, or at least decent, domestic political institutions (Wenar, 2017).

For Rawls, political injustices appear as world's big injustices and evils of what he calls non-ideal part of his theory. For example, noncompliance of outlaw peoples with the peoples' law, or burdened countries' very bad domestic circumstances (a lack of particular resources) which prevents them from establishing well-ordered societies. In the case of the first example, accomplished countries, such as decent and liberal, must

interfere in internal affairs of such societies through humanitarian interventions to stop human rights misdemeanours which pose a menace to global peace along with stability, that is to other peoples within international community (provided in principles fourth through eight of the law). The latter example illustrates the moral obligation of orderly peoples to intervene through humanitarian aid in unprosperous countries so that to help them become well-ordered, as shown in eight tenets of *The Law of Peoples* (Rawls, 1999: 89-129). Therefore, the peoples' law reflects existing international human rights as well as humanitarian law provisions and practices regarding obligations of nation-states to interfere in national politics of different countries through humanitarian interventions to alleviate human sufferings.

To sum up, for John Rawls, human rights appear as multifold necessary. First, they are required to create civility of one country's governmental organizations. Second, human rights are adequate to dismiss forceful and rightful intervention by others. Third, their political and moral impact is withheld everywhere regardless of being supported locally or not. Further, Rawls's understanding of limiting global fair-mindedness is accompanied by the so-called “the fact of reasonable pluralism“ in a community of societies. Namely, since a humankind cannot agree uniquely on any fundamental concept on principles of natural law or human dignity, they can agree on tenets of fair social cooperation. Consequently, human rights gain their justification not from God or human nature but a constructivist procedure of justification. Rawls points out that to justify human rights we need to analyse their actual role in international relations and upon these outcomes designate their nature and content. Human rights thus have freestanding justification as being a section of a worldwide agreement staged by the conditions of common reason within the international community. Accordingly, for Rawls, his human rights scheme can avoid to be particularly politically parochial, liberal, or socialist and thus exclude ethnocentrism while providing consensus agreeable to all various cultures. Lastly, Rawls's does not address victims' human rights to remedies and reparations in *The Law of Peoples*. However, he writes about the human sufferings considering a demand for humanitarian interventions against the outlaw or burdened peoples, but not for the sake of individuals' well-being but to preserve international peace and stability among peoples. Therefore, Rawls's theory of universality of human rights provides us with only thin substantive moral justifications

and claims for legal recognition of victims people's human rights with respects to intervention for peace but not considering individual victims' human rights to full reparations and well-being where they do not exist or are violated.

1.3. JACK DONNELLY'S THEORY OF HUMAN RIGHTS UNIVERSALITY

Donnelly defines rights of human beings only as: "the rights that one has because one is human" (Donnelly, 2013: 7). However, Donnelly's concept of human rights is more complex. He starts with a notion that "human" side of "human rights" implies analyses of relationships between humanity (human nature) and human rights. Therefore, how can one obtain rights by being a human? Firstly, Donnelly examines and rejects the theory of human needs as possible foundations of human rights because neither Abraham Maslow nor Christian Bay's theories can ensure an adequate list of needs which would create an attractive list of human rights. He further proceeds to examine Amartya Sen and Martha Nussbaum's theories of human capabilities as grounds for human rights, but he finds capabilities to be rather a course to operationalise the use of rights of human beings and not a source for their substance. It is because human rights' source is man's moral nature as if a "prescriptive moral account of human possibility". For example, those who claim a human right to "x" can live richer and fulfilled human lives, that is a life worthy of human being, and those who cannot claim a human right to "x" are rather estranged from their moral nature. Therefore, Donnelly offers the constructivist theory of human rights as if "human nature" is rather a moral postulate than a fact of "nature" and human rights within human rights documents demand, as entitlements (rights), the social changes necessary to achieve the fundamental vision of human nature (Donnelly, 2013: 13-17).

Furthermore, Donnelly does not present a particular theory of human nature, such as Aristotle's *zoon politikon*, John Mill's pleasure-seeking and progressive being, Karl Marx's "human natural being", Immanuel Kant's rational being led by an objective moral law, and so on, because philosophical anthropologies are more assumed than the outcome of philosophical argument. Consequently, human rights tied to any specific theory of human nature can be controversial while conceptually empty theory ensures

relatively uncontroversial and thus substantively thin perspectives which can be used to clarify competing positions across substantive theories. It is because “foundational” arguments operate within certain communities which are defined partly by them, but a sceptic cannot be compelled by such arguments alone. Additionally, moral and political arguments appear firm mainly because we agree to treat them as such, which means that such legitimate accounts can be externally questioned, or that human rights have no strong foundations (Donnelly, 2013: 18-22). Therefore, human rights “foundations” are a phenomenon of assumption and agreement than comparatively of evidence.

However, Donnelly develops a specific substantive theory of human rights named “the Universal Declaration model” based on the principal role of the UDHR (1948) in establishing political and moral standards of the contemporary consensus on internationally accepted human rights. He tries to analyse conceptual logic that is covered by the body of global human rights instruments established principally in the Universal Declaration rather than give a philosophical account. The Universal Declaration model is thus composed of the substantial list of rights of human beings found in the *International Bill of Human Rights* (IBHR) and five structural features, such as the conception of human dignity, entitlements as social practices in realizing liberty, equality and security values, interdependence and indivisibility of human rights, and state's role in implementing human rights (Donnelly, 2013: 24-28).

Particularly, claims of human dignity demand appreciation considering the innate worthiness present in any human as if goods, opportunities, services and protections are owed to each person. Human rights are also specific practices to realise those goods, services, opportunities and protections. Except for the right to self-determination, only individuals, as members of various groups and collectives have rights of human beings provided by the IBHR. Interdependence represents a functional relationship between human rights as if they produce more worth as a whole than as the sum of rights enjoyed separately. Indivisibility means that a life of dignity is not possible if the full range of international human rights is not respected. States have the main role in implementing international human rights nationally. They appear as both protectors and violators of human rights of their citizens. States can and must implement each human right for realising the dignity inherent in us as human beings (Donnelly, 2013: 28-39).

For Donnelly, the Universal Declaration model is grounded on an attractive moral vision of humans as autonomous and equal agents who live in states that treat each one of them with equal respect and concern. Human rights become “hegemonic political discourse“, “settled norms“ and principles in the contemporary international community. Major human rights documents were adopted by over 172 state-parties in 2012, and human rights are an inevitable part of foreign policy, diplomacy, governmental, political legitimacy, and political and social ambitiousness of persons and various groups in many societies. Further, Donnelly borrows a notion of “overlapping consensus“. It's a Rawlsian view of political understanding of fairness which addresses the political construction of liberal order to be stable and just around different comprehensive religious, philosophical and moral doctrines, and extends it to pluralistic international society and consensus on the rights of human beings enlisted in the UDHR. First, such an “overlapping consensus“ enables acceptance of human rights and justice account without tiding them to any particular ethical tradition. Secondly, it leaves each tradition to elaborate foundations of a joint view of rights of human beings within their terms (Donnelly, 2013: 55-60). Consequently, different traditions, individuals and collectives come to a shared vision of the conditions for a life of dignity presented in the UDHR.

Furthermore, for Donnelly, human rights align more with political theory and political conception of justice than with moral theory and comprehensive doctrines found within the modern Western moral theory. Thus he defends the idea of the overlapping consensus. For example, human rights within the modern Western moral tradition played a small role, such as in Kant's book titled *Grounding for the Metaphysics of Morals* or utilitarian's tradition of rights as the second-order rules. To the contrary, human rights were at the centre of the contractarian political theories which endorsed them as a standard of political legitimacy. Similarly, for Donnelly, there is an overlapping political consensus on the Universal Declaration model where rights ensure a guideline of political legitimacy of states as much as they recognize and safeguard the rights of members of their communities. Accordingly, his hypothesis of rights of human beings thus presented is somewhat political than the moral theory of human rights. The political understanding of fairness around which the overlapping consensus was formed requires from states to treat each citizen with equal interest and respect. Equal concern

means that states must treat all persons as political and moral equals. Equal respect entails one's autonomy to choose and pursue one's life ideals freely without the state's interference. Regardless of persons' differences, individuals have inherent worth and dignity for which they are entitled to this equal concern and respect by the states. Human rights enlisted in the UDHR are compatible as well as derived from equal concern and respect political principle of the political conception of justice (Donnelly, 2013: 61-65). Donnelly's constructivist human rights theory thus gain thin substance whereas human rights constitute persons as autonomous and equal citizens and states as policies which govern such rights-bearing citizens.

For Donnelly, the political conception of justice understood as equal concern and respect can be approved by a significant number of comprehensive doctrines. However, he chooses the liberalism which can ensure a normative and robust foundation for the Universal Declaration model. Unusually, both social democratic found in Western Europe and American "intermediate" rights-based liberalism are by the Universal Declaration model because they are egalitarian, support an extensive system of social and economic rights and a firm conception of democratic political control. On the contrary, he excludes utilitarianism and libertarian liberalism because they are inequalitarian liberal theories which cannot provide essential goods, services and opportunities to everyone. He further develops liberal neutrality within liberal stance as a kind of equitable tolerance which is requisite regarding each concept of good which appreciate the same dignity of all humans. Finally, Donnelly admits that liberals are only one among many other egalitarian rights-based political theories who participate in the political consensus on the Universal Declaration. The overlapping consensus of the Universal Declaration model is not transhistorical consensus but rather a position from contemporary societies that each human has specified equal as well as nonnegotiable rights because of which is entitled to equal concern and respect from states (Donnelly, 2013: 65-71). The overlapping consensus is uncoerced and envisioned by the shared commitment to the equal autonomy of all.

Nevertheless, what does universality of human rights mean for Donnelly? In an article titled *Universality*, Donnelly understands human rights universality as threefold. Mainly, the universality is composed of the "international legal universality",

“functional universality“, and “overlapping consensus universality“. Global legal universality implies that states universally endorse rights of human beings. The functional universality of rights of humans means the effective protection of individuals, families or groups from modern markets and modern states as if being a set of practices. Finally, overlapping consensus universality means that various comprehensive doctrines accept human rights as “political conception of justice“ or as an authoritative form which set limits of the political legitimacy. On the contrary, human rights are not universal in their enforcement but possessions. Further, they are also not universal in an anthropological and historical sense, since there are no historical records to prove them as being equal and inalienable rights held by each. Finally, for Donnelly, it is hard to prove that human rights, apart from overlapping consensus universality, exist everywhere independently of belief system (Donnelly, 2009: 261-262).

Notably, for Donnelly, as of 23 March 2009, 170 state-parties (80%) accepted legally six main human rights instruments (on cultural, social and economic, political and civil rights, torment, racial discrimination, children and womenkind), as well as almost all states, agreed on the authority of the UDHR, which results in global legal universality. Accordingly, safeguarding of rights of human beings is predominantly seen as a precondition for the full political legitimacy of the states in the international community. For instance, during Robert Mugabe's reign in Zimbabwe, systematic human rights violations occurred which amounted to his country being suspended from the Commonwealth and treated as an international pariah. According to Donnelly, human rights ideas were firstly articulated in John Locke's piece titled *Second Treatise of Government* (1689) as a consequence of penetrated capitalist markets at that time. Accordingly, penetrating capitalist markets and modern states transformed gradually “traditional communities“ in Europe and an emerging bourgeoisie class envisioned society as if based equally on property and birth. As modernisation progressed, many disposed of groups demanded justice which led to demands to fair and nonnegotiable natural rights (rights of humans) to become pivotal (Donnelly, 2009: 264). Therefore, human rights ideas and practices appeared mainly from economic, political and social transformations of modernity, such as the rise of capitalistic markets and bureaucratic states, which Donnelly calls functional universality of human rights.

For Donnelly, both international legal and functional universalities of human rights are mirrored in the overlapping consensus universality. It means that human rights are an international political conception of justice on which most contemporary doctrines unite together. For example, Muslims, Christians, Buddhists, Utilitarians, Kantians, and neo-Aristotelians, for their specific reasons, recognise human rights as the public explanation of their inmost cultural, political, or ethical values. It is possible because human rights have no single philosophical or religious foundation. Additionally, cultures are malleable as if not being fixed, given, compatible or incompatible with human rights. Therefore, human rights as the public explanation of their inmost sense of duties can ensure the basis for materialisation of foundational egalitarian values. Since human rights have no single philosophical foundation, and because they represent political expression and social practices of realisation of various egalitarian values within many cultures worldwide, Donnelly proposes “relative universality” concept of human rights which describes not whether but rather how they are both universal and relative (Donnelly, 2009: 265).

Notably, human rights are universal (relatively) at the level of the concept, such as those we can find in general legal provisions of the UDHR whereas every individual is entitled to “the right to life, liberty and security of person” (UDHR art. 3). However, concrete concepts of human rights might provide manifold valid comprehensions, and each specific understanding has numerous defensible implementations. Notably, concepts place a scope of possible diversifications between comprehensions resulting in a restriction of practices considered for the implementation of a particular conception. Therefore, “relative universality” concept of rights of human beings is established in the combination of legal, functional as well as overlapping consensus universality which takes the UDHR as laying *prima facie* parameters for internationally acceptable government behaviour at the level of concepts. Because certain deviations of concepts of the international human rights are possible and legitimate, Donnelly proposes four arguments in tackling deviational contentions and in judging particular conceptions of rights. Firstly, variations at the level of concepts might be justified if societies or specific communities are faced with different dangers than the standard ones predicated in global human rights instruments. For instance, indigenous people fall within this category in the sense that their way of life is not compatible with social practices of

private property or universal suffrage-related to elections. Secondly, disagreements over “details” should be approached in a different way than those coming from systematic deviations or large attacks. Thirdly, the autonomous choices of free people who might prefer a particular conception of implementation, out of historical or cultural reasons, deserves sympathetic consideration. Lastly, as the level of coercion increases, so toleration for deviation decreases (Donnelly, 2009: 268-300). Therefore, deliberating rights of human beings as a political notion of fair treatment demands from us to endorse humans, collectively as well as individually, to bring together “relatively universal human rights” by the commonplace visions of good life or human flourishing under the framework of legal, functional and overlapping consensus universality.

Donnelly differs between cultural relativity (an account that cultures are different across time and space dramatically) from the doctrine of cultural relativism which permeates cultural relativity prescriptively. Cultural relativism was a popular methodological approach among anthropologists who tried to free anthropology during the XX century from judging and describing other societies from the perspective of the modern Western categories and values. Cultural relativism appeals, concerning human rights, present a substantive philosophical or moral doctrine requiring appreciation in behalf of cultural heterogeneity. Further, the Universal Declaration's human rights norms are deprived of normative force about different cultural traditions as well as practices are judged by the standards of the particular culture. In cultures which ensure absolute standards of evaluation of what is right and wrong, Donnelly calls them as absolutist cultural relativism; he asserts six counter-arguments. First, it reduces “right” to “good”, “traditional”, “old”, and “habitual”. Few individuals and societies believe that their values are binding because their culture widely endorses them. Second, if a particular value as well as a specific activity originated in the location X for which it makes it inapplicable to place Y is relevant only if we assume the impossibility of moral learning and adaption. Third, if an intolerant normative relativism (genocidal) is utterly coherent as if the values of culture proclaim that other persons or groups are unacceptable, there can be no standards to challenge this except with multidimensional and cultural conception of human rights. Fourth, coercive elements of culture are often ignored, and since politics and culture are blended, it is hard to distinguish in such cultures what is that people tolerate, value or forced to accept. Fifth, these cultures are an idealised

representation of the past that does not exist today. Sixth, cultures are represented as static, homogenous, coherent, while cultural contingency, contestation and change are ignored (Donnelly, 2009: 267).

Michael Freeman in an article titled *The Philosophical Foundations of Human Rights* criticises Donnelly's approach to human rights on three accounts. Firstly, Donnelly criticises cultural relativism but allows for the cultural-relativist criticism of rights of human beings to be "logically impeccable". Further, Donnelly shifts directly to moral obligations from consensus as if majorities' moralism might be obligatory on disagreeable few on communitarian grounds, which is inconsistent with both human rights and Donnelly's view that persons and outnumbered are not certainly compelled to obey to the greater number's values. Finally, his qualifications that he adds to his assertion about consensus, such as "almost (universally accepted)", "more-less (binding)", or a universal human moral community being an aspirational commitment at least, are weak (Freeman, 1994: 492-493).

Furthermore, the consensus argument only exists on a limited set of basic rights because of which practical consensus is often shallow, whereas claims for rights assume some failure in consensus, both logically and empirically, that calls for an appeal of theoretical consensus. For Freeman, avoiding to find the best grounding for human rights regarding philosophical sceptics together with opposers shows a lack of scholarly liability. Donnelly's approach to human rights concerning philosophical foundations is either avoided or puzzling, for the sake of international consensus. It is because he holds that human rights values and beliefs are rather historically contingent (not based on necessary truths, for example) while at the same time this approach is in harmony with a conception of rights of human beings as rights of universal moral authority. First, Donnelly asserts that international consensus is morally valid because rights of human beings are grounded on an idea of the nature of humans. Second, he rejects and borrows philosophical anthropology to support his explanation of rights of humans. Particularly, the source of rights of human beings is man's moral nature as if "a moral account of human possibility". Human rights serve as a societal exquisite of a specific moral farsightedness of human beings potential and that further count upon a specific considerable calculus of the slightest basis of a dignified life. Human nature that lies

under human rights is a social project which combines natural, moral, historical and social elements. Consequently, Donnelly does not offer a philosophically defensible enumeration of rights of human beings acquired out of a moral utterance of the nature of human beings but he defends them indirectly as if the attractive and plausible account of human nature (Freeman, 1994: 502-503). Accordingly, Donnelly's consensus (based on theory) and human rights theory is weak.

Notably, Donnelly's human rights theory is thin because its impossibility to defend in detail or directly a substantive theory of human nature, which would ensure in turn an exact and definitive source of human rights. Therefore, his theory is abstract and rather empty of content. Donnelly's theory is not a comprehensive theoretical explanation of rights (not normative), but the analytic hypothesis of the human rights concept (descriptive) which tries to explain how human rights work in contemporary social relations. Donnelly's analytic theory ensures a little substantive guidance of how comprehensive philosophical justification of human rights could be achieved. Further, he does not give a consistent explanation of his theory and justifications. For example, he denies that his theory is normative, but he tries to arrange normative considerations in its defence. He also claims that his theory is by many theories of human nature but considers international consensus to be based on a specific theory of human nature. Notably, Donnelly's ground for human rights stems from the conception of nature of human beings around dignity found within every person as if minimum substantive requirements of a life of dignity. Consequently, even if he denies that he relies on a specific conception of man's moral nature, Donnelly does not justify the human rights concept normatively. Further, if his normative theory lies on the supposition of inherent dignity, he does not justify or explain "inherent dignity" sufficiently. Without supporting an account of human nature, Donnelly cannot explain the attraction of the "moral posit" of the dignity bound up with the human person, on the point of the basis of his conception of rights of human beings, by reason of which his consensus has no moral force as "moral posit" has no moral force. Finally, Freeman classifies Donnelly's avenue to rights of human beings regarding the questions of the philosophical foundations as if emphasising contingency, construction and relativity (not reason and morality) (Freeman, 1994: 503-505). Mainly, it means that different lists of rights,

conceptions of human rights, or even various moral concepts might be appropriately defended under slightly different conditions.

Donnelly does not examine victims' human rights explicitly within his constructive theory of human rights. Further, there are no victims' rights to reparations and remedies mentioned particularly. However, it is plausible to claim partially the victims' rights to remedies and reparations within his Universal Declaration model, IBHR or six fundamental human rights documents (along with the treaty on torture), based on the “basic” rights of human beings and legal recourse. On the contrary, Donnelly does not present any specific conception of justice upon which we could also set or derive a set of moral duties or specific rights from the principles of such justice which might in return secure acknowledgement and safeguarding of the victims' human rights specifically. Further, his theory of human rights is rather political than normative, and his conception of the inherent dignity of a human being is not adequately explained so that we could find sufficient normative basis for justifications of victims human rights to remedies and reparations based on its substance. However, Donnelly in his book mentioned above examines the importance of the humanitarian intervention in international community considering genocides and victims' sufferings within his theory of human rights.

Namely, for Donnelly, humanitarian intervention represents a kind of intervention “undertaken to halt, prevent or punish 'genocide', understood as gross and systematic and severe human rights violations involving extensive political killing, or in response to the humanitarian crises such as famines or massive refugee flows” (Donnelly, 2013: 255). Similarly, Erica A Heinze in an article *Humanitarian Intervention: Overview* points out that: “Humanitarian intervention is generally understood as an act of militarily intervention by an actor or actors (usually states) into the jurisdiction of another state to halt or to avert gross human abuse” (Heinze, 2009: 448). Both authors understand humanitarian intervention as a complex and often controversial type of intervention composed of moral, political and legal dimensions.

Donnelly's moral account regarding humanitarian intervention has a few arguments. First, universal human rights values (especially in cases of genocide and slavery) may overcome strongest normative pluralism's assumptions against intervention, because

pluralism is desirable as far as it reflects the autonomous choices of free moral agents and because not all choices deserve our respect. Second, the appeal of the political community to self-determination as an argument against intervention is cynical if human rights violations are so severe that there are no moral bounds among states and citizens so that to demand respect from outsiders. The political dimension of humanitarian intervention, for Donnelly, is two-fold. First, it is related to a danger of partisan abuse of non-authorized UN's humanitarian intervention by states for their real political interests and rivalry. Second, it is related to changes in the concepts of sovereignty (states which do aggression or genocide forfeit their right to non-intervention) and security (personal security became defined regarding human rights with the Helsinki process in Europe). Consequently, international human rights norms moved society internationally to accept an anti-genocide exception to the prohibition of intervention. On the legal perspective, Donnelly refers to humanitarian intervention as being illegal under Article 2(7) and Article 2(4) of the UN Charter which forbids the employment of power or interference across domestic jurisdiction, independence and territorial integrity of any state. Conversely, Donnelly also cites generally the UN Charter which provides an application of military power against states so that to bring back or preserve global peace as well as safeness in the Chapter VII (Donnelly, 2013: 255-273). Finally, Donnelly rightly concludes that if humanitarian intervention is not authorised by the United Nations Security Council (UNSC), then it is illegal but if it is simultaneously carried out within sizeable regularising intent of international law that allows the state to stop massacres, it could be deemed "lawful".

To summarise, for Donnelly, rights of human beings are entitlements each human being has by merely being human. Further, Donnelly defines the concept of the human rights universality as threefold. Mainly, the universality is composed of the "international legal universality", "functional universality", along with "overlapping consensus universality". Global legal universality implies that states universally endorse rights of human beings. The functional universality of rights of human beings means the effective protection of individuals, families and groups from modern markets and modern states as if being a set of practices. Finally, overlapping consensus universality means that various comprehensive doctrines accept human rights as "political conception of justice" or as an authoritative form which set limits of the political

legitimacy. Comprehending rights of human beings on the point of a political consideration of fair treatment demands from all of us to grant humans, collectively or individually, to bring together “relatively universal human rights“ by the commonplace of the good life or human flourishing under the framework of legal, functional and overlapping consensus universality.

Finally, Donnelly does not examine victims' human rights explicitly within his constructive theory of human rights. Further, there are no human rights to reparations and remedies for the sufferers of GHRV mentioned particularly. However, it is plausible to claim partially the victims' rights to remedies and reparations within his Universal Declaration model, the IBHR or six fundamental human rights documents (counting the torture treaty), in relation to the “basic“ rights of humans as well as legal recourse. Contrarily, Donnelly does not present any specific conception of justice upon which we could also set or derive a set of moral duties or specific rights from the principles of such justice which might in return provide recognition as well as safekeeping of the victims' human rights specifically. Further, his theory of human rights is rather political than normative, and his conception of the inherent dignity of a human being is not adequately explained so that we could find sufficient normative basis for justifications of victims human rights to remedies and reparations based on its substance. However, Donnelly examines the importance of the humanitarian intervention in international community considering genocides and victims' sufferings which is by current legal, ethical and political norms and practices about it. Therefore, Donnelly's theory of relative universality of human rights provides us with rather thin substantive moral justifications and claims for legal cognizance of individual sufferers' human rights to remedies as well as reparations after the mass crimes committed, where they do not exist or are violated.

1.4. İOANNA KUÇURADI'S THEORY OF THE UNIVERSALITY OF HUMAN RIGHTS

İoanna Kuçuradi's in her book titled *Human Rights: Concepts and Problems* points out that the concepts can be dangerous when their content is taken for granted. Therefore the task of philosophy concerning the human rights concept is to examine it anew. What do human rights mean for Kuçuradi? Kuçuradi points out that: "Human rights express some necessities, related to each human being. These necessities appear as demands to recognise and observe the value of the human being, that is, they appear as demands to protect individuals for the sole reason that they are human beings" (Kuçuradi, 2013: 5).

Furthermore, she raises and answers a question about what does the notion of fundamental rights of human beings mean? In her opinion, the concept of fundamental (inalienable) human rights mean their foundation, that is "the dignity" or "value" of Man, upon which humans are proclaimed to be one and the same. What does the term "the value of human being" mean? It is meant the totality of his/her characteristics, his/her potentials which tell the difference between humans and non-humans. They emerge as actions and as results of these actions proper to the human being. These possessions or potentialities form "the value of human being" that is one's dignity. To protect this ultimate existence of properties of human beings in persons, that is to develop his/her potentialities in individuals, becomes the cause of humankind and is the assignment of each individual. Therefore, what secures each human right a right, i.e. the requirement either not to be violated or to be fulfilled for every human being, finds its basis in the knowledge of human being's potentialities (Kuçuradi, 2013: 5-6).

Nevertheless, what could be used as a criterion to examine the fundamentality of rights of human beings? Accordingly, the systematic knowledge of Man's potentialities, acquired using the achievements of humanity and a clear knowledge of conditions securing the ground for their actualisation (Kuçuradi, 2013: 6). Furthermore, rights of human beings are the entitlements of the person. However, as demands they demonstrate a few noteworthy dissimilarities: a portion of these demands is connected straightforwardly with human potentialities, such as security of individual (for instance, no human will be tortured, subjected to degrading, inhuman, cruel practices, or arbitrary arrest, no human will be treated as a slave or in serfdom, etc.) and fundamental freedoms (for example, freedom of expression, opinion, peaceful association, etc.). Another are concerned with preconditions required considering their progression

generally (for example, the rights to education, work, a decent living unobjectionable regarding her/his health, etc.); while another part of them is connected with certain (changing) conditions (Kuçuradi, 2013: 7). Kuçuradi argues for restricting the term rights of human beings to the first two types of demands.

The demands of the first kind are directly linked with the performance of human potentialities. They are demanding from everybody not to harm the value of Man. They request the protection of entitlements which are not handed down (by a government) but exclusively appreciated in persons by persons. Therefore, respect for these rights appears as an ethical question. The role of a State about these rights is to prevent violations by guarantees of laws, and in cases of violations to re-establish balances through interventions of the State organs. Commonly named “fundamental freedoms” are the legalized assurances of these entitlements of the person which guarantee that nobody touches an individual while he/she realises his/her potentiality. Where these rights are respected, there the related freedoms exist: people “enjoy” these rights and vice versa (Kuçuradi, 2013: 7-8).

There is another group of rights that are requests pertinent to the pre-circumstances providing every person with the opportunity to progress one’s human potentialities. For example, these are the rights to education, to a decent living acceptable for one’s well-being, and so on. This group of rights represents fundamental rights that belong to each person. They are not given, but neither can be respected nor violated. Their fulfilment depends on other rights passed on to persons by a government – by way of societal, economical along with (few) politic rights. What makes the limits drawn to these given rights protect or not protect the human rights of which they are means, depends on whether these limits are drawn with respect of the equality of all citizens in a country (Kuçuradi, 2013: 8). Furthermore, for Kuçuradi, the first prerequisite considering the support of rights of human beings seems to be an unclouded conception of the essence of rights of human beings as well as the content of each right, clear enough to allow us to see its full implications. The second prerequisite is sufficient courage to declare each one of us as human, which amounts to bear and carry out the responsibilities which such a declaration involves for us as individuals and as humanity. Nevertheless, the issue of the protection of rights of human beings appears equally a philosophical, ethical and

political question. It is philosophical, as we need a clarification of the concepts of human rights with more certain conclusions about their implications. It is ethical, as individuals in everyday life respect or violates these rights. For instance, individuals are those who contribute to their protection by their votes or decisions as public officials. It is political, as it is the assignment of each government to provide circumstances necessary for all its citizens to develop their human potentialities and live “far from fear and want”. States are governed through persons, for example. Therefore, the safeguarding of rights of human beings depends on individuals as well as States. However, many States do not protect human rights not only enough but also often violate them through their organs. However, as humanity what should we do? When human potentialities or human rights are at stake, to protect these rights becomes the right of humanity as a total, but not, as it is sometimes claimed, of some or any part of it. As humanity, we have forgotten the truth that among the requests to recognise as well as pay attention to the value of Man no conflict can arise, but among interests as if some complex political and legal ones (Kuçuradi, 2013: 7-8). Therefore, it is necessary to demystify all our concepts and principles in connection to human rights and to shape new concepts and deduce new principles in politics, law and social organisation concerning the safeguarding of human rights.

What does human rights universality mean for Kuçuradi? For Kuçuradi, while often promoting human rights and cultural identities parallelly (such as ethnic and religious identities), we promote two different and contradictory kinds of norms regarding the same issues. Notably, instead of linking and resolving the problems of various identities with a clear concept of human rights in the spirit of Enlightenment, we are faced with postmodernism's assertion about the equal value of all norms, worldviews and so on. Consequently, we are faced with increasing kinds of various “metaphysical” claims of fundamentalisms, racisms, communalisms instead of relevant demands that human rights express. Especially, human rights give voice to norms deduced *reductio ad absurdum* from the presupposition of a particular epistemic quality (from the anthropological knowledge of the value of certain human potentialities). Further, human rights specificity constitutes their “universality” to protect the value of every human being regardless of their differences, such as religion, sex, race, language, and so on. On the contrary, cultural norms are often changing parochial norms directed at safekeeping

the benefits as well as concerns of persons of certain groups as if deduced in given social conditions by induction (Kuçuradi, 2013: 125-130).

Furthermore, for Kuçuradi, human dignity (awareness of the value of human being) is made up of philosophical (anthropological) knowledge of the value or worthiness of human species, such as their specificities (including human potentialities) and historical achievements. It is because of these facts that there is an objective value of human being as also a subjective correlative of it to treat all human beings in ways to actualise such “worthy“ human potentialities. Human rights are thus practical implications of such human dignity as if they demand from all persons a sort of treatment of individuals which protect the value of human being. Therefore, human rights are also “universal“ norms as they assert and request from each one of us to treat all human beings by this value, regardless of their different individual and multiple identities. The knowledge about the value of human being allows us to become aware of being first of all human beings, with our shared and common human identity, regardless of any other particular identities. Therefore, the universality of human rights is what sets them apart from different cultural norms which might differ or change within the same society or among different societies, such as “honour“ usually related to different value judgements about what is “good“ or “bad“ within different cultures or societies (Kuçuradi, 2013: 100-102).

Consequently, for Kuçuradi, bearing in mind a clear concept of human rights, human rights represents ethical principles and demands in the creation and administration of social organization, law, and public affairs in a country, as if creation of the general conditions considered to be necessary with respect to the realization of the citizens' human potentialities as human beings. The government is thus formed firstly to secure the equal protection of human rights of its citizens through its public policies. It is possible to achieve if we firstly scrutinise and evaluate norms before their enforcement in such policies, such as those of human rights from various cultural-religious and other norms and practices of empirical origin which diverge or are in conflict with clearly conceived human rights. Kuçuradi, therefore, replaces the “overlapping consensus“ of human rights and cultural-religious norms in the arrangement of public affairs with a principle of toleration, based on clearly conceived human rights and knowledge that

limits intolerable cultural norms and practices, as necessary criteria in determining public affairs in multi-ethnic and religious societies, so that to avoid direct or indirect damage to basic human rights in creation and implementation of public policies (Kuçuradi, 2013: 131-133).

However, both Jack Donnelly in his book *Universality of Human Rights in Theory and Practice* as well as Michael Freeman in his book titled simply *Human Rights* criticise the theory of “capabilities” (whereas capabilities are also interchangeably understood as “human” potentials) as not being adequately elaborated or as inadequate approach for justifications of human rights. For example, Donnelly points out: “Human potential, however, is widely variable: the world seems to be populated by at least as many potential rapists and murderers as potential saints. Society plays a central role in selecting which potentials — capabilities — will be realised” (Donnelly, 2013: 15). Therefore, for Donnelly, human potentials or capabilities can be used both for and against human beings and humanity. He also asserts that rather societies or cultures provide the basis for identifying certain human potentials or capabilities than vice versa (2013: 15).

Consequently, firstly, what do the theory of capabilities mean? Also, what are capabilities? Michael Freeman in an article *Philosophy* considers the theory of capabilities, put forward by an Indian philosopher Amartya Sen and an American philosopher Martha Nussbaum, to had a primary goal to challenge the prevailing concept of development understood as an increase in national wealth with the idea of ability of every person to flourish, and thus not to justify human rights during XX century. The concept of capabilities, therefore, set proper goals for governments to ensure minimum standards for all to develop their capabilities or quality of life in general. Capabilities are understood as a person's abilities to do those things that are fundamentally important to every human life or to be whatever he/she wants to be. It is because they make life fully human that they are intrinsically valuable. For instance, Nussbaum made a specific list of human capabilities, such as life, bodily integrity, bodily health, imagination, thought and senses, practical reason, emotions, play, affiliation, control over one's environment, and other species. The link between capabilities and human rights can be demonstrated, for example, by the similarity

between the capability of affiliation and the right to liberty of organization. The underlying justification of their connection is that the notion of rights of human beings can be related to that of capabilities as long as everyone has justified a claim for their capabilities to remain secure. The capabilities approach assert to have identified certain essential human goods as objective, and the idea of human rights, in turn, suggests that these vindicate claims on governments (Freeman, 2009: 230-231). However, many human rights philosophers (Donnelly, Amartya Sen, etc.) point out that human rights and capabilities somewhat overlap than that human rights might be fundamentally matters of capabilities for the reason that they are grounded on human dignity.

Nevertheless, for Freeman, the capabilities theory has a few problems. First, actual or potential capabilities are facts about human beings, and their moral status is questionable. For example, practical reason (capability) can be necessary for human flourishing, but it can be used for both good or bad capabilities. Alternatively, imagination (capability) can be used for art and torture. Second, even if good capabilities can be defined as those that do not diminish but rather enhance the capabilities of others, the theory of corresponding obligations is undeveloped. Capabilities theory cannot tell us what a fair distribution of capabilities is but rather what might be minimal entitlements. Third, it is not clear how to identify, weight, and prioritising capabilities. Consequently, whether cultures provide grounds for distinguishing capabilities or capabilities ensure the basis for criticising cultures? (Freeman, 2017: 83-85).

In sum, Kuçuradi's concept of human rights has parallel points of connection as well as of disconnection from the points described the capabilities theory of justification of human rights mentioned here generally. Namely, the parallel points of connections among the mentioned ideas of rights of human beings include: human potentialities or capabilities are fundamentally crucial for every human life as they make one's life fully human to flourish, or to be developed, which amounts in their inherent value as such that demands protection, respect, or fulfilment ensured by the state. Further, both concepts argue liberal freedoms, basic welfare, and democratic rights which are necessary for human flourishing. They are secular as they try to avoid doubtful

metaphysical or religious commitments. They are also universalistic and egalitarian because all human beings have human potentialities or capabilities equally.

On the contrary, in Kuçuradi's account, human potentialities are rooted in human dignity (the value of human being). However, the mentioned capabilities approach claims to have identified certain objective basic human goods (as natural law) upon which enjoyment of human rights is possible; this suggests that these basic goods vindicate claims on governments and not human dignity. Further, Kuçuradi's idea of human potentialities suggests that they form “the value of human being“, and that they appear as activities or products of such activities typical for human beings. However, the mentioned capabilities approach offers a specific list of particular capabilities which can be variable depending on different philosophers' accounts about it. Finally, Kuçuradi's concept of human rights rejects the notion that culture provides basis for identifying capabilities or human potentialities, but instead affirms that a clearly conceived human rights and knowledge about the value of human being (of which human potentialities are constitutive part) limit intolerable cultural norms and practices which may harm fundamental human rights.

Kuçuradi in her books titled *Human Rights, Concepts and Problems* and *The Philosophical Foundations of Human Rights* respectively, does not address victims' human rights explicitly. Especially, in her article titled *Justice: Social and Global*, there is no mention of sufferers of GHRV or their rights to remedies as well as reparations specifically. It is because the victims' rights are understood to be more about practical and not theoretical considerations generally. According to Kuçuradi, justice is defined as: “the demand of the permanent creation of conditions affording to individuals possibility to actualise, in the conditions of the historical moment at which they live, their human potentialities“ (Kuçuradi, 2013: 27). Kuçuradi's conception of justice is founded on the clear cognition of rights of human beings as the main point of reference in the creation of public policies by the state so that to ensure for their citizen's fundamental human rights or general conditions for the development of their human potentialities. However, this particular concept of justice is too general for addressing adequately specific rights of the victims of GHRV, in those cases where they are violated or do not exist. Namely, deduction of principles for justifications of victims'

rights from such an idea remains plausible but quite challenging. Even if assume that her human dignity concept (the value of human being) entails the performance of corresponding duties or to be in line with contemporary international human rights that entail general duties, such as to aid the victims of violations, not to violate rights or to protect others from violations in general, her specific account on justifications of victims' human rights remains plausible but relatively weak or too general as such. Therefore, Kuçuradi's thesis of human rights universality (to treat each human being by the value of certain human potentialities) provides us with rather thin substantive moral justifications and claims for legal recognition of specific individual victims' human rights to remedies and reparations where they do not exist or are violated.

1.5. CULTURAL RELATIVISM

What does cultural relativism mean? According to Maria Baghramian and J. Adam Carter, in an article titled *Relativism*, cultural relativism is a type of relativism which claims: “the equal standing of all cultural perspectives and values which co-vary with their cultural and social background” (Baghramian & Carter, 2015). However, H. Victor Condé defines cultural relativism about rights of human beings as: “A theory of human rights that holds that all human rights must be looked at, applied and interpreted according to different cultures and cultural values“ (Condé, 2004: 55). Accordingly, the cultural relativism theory and “universality“ of theory of human rights (the sameness of rights of human beings everywhere) form a complex and often diverge relationship. Namely, on the one hand, there is a claim about toleration of different cultural views and moral positioning of the cultural relativism theory. On the other hand, there is an assertion about the cultural relativity of international human rights and their implementations considering different cultural particularities, which diverge human rights from their universality. Jack Donnelly calls this complex relationship amidst cultural relativism along with universal human rights theories' competing claims a “necessary tension“ which needs to be preserved within a weak cultural relativism approach toward universality of the basic human rights (Donnelly, 1984: 400-402).

Nevertheless, for Freeman, cultural relativism was introduced in social sciences by an American anthropologist Franc Boas in the first half of the twenty century to defend

vulnerable peoples in the face of the evolutionary theories which held that Western cultures were the most evolved. Afterwards, the American Anthropological Association in 1947, in whichever proclaimed that values were derived from culture and culturally relative because of fear that great political powers might use human rights as universal values to pursue their hegemony. During the nineties Asian states and intellectuals claimed that there is an Asian conception of human rights around “Asian values“, while African scholars similarly asserted cultural challenges to the universalism of human rights by Islam. However, the anthropologists slipped to demonstrate that relativism could ensure a powerful defence of vulnerable peoples. Further, “Asian values“ challenge to the universality of human rights was also unsuccessful because of the Asian cultural diversity, support of human rights by many Asians and mistreatments of vulnerable Asian peoples by Asian governments. Likewise, some critiques of the universalism of human rights are not based on cultural relativism per se but rather on Islam as universalist religion within which some of its principles are interpreted as being incompatible with some human rights on gender relations (Freeman, 2017: 135-141).

Furthermore, for Conge, there are three types of cultural relativism considering human rights, that is a *radical, strong and weak cultural relativism(s)*. The first one is a political concept of philosophy according to which a culture represents the only starting point of the soundness of a what is right or wrong as well as that of a right. Further, *strong cultural relativism* is a type of cultural relativism where culture is seen as a main source of the justice of a moral rule or right while only a few universal basic human rights are allowed to bring up a check on the potential dangers of relativism. Lastly, *weak cultural relativism* represents a concept according to which culture may be considered to be an originator of the soundness of a rule's meaning as well as that of a right (Condé, 2004: 214, 249, 274).

Also, Donnelly in an article titled *Universality* differs between *cultural absolutism* (by referring to Rhoda Howard) and *normative cultural relativism*. *Cultural absolutism* means that one culture ensures its own absolute standards of evaluations according to which whatever that particular culture considers being a good deed *is* a good deed for members who live in that culture. *Normative relativism* (cultural) is significantly a

questionable moralistic approach which provides toleration of differences including intolerant (genocidal) relativism's standards about the inferiority of *Others*, and it offers a problematic comprehension about the relativity of human rights (Donnelly, 2009: 267; Howard, 1986). However, there are also other types of cultural relativism, such as *descriptive relativism* and *historical relativism*. *Descriptive relativism* is concerned with an important cultural diversity across historic periods and cultures based on empirical observations. *Historical relativism* is a diachronic kind of cultural relativism which asserts that we cannot comprehend other people's culture or period like it is our own. It originated as a reaction against the universalist tendencies of the Enlightenment asserting that there are no universal truths (Baghranian & Carter, 2015). The most popular representatives of historical relativism were Karl Marx, Max Weber, Oswald Spengler, Karl Mannheim, and Thomas Kuhn.

Therefore, a seemingly complex types of cultural relativists' justifications can be sum up as if a mixture of empiric, theoretic as well as normative deliberations of the cultural relativism position as follows:

- (a) The empirical observation that there is a significant degree of diversity in norms, values and beliefs across cultures and historic periods, known as *descriptive relativism*. (b) An inductive argument to the effect that failures in previous attempts to resolve disagreements arising from (a) show that there are no universal criteria for adjudicating between differing worldviews. (c) The methodological assumption that human behaviour and thought carry the imprint of their cultural and social context such that biology by itself is not sufficient for explaining many of their most important features, especially those with respect to which cultures differ. (d) The normative principle of a need for tolerance and acceptance towards other points of view, which leads to so-called "normative or prescriptive cultural relativism", or the positions that cultural relativism is a moral requirement (Baghranian & Carter, 2015, para. 67).

What does cultural relativism mean considering the universality of human rights? There are many critics and replies regarding the descriptive and prescriptive problems of the cultural relativism by many human rights theoreticians. For instance, for Grace Y. Kao cultural relativism, as a variant of ethical relativism, insists on the impossibility of objective judgement between competing norms. Unusually, all assessments of others' acts could only be linked to the specific standards of measurement present within each particular culture. Consequently, universalism in ethics or the universality of human rights could only be assessed in culturally constrained ways, that is any universalism could be considered illusionary and entirely problematic, both UDHR and human rights would face accordingly the same faith (Kao, 2011: 11-12).

First, on the descriptive account of the cultural relativism which claims, by empirical observations across cultures, about irreducible (cultural) differences, we come to an argument about “success“ of those arguments only through their exaggerations. Notably, regardless of various reports about broadly different cultural specificities, practices and attitudes, moral common ground can still be found at the level of higher principles. For example, the Inuit culture engages in senilicide as if abandoning their older members to die when they cannot travel or hunt with the group. Similarly, non-Inuits and Inuits might consent and support the idea that it might be wrong to postpone an inevitable death in desperate circumstances, such as those of passive euthanasia and physician-assisted suicide, or regarding unequal distribution of health care due to scarce resources in the times of national disasters and war. Further, it is reported that the Hopi people show no specific compassion for the sufferings of animals or that they sometimes even take pleasure in it. Even though the Western societies often enact legislation to protect and prosecute those responsibly of animal cruelty; it is estimated that 9.8 billion of animals are consumed as a food per a year, or 17-100 million of other animals are used per a year for research and experiments. Alternatively, the Prime Minister of Singapore, Lee Kuan Yew pointed out that there is an inevitable difference between Western societies and governments, and Eastern ones which believe that individual exists in the context of the family. However, communitarians and feminists maintain that an atomistic conception of the individual is philosophically indefensible within the range of Western thought. There are also Asians who support liberal values. Consequently, cultural relativists often overlook or exclude the voices of dissent from their cultures throughout descriptive reports of allegedly fundamental differences across cultures (Kao, 2011: 12-14).

Second, for Grace Y. Kao, relativism does not provide real moral directives on how to act, but rather it ensures a meta-ethical proposition about justification in ethics and the nature of truth. Therefore, by prescriptive varieties of cultural relativism, he means the social attitudes, policies and practices according to which moral judgements and values are relative about sociocultural context. On the first account of the formulation of prescriptive cultural relativism, it is widely believed that cultural and linguistic entanglement of all values and norms announces inevitable failing to understand them from the “outside“. However, any multilingual, sensible and well-informed person

knows that proof or certainty considering translation matters is not quite required for successful communication. Further to this, even there are cross-cultural differences in the criteria for and experiences of pain and illness, we can still be emphatic with one's vulnerabilities and fears regardless of cultural or linguistic particularities. On the second account of the formulation of prescriptive cultural relativism, it is believed that acknowledgement of all many tradition-specific conventions and norms compels toleration or equal respect for them all. Toleration was regarded as a morally appropriate stand. However, cultural relativists to embrace toleration principle based on their logic would have to make the same limited applicability of it. Therefore, they could only appeal every culture to tolerate different cultural specificities of all others by submitting to a universalist kind of argument, against which they are principally opposed. Therefore, it appears self-refuting to only support toleration of *Others* as if referring to one's subjective evaluations without ever transcending them, that is as there not being genuine respect for *Others* (Kao, 2011: 14-16).

Similarly, for Freeman, cultural relativism gives a voice to two main ideas: 1) everyone is equally entitled to respect, and 2) to respect a person demands respect for that person's culture as that culture shapes his/her identity partially. Nevertheless, the mentioned principles are universal principles and thus inconsistent with cultural relativism. Some cultures do not respect all cultures, and thus the principle that we should respect *all* cultures is also self-refuting. The teaching of respect for *persons* is not by the principle of respecting all cultures. Further, cultures which support human rights violations cannot demand our respect just because they are cultures. Moreover, some other fallacies about cultural relativism are that it backs up anti-imperialism, but that is unlikely since it provides no foundations for criticising imperialistic cultures. On the contrary, cultural relativism is rather used by imperialists to deny rights to non-Westerners because of which human rights concept criticises imperialism because it is objectionable by violations of human rights. Further, it assumes a simple conception of "culture", and it is self-contradictory as cultural relativism seems to be a *universal* principle in itself. Cultural relativism looks like approving Nazism practices which almost no one accepts as such. Lastly, the appeal to sovereignty is not a request for cultural relativism principle being that the usage of sovereignty is universal as the one

of rights of human beings. It could be used to keep peace among states, protect human rights violators or help destroy cultures (Freeman, 2017: 140-141).

Furthermore, for Donnelly, the principle problem between cultural relativism along with human rights universality is a demand by a substantive moral or philosophical doctrine for cultural differences to be respected while at the same time UDHR's norms are presented as having no normative force considering contrasting cultural traditions, because of which cultural practices are to be assessed exclusively by the standards of a particular culture. Consequently, varieties of the cultural relativism, such as cultural absolutism, radical cultural relativism and normative cultural relativism, appear as highly problematic forms of the cultural relativism considering safeguarding, acknowledgement and use of the universal rights of human beings in particular societies. Notably, each type of the mentioned cultural relativism might assert those particular cultural standards according to which whatever that culture deems as a right that is right, whatever particular values of the culture tells us about others that might be inferior there is no standard by which to challenge this, and that intolerant relativism causing GHRV might be completely coherent with such doctrine. Accordingly, a multicultural and multidimensional human rights conception makes an earnest request to the principles outside of and inconsistent with such kinds of cultural relativism (Donnelly, 2009: 267). Therefore, Donnelly proposes a weak cultural relativism as if “a fundamental universality of basic human rights, tempered by a recognition of the possible need for limited cultural variations” (Donnelly, 1984: 419).

Consequently, cultural relativism can be a source of injustice for adequate respect, safeguarding and responsiveness of the victims' rights to remedies along with reparations within particular societies. It can appear either as normative, radical or even as a strong cultural relativism, whereas certain victim groups and their members can be excluded from or included to enjoyment of their human rights based on their cultural particularities (for example, language, religion, cultural customs differences). It can be also a source of justifications of conduct of the GHRV (genocide), against specific groups and their members (and the consequent denial of the crimes), based on their cultural differences, if the official governmental politics effectively employ it and backed up by certain criminal ideology or ideological program. Therefore, the

universality of human rights plays an important life role for the injured party of GHRV to claim his/her human rights to remedies along with reparations in such societies where they do not exist or when they are not in accordance with global human rights legal provisions that assert that every person is entitled to enjoy human rights everywhere regardless of culture, customs, religion, ideology, language, and so on. The human rights universality is principally affirmed in Articles 1 and 2 of the UDHR, specifically in The Vienna Declaration and Programme of Action (1993) and as a matter of course in other subsequent human rights documents, such as those related to human rights of sufferers of GHRV. Accordingly, the theories about rights of human beings and universality of human rights provide us with necessary substantive moral justifications and claims for legal recognition of individual victims' human rights with respect to remedies along with reparations in societies or cultures where they do not exist or are violated.

In this chapter, we have examined Finnis's theory of the ontological universality of human rights, Rawls's constructivist theory in justifying human rights universality in complex humankind, Donnelly's theory of the relative universality of rights of human beings, Kuçuradi's approach to universality of rights of human beings, and the notion of cultural relativism. Finnis attempts to appeal to natural law free of metaphysical assertions to justify human rights on the grounds of objective basic goods, such as life and knowledge, which are thought to be rationally necessary requirements for human flourishing and foundations of moral obligations. On the one hand, his theory is dogmatic since not all human rights philosophers would agree on either objective goods or his particular list of "self-evident" basic goods. On the other hand, Finnis's theory is normatively thick as it provides an excellent strategy of rational arguments about claims and moral justifications of the victims' human rights, such as an appeal to basic human goods necessary for self-development, correlative rights and duties of everyone, and desert-based retributivism and punishment including civil remedies. Rawls develops a political apprehension of human rights in a pluralistic world which is not ethnocentric or merely Western. However, Rawls's theory is normatively thin since he departs from a moralistic position of human beings as a philosophical standard of the justifications of rights of human beings. Further, he suggests a restricted catalogue of humans' rights

which is also specifically problematic regarding adequate protection of victims' human rights.

Donnelly aims to justify rights of human beings based on the existing worldwide consensus on rights of human beings in global law. On the one hand, his analytical theory shows descriptively how human rights work in contemporary social relations as if a reality of relative universalism. On the other hand, Donnelly's theory is normatively thin since without establishing an account of human nature his concept of "inherent dignity", as the basis for his conception of human rights, its moral attractiveness and international consensus on human rights has no moral strength. Since his human rights theory is rather political than normative, and his conception of "inherent dignity" is not explained sufficiently, there is no satisfying normative basis for justifications of victims' human rights. Kuçuradi intends to justify human rights by protection and respects of the value of certain human potentialities which we all share and which allow us to develop ourselves as individuals and humanity. On the one account, her approach to universality of human rights is founded on a concept of the dignity of a human understood as the consciousness appertaining to the value of human being (anthropocentric characteristics, human potentialities along with historical achievements) regardless of different understandings of the concept of human dignity (moral realism or variations of transcendental or reflexive justifications). On the other account, Kuçuradi's deliberations about human potentialities are primarily positive, disregarding negative human potentialities which are also an inevitable part of human history. Therefore, Kuçuradi's understanding of human rights universality (to treat each human being by the value of certain human potentialities) provides us with rather thin substantive moral justifications and claims for legal recognition of specific individual victims' human rights. Finally, cultural relativism is a theory according to which human rights must be understood, interpreted and implemented by different cultural particularities (customs, religion, language, values, ideology) and not their same universality everywhere. On the one hand, such a theory often has shallow, general or self-refuting descriptive and prescriptive arguments, such as negation of cross-cultural existence of common moral grounds at the level of higher principles or like-minded persons, and empathy for fear and vulnerabilities of others. On the other hand, it is

supportive and coherent with “genocidal” relativism which is highly problematic for adequate protection of the victims’ human rights.

In conclusion, as we have seen, there is no ideal theory of human rights which can avoid criticism or provide supreme philosophical justifications of human rights. There are instead many human rights theories resulting in “overlapping justifications” of human rights across fundamental divides or a plurality of incompatible justifications. Nevertheless, I argue that Finnis’s theory of the ontological universality of human rights provides a mainly better normative substances than other three normatively thin human rights theories respectively, for moral justifications and claims for legal recognition of violated individual victims’ human rights to remedies and reparations based on the rational arguments provided by his theory, such as the objective basic goods necessary for well-being, correlative rights and duties of everyone, and desert-focused retributivism and punishment including civil remedies.

CHAPTER 2.: DENIAL OF GROSS HUMAN RIGHTS VIOLATIONS AND VICTIMS' HUMAN RIGHTS TO REMEDIES AND REPARATIONS

The second chapter will examine a phenomenon of denial in psychoanalyses, sociology, genocide studies and human rights theory how we would be able to better understand, distinguish, classify and identify those types of denials specific for GHRV along with victims' rights. Accordingly, we will grasp particular reasons, manifestations and implications of such kinds of denials considering better protection of sufferers' human rights to remedies along with reparations as well as stress out clearly consequences of denials for broader society. Particularly, it will be further analyzed the theory of subaltern genocides according to which if humanity and justice are denied to victims by the regime this leads to genocides by the oppressed against their former enemies. Namely, the denial of justice might lead to a perpetual spiral of violence. The last part of the chapter will examine democratic peace theory; transitional justice and peacebuilding approach as contemporary theories and political-legal framework so that to ensure theoretical foundations regarding adequate appreciation and safeguarding of victims' human rights in relation to GHRV.

2.1. DENIAL IN PSYCHOANALYSIS

In his work on denial in psychoanalysis, Martin Wagh explains Sigmund Freud's concept of denial from an intrapsychic standpoint of handling both *thanatos* and *eros* drives and perception. According to Wagh, Freud in *Negation* infers that *thanatos* is a death drive which is a source of all negation including denial while *eros* is an opposite life instinct driving person's all affirmation and assertion. For Wagh, however, Freud finds a logical paradox of negation for *thanatos* thesis as being rather inherently affirmative as a drive in itself which it is not the case with *eros* directed at self and species preservation as if instinctual denial of death shared by all (Freud, 1923/1961, in Wagh, 1989).

On the intrapsychic representation of an object, Freud's analyses of denial as a "defence mechanism" is more complex. Particularly, in Wanhg's readings of Freud's *Negation*, denial appears as the fourth stage of patient's negation intrapsychic process, and its role is to stop leaks of repression. The first "No" appears when a patient, for example, asserts: "This is not so!" Consequently, "No" departs intellect from affect and thus creates almost a repression in effect. This process happens because of the so-called "Pleasure-Principle" (driven by *eros*) which demands only pleasurable to belong to "Me" and non-pleasurable to belong "Not Me" or to belong "outside". Therefore, the first "No" spares the patient from inner self-humiliation and it is immediately followed by the negativism inherent in the projection of it toward "outside" which allows for an outer-directed resistance as a second stage of negation. Both negative phases occur instinctively as induced by the force of pleasure principle. The third stage of the negation process is called repression. Repression represents a significant incomprehension of the original memory of an object projected "outside" and its significance for the living organism. Repression is never total but partial because of which denial appears as a conscious assertion of "No", so that to stop the leakages of repression. Nevertheless, for Wanhg, denial, so that to stem further linkages in the face of normal inclination toward acknowledgement of reality, has to be affirmed through religious beliefs, positive personal fantasies, mythical figures, and lies (Freud, 1923/1961, in Wanhg, 1989: 8-9).

Consequently, Wanhg's work analyses and expands on Sigmund Freud's concept of denial within the limits of the intrapsychic domain of perception and denial:

Denial does not change an outside object. Only its 'psychic representation' gets modified. Only its 'meaning' has changed. Such a change of meaning of the stimulus object can entail, however, changes in attitude toward the object, changes in affects aroused by it, and of moods lingering on beyond the encounter. The 'reality of the object persists', although psychoanalysts in their shorthand way speak of 'denial of reality' (1989: 10).

Similarly, according to Anna-Freud, we should to restrict denial to the negation of ideas or reality: "In a ... strictly psychoanalytic ... *technical* ... sense the word denial refers to the defensive distortion of one's perception of some aspect of one's environment, of what is usually called external reality" (Freud 1936/1946, in Wanhg, 1989: 11).

However, Theodore L. Dorpat criticises advocates of intrapsychic psychoanalytic theory by interactional denial and defence mechanisms found in individuals, dyads and groups.

According to Dorpat: “Denial and defence are just as much a part of how individuals communicate and relate with each other [interactional] as it is an aspect of how and what they think to themselves [intrapsychic]” (Dorpat, 1989: 33). Namely, for Dorpat, a term “intrapsychic” is inadequate spacial metaphor enouncing that mind is space and that defence mechanism occurs only inside of the mind and not in interactions with others. Therefore, Roy Schafer proposes a term *privately* for one carrying out the very personal defence activity and a term *publically* for personal defence performance in transactions with other people (Dorpat, 1989: 33; Schafer, 1976: 160). Theodore L. Dorpat while refers partially to Loewald’s study he criticises openly intrapsychic domain:

Even those defenses carried out privately do involve conscious or unconscious fantasies and memories of a person's feared or wished-for relationships with objects. Defensive activity is developed from the individual's relations with others. What is internalized and ultimately transformed into defenses and other psychic structures is interactions with objects (Loewald, 1970, in Dorpat, 1989: 33). Therefore, an object relations element is an essential part of all defensive activity, whether that defensive activity is carried out privately in one's thinking and imagination or publicly in one's interactions with others (Dorpat, 1989: 33).

For Dorpat, denial as an unconscious defence strategy has more importance within the realm of interactional than intrapsychic system. How does denial appear and function within such an interactional method? For example, Dorpat refers to Rosen's study (1955) on a patient with genuine distortions of reality. The patient was under the influence of his father's lifelong support for denial of his mother attempted suicide. When the patient was three years old, he witnessed an attempted suicide by his mother. His father later denied and deceived his traumatic experience as if it was all just a “bad dream”. For Dorpat, these kinds of clinical studies affirm his thesis on the importance of interactional factors (such as the patient's father's denial) in the creation and endurance of the patients' denials (Rosen, 1955, in Dorpat, 1989: 19). Accordingly, the interactional model of defences is based on one actor's *projective identification* with other actor's projection which denies some disturbing mental content. Both persons deny offending ideas or emotions. However, the one who identifies with other person's projection can now take away his/her threatening knowledge, or he/she can have clinical problems related to severe distortion of reality in the long run. Therefore, denial represents a way of avoidance of “internal awareness” about personal trauma and means of diminished sense for external reality.

Nevertheless, Donal L. Nathanson in a paper titled *Denial, Projection and the Empathic Wall* presents another theory about denial mechanism based on the nature and interaffectivity of affects. Notably, he refers to the affect theory developed by Silvan Tomkins to explain neurophysiological affect mechanisms found in infants which enable them to react to external stimuli by their mothers which they cannot cognitively comprehend. For example, enjoyment, fear, anger, disgust, interest are some of the affect mechanisms. The affect model is considered to function itself as an entirely independent subcortical system of affects which intensifies drives and other brain functions of the organism (Nathanson, 1989: 40; Tomkins, 1962).

Nathanson further refers to Basch's analyses on affects and emotions so that to explain empathy which is central to his notion of *the empathic wall* and denial mechanism. According to Nathanson, for Basch, the term *affect* refers to: "biological events, feeling to our awareness of these events, and *emotion* to the complex interrelationships formed by the experience of affect and our associations to it" (Basch 1983, 1976, in Nathanson, 1989: 40).

Therefore, for Nathanson, the infant is exposed to "affective communication" with his/her mother's affect as well as audiences are subjected to performers' "affective display", such as joy or anger, which he refers to as "affective transmission". Our associations with specific affect transmitted are possible through empathic perception which we experience as emotion. Thus, affect is transmitted in empathy. Each one of us has his/her personal experiences of emotions related to our affect model, but we can identify or "share" our emotions with other people's emotions based on empathy. On the contrary, we can block the affect of others because of an ego-mechanism called the *emphatic wall*. It allows the child to remain self while separating feelings outside the self. It is also typical for mature persons who do not engage too much in "sharing" of their emotions. Notably, for Nathanson, the empathic wall monitors our affective experience, determines whether affect comes from inside or outside the organism, and it is central to ego's various defensive operations. For Nathanson, denial in this context represents one's skills learned and derived from the operations of the empathic wall mechanism so that to ward off or explain away aversive external or internal stimulus or environment (Nathanson, 1989: 42-45).

These three psychoanalytical theories have somewhat different theoretical explanations about complex psychological strategies of denial. While the first classical theory focuses on *intrapsychic* domain and drivers of one's denial, the standpoint of the second theory is on the interactional model and *projective identification* with other person's denial. The last theory is entirely different from both, as it analyses the nature of emotions and affects rather than perception or cognition in explaining denial mechanism. Consequently, each theory demonstrated that denial is instead a complex psychological phenomenon and that both scientific and teleological (nonmeasurable) aspects of it are typical for theory on denial in psychoanalysis.

Apart from theory, the function of denial is examined within various clinical studies of patients with severe problems of personality disorders, life-threatening illnesses, homosexual identity, child and adulthood developments, and so on. For example, Lea Baider and E. L. Edelstein find that the patients with a terminal illness would deny “the meaning of the illness“ through the process of delusional thinking and occasional hallucinations so that to make “gratifying meaning to their lives“ (Baider & Edelstein, 1989: 246-247). Further, Richard C. Friedman in *Denial in the Development of Homosexual Men* finds that persons with denied homoerotic fantasies, activities or gay identity often have psychological problems with the sense of their ego identity (Friedman, 1989). Nevertheless, denial in most of clinical cases often has adaptive functions for patients to bridge the real pain, trauma, and threatening or challenging external or internal conflicts in their lives. On the one hand, denial as a defensive mechanism can generate beneficial results in dysfunctional organisms in the short term. On the other hand, it can also have harmful effects on persons' health and well-being in the long run.

In sum, psychoanalytical theories on the subject of denial as a defence mechanism are examined. Individuals who may be faced with uneasy truths (for example, grief, illness, sexuality, addictions, family violence, and so on), distort reality in unconscious parts of minds so that to avoid either painful feelings or threatening events to their specific personal experiences. It is because long exposure to pain and agony can cause an organism not to behave normally. Denial thus understood in psychoanalysis is a healthy mechanism which serves the cause of life. However, the morality of such unconscious

strategies for evading threatening feelings and events at the societal level (which prescribes different social roles, tasks, duties, and responsibilities) are not examined for the reason that is solely the task of the sociology of denial analysed in the next subchapter.

2.2. SOCIOLOGICAL APPROACH TO DENIAL

Far from being ignorant and hence innocent of what he did, Oedipus [the greatest denier of all time] must have realized that he had killed King Laius, his father, and married the widow, Jocasta, his mother. Oedipus did not, of course, fully know all these facts; rather, 'he half knew them and decided to turn a blind eye to this half knowledge'. All the main characters in the drama must also have been aware of the identity of Oedipus and realized what he had done. There is, to be sure, considerable ambiguity about just how much each knew. Certainly all the participants – Tiresias, Creon, Jocasta, the court officials, the elders – had good reasons to evade their knowledge or suspicions. If any of them had made some enquiries or followed up some leads, the truth would easily have come out. Instead, consciously or semiconsciously, they join Oedipus in staging a collusive cover-up. He, in turn, erects a plausible facade to hide even the half-knowing that he is reluctant to acknowledge – and persuades himself and others to accept this. (Cohen, 2001: 62-63)

Stanley Cohen in his book on denial of human sufferings points out: "Statements of denial are assertions that something did not happen, does not exist, is not true, or is not known about" (Cohen, 2001: 24). However, according to Oxford Dictionary, a term "denial" means: "The action of denying something" ("Denial", n.d.). Accordingly, Cohen's definition of denial is more specific and sociological, that is scientific. It takes as its criterion value of "truth" is not acknowledged by a subject about a certain object. Particularly, Cohen's a short "denial" definition is rather a complex definition of the interplay of actors, actions and states being denied. Notably, for Cohen, it is possible for individuals, organisations and governments to assert that "something did not happen" as being in good faith, and without their knowledge, simply true, excused, and right as such. These denial assertions he calls "statements of facts". Further, he argues it is also possible for actors to know truth clearly but they choose to lie, deceive, or manipulate, cover-up, spin, misinform because of some personal or political reasons. Lastly, he interprets denial as neither telling the truth nor intentionally lying about the object. In other words, we register information, but the conclusion about it is evaded. For example, people "turn a blind eye" in democratic societies on homelessness, poverty, urban decay and so on. They know but at the same time do not know about human sufferings (Cohen, 2001: 23-26).

Nonetheless, Cohen's sociological classifications of the basic forms of denial are even more complicated than his definition. For Cohen, by "what" is denied he differs: *literal*, *interpretive*, as well as *implicatory* denials. The first one is a statement that an issue is untrue; alternatively, it does not exist. It means an apparent refusal to acknowledge facts or knowledge about facts. For example, in a private realm: my husband could not hurt our daughter; or in a public sphere: massacre did not happen, they all lie. Further, interpretative denial is not a denial of facts but apparent meaning. For example, in a private sphere: I am not a lazy person, but work-shy; in the public sphere: this was not ethnic cleansing, but population exchange. Consequently, interpretative denial is managed through euphemisms or technical language. Implicatory denial represents denial or minimisation of political, moral or psychological implications of an event or an issue. For example, it encompasses various folk idioms of detachments from moral or psychological accountability, such as, "what is the big fuss about?"; "someone else will deal with it!" (Cohen, 2001: 29-32).

Moreover, Cohen distinguishes based on "time" criteria between *contemporary denial* and *historical denial*. Contemporary denial is grounded on the claim that we cannot observe everything around us psychologically. For example, these include "information overload", "emotional burnout", or "compassion fatigue" thesis. On the contrary, historical denial is about denial of something that happened a long time ago. For example, in the private sphere: both denial of things we do not want naturally to remember or childhood trauma. At the public level, it means that memories about crimes and injustice regarding victims, perpetrators or bystanders are even lost or recovered. For instance, it includes "social amnesia" driven by "Good Germans" (observers) about sufferings of others during the WWII; or "the politics of ethnic amnesia" where the perpetrator government denies atrocities, bystander government, or for the sakes of social reconstruction and reconciliation (Cohen, 2001: 29-32). Similarly, we can make a comparison of historical denial with "historical injustice" regarding conducted mass crimes against a minority or indigenous group, or of contemporary denial with "transitional injustice" of GHRV carried against the ethnic or religious group, which need to be acknowledged and repaired publically (Schleker, 2009: 335).

Another classification is based on an “agent” criterion of whether a *victim*, *perpetrator* or *observer* is the agent. For victims, this means denial of trauma, imminent danger, or constant fear. For perpetrators, it means denial of the meaning about what they did/do through unsound lies or deep beliefs. For bystanders, this means denial of any assistance for those in need because of personal helplessness, missing any reward, or out of fear of punishment. However, Cohen differs between *domestic* and *foreign* denial by “space and place” criterion. Domestic denial as if “worse things are happening elsewhere” means justification for inaction locally while foreign denial by the same token means that there exist even worse places with more horrible human sufferings which also renders inaction (Cohen, 2001: 35-46).

Lastly, Cohen makes a distinction between *personal*, *official* and *cultural* denials based on a criterion of “organisation”. *Personal denial* is psychological, individual and private denial. For example, it is refusal about possible partner’s infidelities or rejection of the fact about friends, and family member’s participation in atrocities (Cohen, 2001: 32). According to Willem De Haan, personal denial includes: “[c]ognition (not acknowledging the facts); *emotion* (not being disturbed); [and] *morality* (not recognising wrongness or responsibility). A person who is in denial will refrain from the *action* (will not take any steps in response to the unwanted knowledge)” (Haan, 2016: 11-12). Therefore, personal denial encompasses cognitional and emotional dimension (analysed mainly in psychoanalysis), and also moral and activity dimension (found in the sociology of denial).

For Cohen, *cultural denials* are neither private nor organised officially by the state. They are thus rather collective and informal denials. Societies may slip into or come to informal agreements of collective denials about the past or present events. For example, cultural denials about sufferings of indigenous peoples or on-going not ever openly acknowledged repressions, exclusions or discriminations of certain groups, such as ethnic or religious, in one society. This is possible because people act as if they believe in knowingly fake information or they simulate their loyalty to senseless slogans and kitsch celebrations. Cultural denials can also be initiated by the state but left to live further on their own, for example, linguistic tricks related denials about sufferings of distant others. They can also be micro-cultures of denial typical for families, army,

police or government bureaucracies. These collectives self-censure themselves so that to cover up secrets or to maintain a good public image. It is considered “taboo” or “whistleblowing” to expose such “vital lies”. For Cohen, resolutions about cultural denials lie within human rights, social movements and political “consciousness raising” about human sufferings in media or particular political culture (Cohen, 2001: 33-36).

Similarly, Nenad Dimitrijević defines “culture of denial” as: “[a]ttitudes, beliefs, and normative patterns of action of people who in populist criminal regimes formed a peculiar 'silent majority' supportive of the regime and its criminal practices, and have kept this cultural blueprint alive after the regime change“ (Dimitrijević, 2011: 86). Dimitrijević's understanding of “culture of denial“ refers to specific societies in democratic political transition which conduct transitional injustice toward certain victim groups and their members. Mainly, the culture of denial refers to the denial of GHRV and reparations for another ethnic and religious groups. Cultural denial thus understood resonates with Cohen's understanding of cultural denials toward human sufferings of distant others, as initiated by the governments and left to live on its own. However, the difference is that Dimitrijević's concept of a culture of denial occurs within the particular society.

Nevertheless, *official denial* is a public, highly organised and collective as if initiated, structured and supported by the modern state. Denial is ideological and not private because it is built into façade of the state. For example, official denial in a totalitarian Stalinist society rewrites history entirely as if blocking-out acknowledgement of past or inconvenient present realities. However, official denial of democratic political order is more profound. It is based on specific public agenda, interpretative denials, selective concerns, spins, and suitable victims. Therefore, social conditions which cause mass crimes and human sufferings often merge with official denial techniques (Cohen, 2001: 32-33). For Dimitrijević, however, there are two types of official denial politics driven by the state, which are the *politics of denial* and *politics of silence*. Politics of denial assert that “we did nothing wrong” in the past, and politics of silence minimises the past wrongs for the sake of a better future (Dimitrijević, 2011: 43-85). Therefore, official denial or political denial of the human sufferings rejects facts and wholly or partially moral responsibility for injustice committed because of particular ideological reasons.

A particular clarification of *human rights and denial* within the academic community is non-existent. However, there are different theses about why and how denial appears concerning human rights issues. For example, for Cohen, one of the reasons for the official governmental implicatory type of denial concerning human rights violations is that of *righteousness*. Righteousness implies that moral standards and values found in international human rights instruments are not universal because of appeals to higher loyalties found in any society for which they act on their particular morality. Another weaker version of righteousness asserts that alternative values can override universals under certain circumstances or concerning certain people. Accordingly, there are two types of justifications on denial of human rights: stronger transcendental justifications based on righteous cause, transcendent ideology or sacred mission; and weaker non-transcendental justifications based on binding ideologies of ethnic purity, revolutionary struggle, or Western civilisation (Cohen, 2001: 162-163).

However, for Willems, Moerland, and Nelen, in a book on denial and human rights titled *Denialism and Human Rights*, human rights violations and injustice prevail in our societies because political, social, cultural, and economic structures ensure the existence of “denialist defence mechanisms”. Therefore, the roots of problems embroiled remain mainly unacknowledged and unresolved (Moerland, Nelen & Willems, 2016: 2). David Nelken replies that at both individual and social life, denial and forgetting are necessary and valuable processes. In the former case, an individual has to be psychologically selective because of too much information available to him/her. In the latter case, courts’ procedures are sometimes created to hide (prejudicial) information (Nelken, 2016: 480).

Moreover, Haan makes a distinction between term “denialism” from “denial” in human rights discourse. Notably, while denialism is used to mark rather rhetorical arguments constructed ideologically to discredit and undermine scientific debates about Acquired Immune Deficiency Syndrome, global climate change, circumcision, Lyme Disease, vaccinations and evolution; denial is mainly used within scientific discourse and established historical records such as those related to GHRV, for example, “Holocaust denial” (Haan, 2016: 14-15). Consequently, we can make classifications of denials such as denial of GHRV and the denial of particular rights of human beings. For example, for

Cohen, torturers, at times of torture, use linguistic euphemisms such as (“what hours are you working tomorrow?”), so that to construct and shift to another social and cognitive reality from that of inflicting pain to another person (Cohen, 2001: 128). This type of denial is called interpretative denial. However, it is also a denial of a particular human right, for instance, the right to liberty from “torture or to cruel, inhuman or degrading treatment or punishment” of the detainee, found in the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights [ICCPR], art. 7).

Nonetheless, for Cohen, *acknowledgement* represents the opposite state of denial. It means reacting psychologically and morally appropriate to human sufferings. For example, one or collective get angry or show compassion for those in needs as they want to help them somehow, intervene, or stay committed (Cohen, 2001: 14). For Clara Ramirez-Barat, acknowledgement represents official governmental recognition of past human rights abuses in the transitional political period through taking responsibility, promoting truth, and expressing public condemnation of their wrongful nature (Ramirez-Barat, 2013: 280). Accordingly, acknowledgement might mean individual, collective or governmental set of various recognition activities, or political discourse, as if highlighting the truth about victims’ past human sufferings and helping them. Therefore, acknowledgement in the face of denial represents the essence of Cohen’s sociology of denial as well as of sociological approach to denial, “what to do with knowledge about other people’s sufferings, and what this knowledge does to us”. Namely, acknowledgement of human sufferings in the face of denial entails convenient or suitable individual, collective, or official psychological, moral and public reaction and action.

Moreover, Cohen makes a systematic classification of different “modes of acknowledgement” of past atrocities, as follows: *truth commissions, criminal trials, mass disqualification, compensation, naming and shaming, criminalising denial of the past, commemoration and memorialization, “expiation, apology and exorcism”, reconciliation, and reconstruction*. Especially, truth commission, for Cohen, like that of Truth and Reconciliation Commission in the South Africa, is the loudest institution in disclosing and acknowledging the previous mass crimes. It is because of its dedication

to finding “truth as a value in itself”. Further, criminal trials, such as those related to Nuremberg, Rwanda, Srebrenica, or International Criminal Court (ICC) are focused on the establishment of personal criminal liability around universal standards of justice and retribution for mass crimes. Also, mass disqualification, or *lustration*, is an acknowledgement method which confronts the responsibilities of all those former government officials associated with past human rights violations through disqualification from their jobs. Compensation, however, can be partially beneficial for victims and survivors since it cannot repair deeper past damages. Naming and shaming imply exposure of various sorts of criminals, such as corrupted governmental officials, irresponsible doctors and social workers, various perpetrators of war crimes so that to stigmatise them in public as well as to tell the truth (Cohen, 2001: 311-319).

Moreover, criminalising denial of the past, such as that of the Holocaust, is considered as a legal acknowledgement of significant horrific past by society in the face of “revisionist historians”, racists, far-right groups and associated criminal ideologies. Commemoration and memorialization is the oldest known way of acknowledging past horrors and victims through memorial culture, collective memory and representation of past. “Expiation, apology and exorcism” in secular language mean catharsis or admission of guilt, often meant as an acceptance of collective guilt, such as that found in *The Question of German Guilt* (Jaspers, 1947/2001: 55). Reconciliation, as a mode of acknowledgement, encompasses forgiveness, tolerance, and social reconstructions other than punishment. At last, reconstruction means the creation of conditions for the development of democracy, legality, social justice and decent public morals. It could be achieved through human rights education and civic education that would explain why crimes happened and scrutinise discursive techniques of denials and linguistic morality (Cohen, 2001: 319-328).

A sociological approach to denial implies both psychological (emotional and cognitive) as well as social (moral and activity) dimensions of denial phenomenon. Further, it differs between individual and collective, cultural and official, historical and contemporary, local and international types of denial. Simultaneously, it offers a concept of acknowledgement of social responsibility toward human sufferings with its various responsive models. Accordingly, sociological approach to denial analyses

complex dynamics of denial and acknowledgement at societal levels, and this alludes us to be socially responsible human beings to human sufferings in our society or globally. Having departed from private to public sphere with Cohen's sociology of denial of human sufferings and acknowledgements, the thesis focus on the specific type of denial which is related to identification and assortment of disapprovals of GHRV such as the Holocaust together with more genocides, particularly the Srebrenica genocide in B&H.

2.3. DENIAL OF THE HOLOCAUST, GENOCIDES AND GROSS HUMAN RIGHTS VIOLATIONS

What do denials of Holocaust, genocides and GHRV mean? According to a genocide scholar Israel W. Charny, negation of the Holocaust and genocides implies:

[t]he denial of responsibility, denials are celebrations of destruction, renewed humiliations of survivors and all others who care about the destruction of life, attacks on the identity of the victim people, unabashed attempts to dominate the minds of people by dictatorial fiat and, metaphorically, "murders" of historical truth and collective memory (2010: 11).

Similarly, Martin Imbelau about denial of genocide and GHRV states:

Deniers of genocide and other massive human rights violations are engaged in obsessive quests to demonstrate, via fallacious arguments, erroneous facts, and historical distortions, that the events never occurred or are grossly exaggerated. The denial speech, notwithstanding its effort to be perceived as a historical debate, is about contemporary political motivation, racism, and anti-Semitism. It is an ideology, not an historical endeavor. Deniers' conclusions precede their research and analyses. They aim, not to destroy the truth, which is indestructible, but to eradicate the awareness of the truth that prevents the resurgence of past criminal ideologies (2005: 243-244).

Consequently, negation of the Holocaust, genocides and GHRV implies three important dimensions which can be derived from these two definitions: moral, political and ideological.

Namely, *moral dimension* is mentioned by Charny as "denial of responsibility", or implicitly as *denial of moral responsibility* because it is reflected in wordings of "renewed humiliations of survivors", as well as toward "all others who care about the destruction of life" (Charny, 2010: 11) as wrongful moral behaviours. Similarly, Nenad Dimitrijević argues that denial of collective moral responsibility of a nation for the crimes committed is the result of an exclusive national "moral relativism" of a nation, which he refers to as the "Ethics of evil" (Dimitrijević, 2011: 85-133). For example,

ethics according to which only the Germans and Serbs can say that the Holocaust or the Srebrenica genocide was or was not morally wrong. Specifically, despite everything of practice and courtesy about what is good and what is bad, which is shared by the majority of people regardless of where they come from or to which group they belong (2011: 96). For Emrys Westacott, moral relativism represents the perspective that moralistic judgements are false or true exclusively contingent to concrete cultural or historical contexts. It implies that there are no universal moral values typical for all human societies. Moral relativism encompasses a wide range of kinds of relativism, such as cultural relativism and normative relativism (Westacott, n.d.).

Further, Charny's definition on denial includes *political dimension* through the existence of specific political strategies such as “attacks on the identity of the victim people“, “attempts to dominate the mind of people by dictatorial fiat“, and symbolically expressed as “murders of historical truth and collective memory“ (Charny, 2010: 11). According to Dimitrijević, the politics of silence and the politics of denial of perpetrated mass crimes represent political and cultural strategies of denial of collective moral responsibility and the facts of the groups in the transitional political period (Dimitrijević, 2011: 42-50; Subašić & Ćurak, 2014: 140). However, the thesis argues later on that denial of facts and moral responsibility by perpetrators of genocide is not only specific for a transitional political period but the whole genocidal process.

Ideological dimension of denial is found in Imbelau's definition about denial speech as being about “racism and anti-Semitism“, “ideology“ as well as denialists' attempts to destroy the awareness of the truth about genocide which does not allow for “the resurgence of past criminal ideologies“. Likewise, Eric D. Weitz points out that “the regimes defined by explicitly national or racial ideologies were most open about the enemy status of the other“ (Weitz, 2005: 1124-1125). He further explains that both Hitler's Nazi regime and Slobodan Milosević's vision of a utopian Great Serbia were envisioned as patterns of homogeneous and highly developed and creative societies composed exclusively of Germans, or in the case of the later, Serbs. These utopian communities are believed to be found somewhere in the future, and for which realisations the "other" groups, such as Jews, Roma, Muslims or Croats need to be

exterminated. These processes in the final lead to severe infringements of rights of human beings (2005: 1124-1127).

Therefore, denial of genocide along with GHRV is composed of parallel and mutually reinforcing moral, political and ideological dimensions of denial. They are also in interplay. Namely, normative cultural relativism might serve as both ground for realization of the certain criminal ideologies of imagined utopian homogenous communities (composed of only one ethnic or religious group for which achievement others who are portrayed as inferior need to be exterminated), as well as instrumentalised cultural grounds for politics of denial of weighty human rights transgressions concurrently as well as following the mass crimes. According to Wong, normative cultural relativism as a type of the doctrine of cultural relativism asserts that, “it is wrong to pass judgement on others who have substantially different values, or to try to make them conform to one’s values, for the reason that their values are as valid as one’s own” (Wong, 1991: 442). Tilley defines cultural relativism, mentioned previously within the first chapter, as: “(...) it’s a *cultural* brand of moral relativism, a brand that ties morality to elements of culture (e.g., customs) as opposed, say, to personal likes and dislikes” (Tilley, 1998: 272). Nevertheless, even though, normative cultural relativism consider broad-mindedness of diverse cultures rather than cultural hegemony, it also alleges that every moral decision about blame and wrongdoings is not universally valid but culturally relative. For example, if there are no universally valid moral judgments but only culturally relative judgments, then genocides and war crimes might be utterly coherent with intolerant relativism's cultural values as there is no universal moral standard to challenge this. Accordingly, normative cultural relativism might be used about negation politics of individual victims’ rights to remedies along with reparations regarding GHRV in post-conflict societies, which may lead to severe further military conflicts.

However, denial of genocide is not only composed of moral, political and ideological dimensions of denial but it is also a dynamical process. It means that denial of genocide does not occur only after the mass killings of people so that to destroy material evidence or memory about the mass murders but it also appears during the very act of killing. Namely, for Gregory H. Stanton genocide is a process composed of ten stages:

“classification, symbolization, discrimination, dehumanisation, organisation, polarisation, preparation, persecution, extermination, and denial“ (Stanton, 1996). Denial is understood as the ultimate stage of genocide in which evidence and awareness of it are to be eradicated. However, denial is also understood to be present throughout the whole genocidal process or all mentioned stages. Denial thus comprehended is not just denial of proof and remembrance, but it represents an essential part of the genocidal process which enables mass killings.

Specifically, for Roland Moerland, denial in dynamics of the genocidal process can differ as two-fold: *genocide denial* (composed of primary and secondary genocide denials) and *denial of genocide* (consisting of primary and secondary denials of genocide). Genocide denial represents Stanton's last stage of the genocidal process, Marc Nichanian's the *killing of death* or an act of genocide in itself. It does not enable other stages of genocide. Primary genocide denial implies an undertaken act of genocide denial with the genocidal intention to bring to an end the very genocide process. For example, wrongdoers involve in negation to assure the greater genocidal purpose. Secondary genocide denial consists of no genocidal intention but adds to the reproduction of denial dynamic of the genocidal process. For example, perpetrators deny genocidal acts so that to reject any responsibility for the mass crimes (Nichanian, 2003, 2009, in Moerland, 2016: 153-154).

Furthermore, *denial of genocide* facilitates more steps of annihilation about the *killing of life*, or the killing of population. Primary denial of genocide represents perpetrator's denial of personal psychological strain, empathic emotions, and societal values and norms as if overcoming barriers to inflict violence. It is, for example, Stanton's fourth stage of genocide, that is dehumanisation of human beings. It means that perpetrator while denying the humanity of victims, he/she expels them from his/her moral universe, detaches himself/herself from moral obligations toward the victim, and he/she can inflict the violence. Perpetrators call victims with various derogative names, such as “vermin“ or enemies. Secondary denial of genocide serves to vindicate as well as legitimise the deeds after that. It means that once perpetrator justified overcoming of emphatic and ethical barriers, he/she can inflict more criminal violence (Nichanian, 2003, 2009, in Moerland, 2016: 154-155, 2015: 139). Therefore, denial of Holocaust,

genocide or GHRV is preferably a complex dynamical process of continuous moral, political and ideological denials.

For Cherny, there is an explorative classification of the Holocaust and genocide denials organised into six major categories. These are *malevolent bigotry*, *self-serving opportunism*, *innocent denials*, *definitional*, *nationalistic hubris*, and *human shallowness*. Mainly, malevolent bigotry represents denials of current genocides by perpetrators and perpetrator governments. It is divided into two subcategories, *denials by perpetrators* (denial of actual genocidal events, past genocides, and denial of factual genocides before trials) and *denials by non-perpetrators with affinities to fascism and bigotry* (denialist governments and their sponsored bodies, denials by bigots, fascist, and neo-fascists, and denials by groups which were the genocide victims, under retaliatory assault when genocide happened, or weaker than some superpower). For example, when Nazi Germany established a camp with decent conditions at Theresienstadt to deceive the International Red Cross, or when Serbian governmental officials ordered cover-up of 45 killed Albanian civilians secretly in Kosovo to look like a battle. Further, *self-serving opportunism* is a denial of genocides by non-perpetrators and non-bigots for the sake of individual or grouped interests of careerism, exhibitionism, pragmatism, and realpolitik. These denials weaken social grounds for fair-mindedness and historical truth. For example, infamous David Irving's failed suit against Deborah Lipstadt regarding his denial of the Holocaust (Charny, 2010: 520).

Moreover, *innocent denials* support one's own perspectives, one's group along with society as not evil but fair-minded. Denialists express innocent disavowals of such violence because genocide is unimaginable and unthinkable. This type of denial encompasses *denial of knowledge* or *credibility of a genocide* (disinformation about the genocide's factual history, a view to maintain a view about one's life, people, society or human life as just, misuse of freedom of speech to promote denial propaganda, banal malevolence of denial and denial celebrations) and *innocent denials through lying and manipulation* (contradiction and double talk to diminish accurate foundations regarding a genocide, and infiltration of negation positions in academic community through "innocent" manipulations). For example, a claim that there were no gas chambers in Auschwitz so that to discredit the whole experience. *Definitionalism* implies attempts to

define instances of massive crimes as not genocide. It encompasses exclusions of immense killers as not genocide (obscuration of the reality of the event as infamy and detached tragedy, denials as time-honoured undertakings of armed conflict or governmental intervention, legal loopholes of “political” victims) and *denials on the grounds of many deconstructions of meaning, such as minimization, rationalization, relativization* (not enough number of victims to be genocide, never all group’s members were killed, all sufferers were not meant as such, victims provoke their annihilation, blacken the victim group so to justify their killings) (Charny, 2010: 521).

Nationalistic hubris and self-involvement as reasons for exclusion of others represent a denial of the importance of other ethnic groups’ genocides except its own. It is composed of various denial forms as *not knowing, not caring, justifications of indifference, open antagonisms and celebrations toward genocide of the former perpetrators, the uniqueness of one’s own people’s genocide, and justifications based on perpetrator’s violations of human rights of other groups. Human shallowness* as a final type of denial represents desensitisation, routinization, or banalization of genocidal events. For example, genocide is inevitable in human nature and history, trivializations about human sufferings, detached “souvenirs” of genocide without commitment, Passover celebration, and so on (Charny, 2010: 522).

For example, for Martin Imbleau, there are many forms of denial and kinds of actors in negating the Holocaust. Specifically, there is a racist agenda and rationale to rehabilitate Nazism, or to target the Jews and survivors once again. Jewish people are mainly portrayed as global manipulators of lies, so the Holocaust is one big lie too. Denialists of the Holocaust vary: from a literature professor Robert Faurisson, Jean-Marie LePen who brought denial in French politics, to pseudo-scholars and historians, such as Arthur Butz and Bradley Smith. They use various forms of denial from minimisation, contextualization, rationalisation, dissemination of the Holocaust denial propaganda through the pseudo-academic organisation, such as the Institute for Historical Review, or the Committee for Open Debate on the Holocaust, and so on (Imbleau, 2005). Similarly, for Stephen E. Atkins the Holocaust denial has become an international movement in the twenty-first century which has attracted all kinds of extremists so that to re-establish

a new Nazi-state, renew the ancient anti-Semitism or to delegitimise the state of Israel (Atkins, 2009: 1).

Likewise, denial of the Srebrenica genocide, or for some scholars the “Srebrenica massacre”, or the “Bosnian genocide”, is not spared of negation from various kinds of extremists, pseudo-historians and scientists, opportunists, populist banality and so on. However, the International Court of Justice (ICJ) and the ICTY judged that the Srebrenica genocide did happen. Therefore it is a legal fact. Despite established historical records, denial of the Srebrenica genocide unfolds in many ways because it is driven by various local, regional and international actors. At the parochial along with Balkan alignment, the entity governments of Republika Srpska and Serbia significantly deny that genocide happened. Namely, according to Steven Leonard Jacobs, Republika Srpska funded Serbian Historical Project in the Hague with US\$ 1,100,000 from 2008-2012 for historical revisionism of the Srebrenica genocide (Jacobs, 2016: 101). The president of Republika Srpska, Milorad Dodik regularly involves in self-serving opportunism, nationalistic-hubris, manipulations, minimalisations, and contextualization denials of the Srebrenica genocide. At the regional level, according to Imbleau, Milošević asserted that the Srebrenica massacre was initiated by local Muslim officials, a Muslim mercenary unit, and with co-operation of the French intelligence, as a part of military strategy. The Serbian government fabricated in the report that only 2,000 - 2,500 Muslim soldiers (out of 8317 reported killed or missing civilians and soldiers) died in the Srebrenica massacre (Imbleau, 2011: 275).

Furthermore, at the international level, an American philosopher Noam Chomsky, Edward Herman, Philip Corwin, and many others, either deny to call the Srebrenica genocide by its real legal qualification or indulge themselves in scepticism and contextualizations about the very nature and legal qualification of the genocidal act (Jacobs, 2016: 99-101). According to a B&H history professor Smail Čekić, denial of genocide in B&H is based on the “Great Serbia” nationalistic ideology. It is inspired by Balkan Serbs’ nationalistic movement from the nineteenth century, found in Ilija Garašanin's book titled *Načertanije* and *The Mountain Wreath* written by Petar II Petrović Njegoš, about Serbian national identity, liberty, statehood, and brotherhood among Serbs (Čekić, 2004). However, according to Christina M. Morus, the causes of

the Bosnian war and the Srebrenica genocide (and related genocide denial) rather result of an intertwined web of political opportunism, material conditions and nationalistic propaganda intersected within public perception (Morus, 2016a: 27-28).

Consequences and solutions of the genocide denial are often complex and long-term. For Deborah E. Lipstadt, while she refers to the International Association of Genocide Scholars, denial of genocide means: “(...) the final stage of genocide, enshrining impunity for the perpetrators of genocide, and demonstrably paving the way for future genocides” (Lipstadt, 2009: 422). Victims perceive the genocide denial as a continuation of the genocide against them. It can lead to further traumatic as well as transgenerational and transnational memories of resentments by victim group members toward perpetrators of genocide and denial. Perpetrators can also be inclined toward more violence through hatred, prejudices, stereotypes, amnesty, and so on. Therefore, acknowledgement of truth about the genocide or GHRV in a democratic society is both therapeutic for the victims and reconciliatory for the whole society. For Charny, one way to counteract the genocide denial is through organizing a conference on denial of genocide so that to create a holistic and interdisciplinary approaches, at individual, communal, national and international levels, including human rights standard setting, to combat denialists of genocides as protagonists of human violence, violators of international law, and decent people’s norms (Charny, 2010: 534).

In sum, denial of genocides and GHRV is a dynamical genocidal process composed of moral, ideological, and political dimensions. Denial is inherent throughout the whole genocidal process, and it is aimed at the destruction of a certain group of people, its members, evidence about the genocidal act as well as truth and memory about the genocide. Denialists can be various kinds of perpetrators, individual war criminals, governments, organisations, pseudo-historians and scientists, opportunistic politicians, misinformed public, and so on. Denial of genocides appears as a never-ending process.

2.4. GENOCIDES BY THE OPPRESSED

According to Adam Jones and Nicholas A. Robins, the subaltern theory of genocide refers to those cases of genocide where subaltern actors, that is those who are

disempowered and oppressed, use annihilation scheme to defeat their persecutors. Massacre strategies are understood as purposelessly aiming at community for annihilation based on its collective national, religious, racial, ethnic, social class, political affiliation or gender identity criterion. It means that dynamic of the genocide process is not analysed from top-bottom, such as state-victims perspective, but bottom-top of the oppressed against the oppressor. It focuses on subaltern “popular” hostilities and frustrations of masses, rather than on state-functions, in explaining the occurrence of genocide (Jones & Robins, 2009: 3-7).

For example, for Karin Solveig Bjornson, genocides are presumed to be old as civilisation itself. It means that in the Ancient world specifically occurrence of the genocides was a commonplace. They were especially brutal and retaliatory. For example, Homer's *Iliad* describes the destruction of Troy's people by Greek forces. Alternatively, Sennacherib, who was a king of Assyria (705-681 BCE), reportedly slaughtered the most inhabitants of Babylon, while the city was obliterated. Those who survived the genocide took revenge on Assyria after 689 BCE, and so on (Bjornson, 2005: 37-38). Similarly, Jones and Robins address the Great Rebellion, Haitian slave uprising, the Cambodia genocide, Rwanda genocide, Jasenovac genocide, and many others, as examples of subaltern genocides.

Notably, the Great Rebellion marks uprising of the oppressed Indians against the Bourbon Crown and the Catholic Church (white and non-Indian oppressors) in Peru (Bolivia) in which the end of eighteenth century exterminated 100,000 people. The Great Rebellion happened as a result of widespread resentment because of forced labour, the imposition of burdensome taxes, the prophecies regarding the comeback of Indian rule, and a lack of judicial remedy. A combination of actual exploitative conditions and a vision of the native utopia did not spare white women, children, potential prisoners, and Catholic believers from the Indian subaltern genocide. Similarly, Haitian slave uprising against French colonial and ruthless exploitation of African slaves resulted in a spiral of massive retaliatory violence in Saint-Domingue (Haiti) throughout thirteen years by the end of eighteenth century. A few hundred thousands of white, black and mulatto people had been killed in the racial bloodbath (Jones & Robins, 2009: 1-2).

Nevertheless, for Jones and Robins, subaltern genocides while representing massive dynamics of genocides coming from below, that is oppressed people, did not just happen during the colonial period, but they also occurred during twenty-century genocides. It does not mean that they were not organised or supported by the states, but that they represent subaltern retaliatory energies of the oppressed people which render genocidal strategies and campaign against domination and other collective identities possible. Namely, for David B. MacDonald Serbs' collective genocide trauma from Jasenovac concentration camp (around 50,000 Serbs killed), and perceptions of oppression by non-Serbs (the lack of historical self-criticism) contributed to their recent political violence and genocide in Srebrenica. The Independent State of Croatia, a former ally of Nazi Germany, labelled Serbs, Jews, Gipsies, and political enemies, as undesirable during WWII. It paved the way for massive killings, torture and inhuman treatment of them in the Jasenovac concentration camp. Consequently, this transgenerational traumatic perception, collective consciousness and feeling of victimisation provided a ground for Milosevic's nationalistic propaganda and invitations for revenge in Croatia and B&H. Srebrenica proved to be Serbs' strategic military location while indicating to Muslims that they do not want them in the same territory (MacDonald, 2009). Besides, in the former Yugoslavia, there was a lack of judicial recourse and democratic public discourse about the human sufferings of particular victims groups for the sake of the unity and brotherhood of all constituent peoples.

Consequently, it was examined various historical and empirical examples of genocides by the oppressed, those who endured mass crimes and were denied justice afterwards by the past regimes, which led inevitably to retaliation against the perpetrators of the regime or others, resulting in a spiral of the massive crimes related violence. According to Jones and Robins, subaltern violence: “(...) was also a reaction against deeply ingrained psychologies of humiliation and subjugation — a means of throwing off the chains of oppression, and reclaiming dignity and autonomy“ (Jones & Robins, 2009: 9).

Therefore, for an individual, people, or state to treat an individual or collective as they are divested of human dignity and legal personality is to treat them as less human, or dehumanised, which might also be a prelude for genocide. According to Condé, human dignity is: “The innate value or worthiness of a human being, existing by the very

nature of humanity and recognised as the juridical philosophical basis of all human rights“ (Condé, 2004: 109). Human rights thus understood protect humanity and human dignity. Only after horrors of WWII that “disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind” (UDHR pmb1, para. 2). The UN adopted UDHR as a normative global pillar and barrier against state’s tyranny and repression averse to its citizens. This means to assert rightfully that one of the reasons for human rights universality is the prohibition of genocides and other serious human rights violations through respect, fulfilment and protection of individual human rights in any society and globally expressed within the UDHR and subsequent developments in international human rights instruments, including victim’s human rights to remedy and reparations.

2.5. DEMOCRATIC PEACE IDEA AND TRANSITIONAL JUSTICE

The notion of transitional justice along with peace-building is further explored in the thesis. Namely, it is crucial to understand underlying political processes and ideas which constitute the protection of individual victims’ rights to remedies along with reparations for GHRV so that to avoid reassurance of the past criminal ideologies, a continuous spiral of violence and retaliation in transitional democratic countries. The thesis also analyses contemporary peace theories which are entirely complementary with the endorsement of peace culture and human rights culture, for example, democratic peace theory.

In an article titled *Peace and Human Rights* David P. Forsythe claims that there is the pragmatical value of human rights: as (1) a micro-contribution to human dignity (individual freedoms and opportunities), and (2) a macro contribution to human dignity by reducing conflicts leading to potential war (peace and prosperity). Democratic peace theory assumes that this is possible to achieve in the liberal democracy with regular and fair elections, the rule of law, safekeeping of the personal, minority rights, as well as by membership in regional markets and international governmental organisations, such as the European Union. The theory was founded on assumptions that democracies lead wars less between each other than autocracies, which can also be found in Kant’s

“Perpetual Peace”, Franklin Delano Roosevelt’s four freedoms inspired by H. G. Wells’s views about it, and the UN Charter (Forsythe, 2009: 188).

For example, for Forsythe, it has been sporadic to witness two liberal democracies engaged in international war since the mid-nineteenth century. It is especially true for mature and fully consolidated liberal democracies. It does not mean that peace is inherent to liberal democracies, or that they do not have disagreements, political tensions, and minor conflicts. Instead, liberal democracies gravitate to form bilateral and multilateral alliances, join in intensive trade and economic integrations, and ensure the protection of human rights (Forsythe, 2009: 189-191). Consequently, liberal democracies, in comparison with authoritarian regimes or totalitarian political orders, provide better protection of human rights. Even though, the logic of democracy (moral truth found within ruling democratic procedures) is not the same with that of human rights (moral truth found outside democratic processes), liberal democracy provides fair-minded conditions and opportunities for peaceful resolutions and articulation of conflictual interests and human rights protection.

Nevertheless, what does transitional justice mean? It can be defined as:

(...) an approach to systematic or massive violations of human rights that both provides redress to victims [criminal prosecution, truth-seeking, reparations] and creates or enhances opportunities for the transformation of the political systems [from authoritarian to liberal democracy], conflicts, and other conditions that may have been at the root of the abuses [reform of institutions and peace-building] (U.N., 2008).

Similarly, for Ruti G. Teitel, transitional justice can be understood as international law's potential for guiding liberalisation of transitional societies from totalitarian to a more liberal regime while addressing repressive past. For example, many societies in Latin America, the past Soviet Union, Eastern Europe, and Africa were dictatorial, communistic or totalitarian societies with repressive governmental regimes and systematic violations of human rights. However, Teitel differs three periods of transitional justice: the postwar period of transitional justice, post-Cold war period, and contemporary globalised transitional justice. The first period represents internationalism and hope for international peace, like the establishment of the ICJ and UN, and the democratization of Europe. The second period was characterised by two international goals (democratisation and state-building), and multifold local aims (such as punishment of aggression, trials, institutional vetting, truth commissions, reparations,

peacemaking and reconciliation). The third stage is composed of pervasive intra-state conflict, “steady state“ transition, and the globalisation of transitional justice (normalisation and standardisation of law by transitional justice measures) (Teitel, 2009: 81-82). Therefore, transitional justice is instead a complex international legal-political process with many different genealogical assignments aimed at the political transformation of societies from authoritarian to liberal democratic ones, as well as a set of modalities to address past abuses, that is genocides, war crimes, and so on.

Moreover, for Melissa Labonate, peacebuilding as a conceptual term was firstly introduced by Boutros Boutros-Ghali in the UN secretary-general report titled *An Agenda for Peace*. The notion was posterior fully embraced by the international community as one indispensable factor in maintaining international peace and stability during the setting up of the United Nations Peacebuilding Commission along with Peacebuilding Fund in 2007. Peacebuilding means a set of actions aimed at reassembling the foundations of peace after the conflict. It is closely related to human rights in this process. Their connection is twofold. Namely, sustainable peace is possible if the fundamental causes of conflict are addressed and solved. Notably, it means addressing either positive or negative peace, both based on human rights protection. Positive peace represents a reduction of “structural violence“ generated by political and economic structures which results in inequalities of individuals in realising their potential related to education, political power, health, legal recourse, and economic opportunities. Negative peace means a reduction of international or national sources' of “direct violence“ against members of a particular society through programs that promote civil and political rights. Therefore, positive peace represents Franklin Delano Roosevelt's “freedom from want“ while negative peace means his “freedom from fear“ (Labonate, 2009: 197-198).

There are two peacebuilding approaches: liberal (focuses on strengthening economic, social and political capacities of persons and groups, including victims, within civil society based on fundamental human rights) and republican (focuses on strengthening state's political, economic and social institutions, through republican governmental practices, such as public dialogue, constitutional development, political representation,

and advancement of state capacity in protecting human rights of citizens) (Labonate, 2009: 199-200).

Apparently, both the transitional justice process and peacebuilding strategies are inspired by the democratic peace theory. Transitional justice's goal is establishing a liberal democratic system, which is grounded in democratic peace theory's principles about the absence of wars between similar liberal regimes together with optimal safeguarding of rights of human beings. The later is directly involved in building societies and institutions respectful of human rights and peace cultures, which in turn enables the safeguarding of victims' rights to remedy together with reparations.

In the second chapter we undertook interdisciplinary approach with respect to examination of the phenomenon of denial in psychoanalysis, sociology, human rights theory and genocide studies. We also scrutinized the subaltern genocide theory, democratic peace theory, transitional justice and peacebuilding ideas considering principle denial of fair treatment to survivors of GHRV as well as importance of redress of victims' human rights.

Namely, the first psychoanalytical theory focuses on *intrapsychic* domain and drivers of one's denial. For example, one's defense mechanism renders a perceptive distortion of reality, such as its meaning, as if driven by Freud's "pleasure principle" (*eros*) which claims principally one's self-preservation and only pleasurable things to happen while death and non-pleasurable issues are denied. The second theory examines the interactional model and *projective identification* with other person's denial. Mainly, the interactional model of defences is grounded on one person's *projective identification* with other person's projection which denies some upsetting mental content. The last *affect theory* analyses the nature of emotions and affects rather than perception or cognition in explaining denial mechanism. Notably, each one of us can experience emotions with other persons based on *empathy* while ego's *emphatic wall* mechanism allows us to deny aversive external stimulus. In sum, persons who deal with uncomfortable truths (for instance, mourning, sickness, sexuality, addictions, domestic violence, and so on), distort objective reality in subconscious parts of minds to evade either hurting emotions or intimidating occurrences to their particular personal experiences. It is because long subjection to pain and suffering can cause an organism

not to conduct oneself normally. Therefore, denial in psychoanalysis is understood as a healthy mechanism which is in the service of life.

Furthermore, the morality of such unconscious strategies for avoiding frightening feelings and events at the societal level (which prescribes different social roles, tasks, and duties) raises different issues of moral responsibilities, acknowledgments, respect and safeguarding of rights of human beings along with justice considering various human sufferings. For Cohen, denial represents claims negating something happens, exists, is true (moral value), or is known about. Mainly, Stanley Cohen's sociology of denial examines psychological (emotional and cognitive) as well as social (moral and activity) dimensions of denial phenomenon. Cohen classifies many different types of denial, such as literal, interpretive, implicatory, individual and collective (cultural and official), historical and contemporary, local and international types of denial, and so on. Simultaneously, Cohen ensures a concept of acknowledgement of social responsibility toward human sufferings with its various responsive models, for instance, truth commissions, criminal trials, compensation, criminalising denial of the past, memorialization, and so on. It means undertaking a suitable individual, collective, or official psychological, moral and public reaction and action toward denial. Therefore, sociological approach to denial points out complex dynamics of denial and acknowledgement at mainly societal levels of human interactions. It requires from us to be socially responsible human beings to human sufferings in our society or globally.

A commonly honored definition on denial of rights of human beings is non-existent in academia. However, we can talk about denial of a particular human right, such as freedom from torture of the detainee. Further, denial of GHRV might refer to negations of clearly established facts about committed mass crimes. Lastly, denialism is related to pseudo-ideological and pseudo-scientific rethorical smears of global climate change, circumcision and so on. However, justifications for denial of human rights violations might come from various kinds of domestic and relative moral *righteousness*, such as righteous deep commitment, transcendent ideology, divine mission, ideologies of ethnic cleanness, revolutionary fight, or Western civilization. Alternatively, our social, political, cultural, and economic structures sometimes do not address adequately causes of human rights violations but instead encourage various denialist mechanisms.

Nevertheless, denial of GHRV encompasses three dimensions, which are moral, political and ideological. Moral dimension entails denial of moral responsibility for conducting or committed past mass crimes. This is possible due to some type of moral relativism (for example, normative cultural relativism) which either justifies killing acts or re-humiliates survivors by denying any wrong-doing. Namely, normative cultural relativism asserts that there are no universally valid moral judgements but rather culturally relative ones. Consequently, there is no universal moral standard to challenge intolerant moral relativism's cultural values, judgements or practices which might amount to GHRV or hinder adequate protection of victims' human rights. Political dimension comprises of specific political and/or cultural strategies which attacks the identity of persons who belong to the victim group and deny moral responsibility and/or facts about the inflicted mass crimes. Ideological dimension includes a criminal ideology (for example, racial or national) and aims at destruction of "other" groups and truthfulness regarding committed GHRV. Therefore, denial of GHRV is formed of jointly reinforcing moral, political and ideological dimensions of denial. Namely, normative cultural relativism might function as both ground for materialization of the specific criminal ideologies and instrumentalised cultural basis for politics of denial of severe human rights violations during and after the committed crimes.

However, for Gregory H. Stanton, denial is a last stage of the ten stages composed genocidal process. On the contrary, denial essentially enables genocidal killing process throughout all mentioned stages. In addition, other genocide scholars have different classifications of genocide denial. For example, for Israel W. Cherny, there exist malevolent bigotry, self-serving opportunism, innocent denials, definitional, nationalistic hubris, and human shallowness as types of denials of GHRV. Consequently, genocide denial is a complex dynamic process. Mainly, victims perceive usually denial as prolongation of genocide against them which can lead to future conflicts. Therefore, some genocide scholars recommend a conference on denial of genocide and/or human rights standard setting as to fight against such forms of human violence. It is because denial of genocide and human rights to victims, as theory of subaltern genocides shows, represents humiliation and subjugation of survivors who try to throw away overwhelming burden of such repression as if reclaiming autonomy and dignity. Namely, there are many historical examples of denied justice to victims of mass

crimes, such as ancient genocides, Haitian slave rebellion, Jasenovac genocide, etc., which resulted in subaltern genocides against oppressors or perpetual spiral of violence. Dignity is understood as juridical philosophical basis of human rights and inherent worth of human beings belonging to humanity. Human rights thus protect both dignity of persons or victims and humanity.

Particularly, recognition and safeguarding of human rights of victims of GHRV are ensured by transitional justice as well as peacebuilding approaches. The former is acknowledged as the potentiality of global law along with politics to redress past GHRV and to establish liberal democracies which would protect human rights adequately. The latter entails a set of actions directed at securing the foundations of peace after the war. For example, it addresses both “negative peace” (direct sources of conflict through promotion of political and civil rights) and “positive peace” (“structural violence” of political and economic structures through promotions of political, economic and social rights). However, both transitional justice and peacebuilding processes are influenced by democratic peace theory.

Specifically, democratic peace theory assumes that democracies lead fewer wars among each other than autocracies. For instance, liberal democracies tend to engage in multilateral and bilateral alliances, economic integrations and to provide protection of human rights. The similar ideas can be found in Kant’s “Perpetual Peace”, Franklin Delano Roosevelt’s four freedoms inspired by H. G. Wells’s views about it, and the UN Charter. However, human rights have pragmatical micro (individual freedoms and opportunities) and macro contributions to human dignity (peace and prosperity) which is possible to achieve in liberal democracy, according to this theory. Transitional justice’s goal is to consolidate a liberal democracy, which is grounded in democratic peace theory’s tenets about the absence of wars between similar liberal regimes together with adequate safekeeping of rights of human beings. The peacebuilding is straightway involved in establishing societies and institutions reverent of human rights and peace cultures, which enables the safeguarding of victims’ rights.

In summary, denial of GHRV is a dynamical genocidal process comprised of moral, political and ideological dimensions. Denial is innate throughout the whole genocidal process, and it works toward the destruction of a particular group of people, its

members, and proof about the genocidal act as well as truth and memory about the genocide. Historically, denial of mass crimes and justice leads to retaliations and neverending spiral of human violence. Therefore, it is necessary to redress past serious violence and establish liberal democracy which protects effectively human rights of its citizens throughout transitional justice and peacebuilding approaches and efforts which find their justifications in theoretical and empirical evidences of democratic peace theory.



CHAPTER 3.: THE CONCEPT OF VICTIM AND INDIVIDUAL VICTIMS' HUMAN RIGHTS IN INTERNATIONAL LAW

The third chapter will address the concept of the victims by asserting that individual victims of GHRV are especially vulnerable persons who deserve justice, and who are entitled morally and legally to have their human rights to remedies and reparations recognised by governments and individuals through respect, protection and fulfilment of their human rights. After we have examined and stressed the importance of providing remedies and reparations to victims based on their specific traumatic and disadvantaged social status, emphasized the importance of the UNBPGRV considering victim-centered approach to ensuring reparations to the victims of GHRV and different applicable theories of justice considering victims' human rights to reparations, we will assume that in order to ensure to individual victims' human rights to reparations and remedies we need to adopt and apply victim-centred approach for purposes of one or overlapping theories of reparations within the context of global legal and political trends of transitional justice and peace-building processes in specific post-conflict societies. Consequently, we shall be able to identify, evaluate, and apply proposed ethical and legal standards of the victim-centred approach, theories of justice, and transitional justice approaches with respect to effective advocacy and safeguarding of victim's human rights to remedies and reparations for GHRV in B&H, which will be assessed later within the fourth chapter.

3.1. A NOTION, HISTORY, AND SPECIFIC TRAUMATIC SOCIAL STATUS OF VICTIMS

Antônio Augusto and Cançado Trindade analyse the origins and developing the notion of the term *victim*. For them, in an etymological sense, the term *victim* originates from a *Latin* word *victim* which designates a person who is sacrificed to the gods in a ritual. In the modern era, however, an expression *victim* gets a different meaning of a hurt, harmed, or killed person (during XVII century), and later on, of an individual who is injured or oppressed by another person, power or situation (in XVIII century). During XX century both *victimology* and developments of global law on rights of human beings

brought “the person of the victim“ to the centre of normative order. The former examines victim's needs which are necessary to rehabilitate, give adequate and due reparations, and the latter ensure the realisation of that aim through a victim-centred approach. Notably, a victim represents a human person who suffers a prejudice or harm because of a wrongful international or domestic commission or act for which he/she is normatively entitled, as a subject of global rights of human beings, to re-vindicate violated rights, claim for reparation and receive legal redress (Augusto & Trindade, 2011: 125-127). Therefore, even though the notion of the victim is of old-world origins, its meanings and applications have been significantly changeable throughout different eras, cultures and body of law.

Furthermore, a term *victim* has multiple and different connotations and meanings even within contemporary international law as well as judicial proceedings. Dinah L. Shelton points out, in a book titled *Remedies In International Human Rights Law*, that victims as “injured parties“ can be individuals, collectives and people, organisations and institutions depending on particular legal provisions of a particular human rights document, related international systems of rights protection, together with nature of rights infringements. For example, The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols guarantee human rights protection to *victims* who can be natural (individuals) or legal persons, such as companies, trade unions, and religious bodies. Similarly, ICC's *Rules of Procedure* in Rule 85 determines victims as either persons (natural) or various organisations and institutions (for example, religious, artistic, educational, scientific, historical monuments, hospitals, and so on). The Inter-American Court of Human Rights (IACtHR) proclaims tribal and autochthonous communities as “injured parties“ in The American Convention of Human Rights (ACHR) in Article 61(1) based on proximity and ties with their ancestral territories or self-identification (Shelton, 2015: 241-254). However, individual over collective (group) human rights are mainly representative and developed within international human rights law nowadays out of mainly historical and practical reasons.

Accordingly, how should we specifically define an often complex term *victim* in human rights theory and law? According to Condé victim is:

A person or group that has been harmed by the state's violation of a human rights norm. Normally, only 'victims' of a violation have standing to file formal written complaints against a state in a human rights forum. Victims can be direct or indirect, such as a person summarily executed or the murder of that person's spouse (...) (Condé, 2004: 271).

If the nature of human rights violations is specifically systematic, severe, aimed against non-derogable human rights of persons who belong to specific groups, and lasts over a certain period, we are faced with the so-called GHRV² or humanitarian law. In the context of specifically GHRV, UNBPGRV details victims as:

[P]ersons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or severe violations of international humanitarian law. Where appropriate, and by domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation (UNBPGRV princ. 8).

Consequently, an apprehension of a term *victim* within contemporary human rights theory and law varies broadly. It depends on different proposed definitions, scope, interpretations and applications of particular human rights provisions regarding “injured parties” used by various global human rights bodies. The term *victim* is contingent on the very nature of rights violations (whether it is systematic or individual, direct or indirect). However, all sufferers of rights infringement are entitled to human rights to a *remedy* along with *reparation* before governments and relevant human rights bodies for harm inflicted or suffered. According to Schleker, the term *remedy* refers to: “(...) procedural rights that is access to a (legal) recourse. ... Without access to recourse, for example, a court or an administrative program, the victim of a human rights violation cannot demand or receive reparation” (Schleker, 2009: 330). Further, Schleker points out that the term *reparation* refers to: “(...) all measures aimed at making good for harm caused through a human rights violation. Full reparations include compensation (monetary indemnification), restitution or *restitution in integrum*, satisfaction, guarantees or assurances of nonrepetition, and human rights, rehabilitation” (Schleker, 2009: 330).

Nevertheless, the modern laws on remedies and reparations are different from those that existed in the ancient legal systems. For Shelton, for example, the Code of Hammurabi

² There is no a clearly outlined and commonly accepted legal definition of gross human rights violations. Nevertheless, the term is often used in various human rights declarations, treaties and resolutions; therefore, it will be examined consequently within the next sub-chapter.

(2285 - 2242 B.C.), Mosaic (The Law of Moses, 14th - 13th century B.C.), and Roman Law (753 B.C. – 5th century C.E.) allowed the objectives of redress, punishment and deterrence for committed wrongs but mostly did not distinguish between *public* (official misconduct) and *private* (not attributable to ruler or state) law. It also granted retaliation as a kind of “negative restitution by equivalence“. Gradually, early legal systems paid a way to developments of basic judicial concepts, customary and written laws as well as replacement of negative retaliation with monetary or other compensations as alternative remedies (partially in Roman law and traditional Islamic law remedies called *diya*). Retaliation was replaced with compensation because of problems related to determining the precise retribution among parties. Money as a remedy was derived from German customary law and tightly entrenched in English law by ending the twelfth century, for instance. (Johns, 1903; MacCormack, 1973; Lippman, McConville & Yerushalmi, 1988, in Shelton, 2005: 23-24).

As modern public systems gradually advanced, the systems started to differentiate between the criminal proceedings from “private action for redress“. The former is related to the aspect of the wrong which was understood to be done against the whole society, which merits to punishment and the later is attributable to an individual who endured the wrong done to him/her. However, there is no clear distinction between punishment related to crime and compensation attributable to obligation/tort that is pertinent to modern national legal systems nowadays. There is a widespread view in many legal systems that punitive damages can be awarded in civil actions in order to deter and punish wrongdoer or that perpetrator of a wrongful act should be punished through rather redress/compensation because that seems more just. Another essential characteristic of modern legal systems is that most of the European states welcomed responsibility of the state for *private acts* (directed at fixing private wrongs among individuals) and not for *public acts* (aimed at redressing state or state agents' wrongs) by the nineteenth century. It is because Roman law, which was based on individual responsibility for damages, influenced their legal developments. However, most states accepted liability for physical, moral or pecuniary harm caused by *public acts* during the twenty century (Shelton, 2005: 25-27). Human rights represent a typical example of such a legal claim or entitlement held principally by an individual human person, for the

sake of well-being or dignity, *vis-à-vis* state or non-governmental authority, for instance, corporations.

International mechanism of human rights safekeeping was established in IBHR by the UN so that to call attention to the human rights, fundamental freedoms, and their implementation mechanisms necessary to safeguard human dignity after the horrors of WWII. For Fiona McKay, in an article titled *What Outcomes For Victims?*, individuals became subjects of international legal rights with the establishment of global law of rights of human beings, who are entitled to claim remedies (access to a legal recourse) before international and regional human rights institutions for their human rights violated, if national remedies are ineffective or exhausted. For example, UDHR in Article 8 or ICCPR in Article 2(3) provides “the right of victims to an effective remedy and reparation“. The states became nominally bearers of such moral duties, political aspirations and international legal obligations enshrined in human rights instruments toward their citizens and non-citizens alike (under universal jurisdiction). However, before the establishment of global human rights legal system, there was the law of state responsibility whereas state was a bearer of global law which would represent the interests of their citizens for rights violated by another state before international commissions or judiciary. Despite a rapidly growing material of global human rights legal rules related to victims rights to remedy and reparation, states political unwillingness to provide such measures effectively remains the *de facto* problem of human rights implementation and enforcement (UDHR art. 8; ICCPR art. 2, para. 3, in McKay, 2013).

Consequently, governments are obligated legally to grant admission considering justice for victims whose rights are transgressed but it is the states that often deny justice to the sufferers of human rights misdemeanours concurrently³. Therefore, what does denial of justice mean? According to Condé denial of justice mean:

³ Particularly, a state represent important subject of international law and international relations and there is a big disproportion in power distribution between state government and survivors of such abuses. These are just a couple of reasons among many others, such as unavailable economic resources and various individual factors, because of which victims of human rights violations are usually faced with many obstacles considering respect, enjoyment along with safeguarding of their rights provided by state governments.

The legal effect of a ruling (decision, judgment, order) of a judicial, quasi-judicial, or administrative forum, which resolves an actual case and controversy in a way that does not fully comply with procedural and substantive standards under any international human rights legal norms binding on the state and under national law consistent with such international norms and applicable to the particular case (2004: 63).

On the one hand, *procedural rights* or *norms* represent procedural provisions provided within human rights treaties which allow to a person, group or state to request obedience of the state with legal obligations of treaty's *substantive rights* or to redress their violations. The right to a fair trial is an illustration of the *procedural right* or *norm*. On the other hand, *substantive rights* or *norms* present actual rights provided by the human rights treaty, for instance, the rights to life or personal expression (Condé, 2004: 207-208, 251). The right to a fair trial is observed in all primary universal as well as continental human rights instruments. For example, it is detected in UDHR Article 10, ICCPR Article 14 (1), ECHR Article 6 (1), ACHR Article 8 (1), and African Charter on Human and Peoples' Rights (AfCHPR) Articles 7 (1) along with 26. Namely, the right to a fair trial ensures one's guaranteed hearing of a human right violation before a self-governing and objective court of justice in a fair, open for public as well as timely manner (Yayawickrama, 2002: 478-479). Therefore, if an international human rights body establishes that a particular state violated many of *substantive* or *procedural rights/norms* of a person or collective, provided that the state-party codified existing legal human rights instrument(s), we may assert that the state's government did deny justice to the injured party by failing to provide effective remedy and reparations.

Also, Shelton refers to Hans W. Spiegel's article titled *Origin and Development of Denial of Justice* to state out that from early Middle Ages to the fourteenth century it was a common practice for an injured alien to whom justice was denied by a judge or his co-nationals to take reprisal against them. However, reprisal against the individual responsibility of a judge for denial of justice was later replaced with the idea of communal responsibility. In particular, collective responsibility means that the judge is an agent of the community from which he derives his mandate. If he/she denies justice to the injured party, then the community is responsible for his/her failing in which case reprisals did take the place of a non-existent appeal. Notably, reprisals served as restitution to reinstate the *status quo* because of the state's fiasco to remedy the mentioned wrong (Spiegel, 1938, in Shelton, 2015: 6-7). In the contingency of the law of rights of human beings, Shelton emphasises that if the state fails to provide an open

door to a fair-treatment along with redress for the injury endured as a result of an inflicted illegitimate deed, after the exhaustion of available local remedies, that act forms a separate wrong committed against the injured party as if denial of justice (Shelton, 2015: 7).

Consequently, the purpose of remedy along with reparation is to ensure that committed wrong by state agents, organisation or business against victims is redressed effectively. For Shelton, however, there are four kinds of purposes of remedies. These purposes are expressed within different remedial theories such as *compensatory justice*, *condemnation/retribution*, *deterrence* and *restorative justice*. *Compensatory justice* seeks to restore the moral wrong inflicted upon the victim as if restoring moral balance equally between wrongdoer and victim. *Condemnation/retribution* searches for punishment and dishonours a perpetrator for violating the rights of a victim and the fundamental values of society. *Deterrence* aims to impact wrongful behaviour of all potential actors considered to be rational persons who weight their anticipated transgressions based on cost-benefit analyses. Finally, *restorative justice* is associated with redress for victims and reintegration of perpetrators within society (instead of punishment) to bring about reconciliation among them at the societal level usually (Shelton, 2005: 9-15)⁴. In practice, purposes of remedy together with reparation afforded to a sufferer whose rights are violated usually include a combination of few or all purposes of remedies expressed above depending on nature of particular rights violation along with the specific judicial or quasi-judicial practice of a human rights body.

Nevertheless, what are specific psychological and sociological characteristics of victims that contribute and explain their specific traumatic social status as victims? In the ambience of GHRV, like genocide, many scholars conducted research on WWII's Holocaust survivors about it. They point out that victims of genocide and mass crimes are victimised by perpetrators “based on who they are, and what they have done or become” (Porter, 2005: 971). Consequently, they become in this way a distinctive or inferior “other”, even though they are not guilty of having this status (2005: 971). A more comprehensive analysis of victimisation can be found in *Marxist-economic*

⁴ The mentioned theories will be examined in more detail within third sub-chapter of the chapter.

theories (i.e. a perception that the chosen group is an economic threat to the community, and "payback" must be done through its expulsion from economic life). Further, it is also present in *radical conflict theory* (i.e. a perception that the chosen group is weak, and it should be exterminated, as were many cases regarding the native peoples). Victimisation is also accurate for *labelling theory* (i.e. a symbolic stigmatisation of victim groups by leaders). Additionally, "*a two-step solution*" method (i.e. it starts with "ideology" which causes genocide, and it proceeds further with "obedience to orders" that happen for different reasons) is also a relevant theory in this regard (2005: 972). Victimisations of "other" groups (or persons belonging to those groups) are often based and governed by their distinctive cultural, ethnic, religious, racial, linguistic, or social characteristics, but they can be carried out in many different particular reasons and ways.

Furthermore, what are the most common psychological characteristics of victims during the occurrence of genocide, and its aftermath? Although Aaron Hass examined the psychology of victims particularly in camps about the times of genocide, we can apply his main points even to survivors outside camps, since at the times of genocide or mass crimes, the whole cities, society or state often manifest themselves as a big detention camp toward the victims. Some of the shared experiences and characteristics of victims are day-to-day humiliation, terror, deprivation of personality and identity, vulnerability, powerlessness, dread, hyper-alert, emotional numbing, fatalism, apathy, death and sadism (Hass, 2005a: 842-844). However, Hass noticed that members of victims also had to some extent different psychological experiences at the personal level due to developments of "intra-psychic coping mechanisms such as denial and retreating into fantasy" (imagining the reunion with family, for example, to bear witness or revenge). These self-defence mechanisms would give them some sense of control over their faith and survival (Hass, 2005b: 844-845). Consequently, victims at group level demonstrate similar psychological traumatic characteristics, but at the individual level, they can be experienced differently.

However, even though some members of victims might survive the genocide, they will always have the altered sense of themselves, of the safe world, and even faith in God to protect them and provide a kind of justice. Many survivors of genocide suffer from

“post-traumatic stress disorder” known commonly as PTSD. It most often includes intense fear, helplessness, nightmares, expectations of new assaults on their personality, trauma, flashback to past events, “survivor guilt”, alienation from those who have not undergone such cruelty (Hass, 2005a: 842-844). On the contrary, some victims of genocide try to repress those memories and live normally. However, they all carry out individual “post-traumatic transmissions” that they in principle transfer to at least one succeeding generation. Once, the cruelty stopped, it is of enormous importance for survivors of genocide for the criminals of committed mass crimes to face the justice. Otherwise, according to Hass, “when there is no retribution the psychic wounds of survivors are even worse” (2005a: 842-844). Consequently, the genocide trauma affects not only survivors and their family but the very group identity in the sense of “grievance and defensiveness” toward some unexpected potential future conflictual circumstances (2005a: 842-844). At the communal level, this can lead to various conflicts between perpetrators and victims, and they can be transgenerational and even transnational (MacDonald, 2009).

Furthermore, the genocide trauma is expressly complex as it consists of physical and psychological wounds. Accordingly, rehabilitation process of survivors of genocide needs to be addressed and supported broadly by existing political and social, local, provincial, state and international institutions to be fruitful and beneficial for the victims, their members, and the larger society. For example, according to Yael Danieli, rehabilitation process of survivors of mass crimes can be addressed through a public apology, reparations, education and commemorations about the mass crimes. Other ways of acknowledging the real nature of war crimes, the truth and story must be accurate and shared by society, the historical and public records need to be secured, factual and available, mechanisms for prevention and monitoring established. Further, fairness to the sufferers of GHRV should not be denied, and impunity for the perpetrators should be avoided. Otherwise, justice and victims’ dignity will not be restored; their psychological wounds will become even worse, and moral codes, as well as respect for law and government, will decrease (Danieli, 2005: 878-880).

In the circumstances of transitional justice together with rights of human beings, for Michael Humphrey, in an article titled *Victim Theories*, a victim of human rights abuses

in victimology is understood as a person who is psychologically vulnerable about the criminal. In particular, there has been a shift of focal point within various social and psychological disciplines and governmental practices from the “conditions of crime“ to the outcome of violence: trauma. For example, an expert opinion during a criminal trial is often used to reaffirm harm committed but also to vindicate compensation as a therapeutic intervention for the victim. Further, the victim has also been recognised progressively within contemporary law, often the being in interplay as such with “victims' rights movement“, the language of victimhood and victim identity (Humphrey, 2013: 267). Similarly, Neil J. Kritz points out that it is vital for psychology of the victim and broader social reconciliation to ensure mechanisms which will provide non-monetary remedies (for example, a national monument or a holiday commemorating the victims), to deal with trauma, grief, and anger of victims adequately and avoid victims' resentments and retribution in the context of past GHRV (Kritz, 1996, in Shelton, 2005: 424).

Moreover, Humphrey refers to Didier Fassin's work to make a distinction between trauma as a history of psychological weakness of an individual from a more social construct of it as if being “an unfortunate encounter between an ordinary person and an extraordinary event“ (Fassin & Rechtman, 2009, in Humphrey, 2013: 267). Mainly, trauma is recognised as “psychologization of memory“ as if PTSD and “traumatisation of experience“ whereas memory is clinically possible to identify as a painful scar which is as such also recognisable by the public. Therefore, the victim's trauma as a kind of human suffering becomes “the embodiment of common humanity“ and an object of empathy and compassion by the general public (Fassin & Rechtman, in Humphrey, 2013: 267). Humphrey further proceeds to cite Fassin's concept of trauma as if a notion that: “something of the human resists all forms of moral destruction ... [and it is in] this vestige of humanity that compensation is demanded damage suffered, that witnesses testify against all forms of oppression and that proofs of cruelty endured are brought forward” (Fassin & Rechtman, in Humphrey, 2013: 267).

Within the context of transitional justice from the past authoritarian regime (followed usually by systematic human rights violations) toward liberal democracy, the victim is seen both as a psychological and political construct. The victim as a psychological

construct implies a therapeutic intervention by the state as if healing of an affected individual through a psychological catharsis process. Also, the state also promotes individual healing through acknowledgement and re-inclusion of the victim socially as a full member of society. For example, reconciliation between victim and perpetrator forms empathy for the victim's human suffering and his/her life story as paying a way toward broader social healing and reconciliation (Humphrey, 2013: 267). The victim as a political construct, however, is a cornerstone of governmentality. Humphrey refers to Robert Meister's article *Human Rights and the Politics of Victimhood* to point out that governmentally appointed truth commissions, which establish historical record about past abuses, use and reaffirm victim's bodily scars and testimonials about suffering to officially recon their victimhood (the state of being a victim), provide compensation and achieve political consensus about victims being wronged during "evil past" (Meister, 2002, in Humphrey, 2013: 268).

Furthermore, Humphrey refers to Fassin to point out that victim as a political construct is based on procedures for identification and recognition of his/her human suffering. Particularly, the victim becomes universalised in his/her body (through the lens of trauma) and shared humanity (through the lens of human rights). Therefore, the individual victim is connected through trauma and human rights (both embodied and universal) morally, existentially and legally to a specific community and humanity (Fassin & Rechtman, in Humphrey, 2013: 268). However, even though the victims' experiences should be recognised on the grounds of universalised trauma or human rights, in reality, they are often selectively heard or their rights recovered by who is seen as morally deserving by the political or legal authority in the creation of the politics of victimhood. In particular, there is a tension, among the human rights universality together with trauma and an implicit power relation among state and victim about who is officially recognised as a victim. For example, The Chile National Truth and Reconciliation Commission (1991-1992) formed to investigate Augusto Pinochet's military regime human rights abuses (1973-1990), redressed those who were considered to be families of the disappeared persons and then afterwards National Commission on Political Imprisonment and Torture (2004-2005) compensated those individuals who were tortured. Even though all victims could suffer GHRV, they are officially differentiated on the grounds of the hierarchy of moral criteria, such as "vulnerability"

and “innocence” as most or least deserving within “moral economy of legitimacy/illegitimacy” (Fassin & Rechtman, in Humphrey, 2013: 270).

Moreover, although victim can share his/her own traumatic experience with others through subjectivity, feelings and memory, their testimony is shaped by a “filtering moral economy of trauma” by the government. It means that the wider political context of victimhood conditions the victim's human suffering. Notably, divisions about victimhood can prevail between victims and perpetrators about different the closure of the past or explicit governmental amnesty for crimes. Victims can keep seeking criminal accountability for committed crimes and redress while perpetrators can blame victims for it based on the shift idea that they get what they deserve, i.e., the so-called “just world perspective”. Victims can also have different perspectives among themselves about the politics of closure as either accepting acknowledgement/compensation or see it as morally compromising. Transitional justice’s aim is promoting human rights as one way to narrow that political divide or conflict as if to balance perpetrator’s fear of revenge with victim’s willingness to respect recognition as a “moral victory” (Humphrey, 2013: 271).

In sum, legal, genocide, and transitional justice scholars all agree that victims of GHRV are entitled, need or deserving effective remedy and redress for the harm suffered. It is because of specific traumatic experience and unjust treatment inflicted by the wrongdoers that they are entitled either morally, legally, socially and politically to some form of reparation which would allow them to heal individually and socially as well as to live in the well-being and human dignity like the rest of their fellow-citizens. Furthermore, they all also confirm that victims may be inclined toward resentments and retributions against wrongdoers if they do not receive adequate help or satisfaction. It is additionally one of the crucial reasons why reparations in the aftermath of GHRV are necessary to ensure justice and peace among different citizens at the societal and political levels. It is especially evident in various ancient or medieval historical examples of retaliation and genocides among different ethnic and religious groups where such societies did not have sufficient legal remedies or mechanisms for their implementations which led inevitably to neverending cycles of communal revenge and human sufferings.

3.2. REMEDIES AND REPARATIONS FOR INDIVIDUAL VICTIMS OF GROSS HUMAN RIGHTS VIOLATIONS IN INTERNATIONAL HUMAN RIGHTS LAW

The second part of the third chapter will explore global legal framework (universal and regional systems of human rights protection), international courts and juridical practices for addressing individual victims' rights to remedies along with reparations considering GHRV. Particularly, international *ad hoc* tribunals for war crimes ICTY together with International Criminal Tribunale for Rwanda (ICTR), ICC, Inter-American Court of Human Rights (IACtHR), European Court of Human Rights (ECtHR), and African Commission on Human Rights (AfCHR) also will also be analysed within this international legal context considering victims' rights to reparations. A special focus will be placed on the UNBPGRV document created especially for victims of GHRV to remedies and reparations as a comprehensive victim-centered approach composed of global humanitarian and human rights legal norms which sets worldwide normative standards and policy related guidelines for states and governments to provide effective remedies and full reparations (restitution, compensation, satisfaction, rehabilitation, and non-repetition) to individual victims of serious human rights violations within their territories. Therefore, UNBPGRV document will be explained in detail and used later within the case study part of the thesis to test adequacy of the existing domestic legal framework, and national policy in relation to respect and protection of individual victims of GHRV to human rights remedies and reparations in B&H, and on the basis of the results finally propose in the final chapter some of the viable solutions of the thesis.

What does a phrase "gross violations of human rights" mean? Shelton differs between "gross" as well as "systematic" violation of rights of human beings. The former represent violations that are serious because of related depravity or cruelty of violations while the later signifies an official and widespread pattern of violence (Shelton, 2005: 389). However, terms can be used interchangeably and in contrast to the cases of individual human rights violations because they share the same characteristics concerning the large-scale nature of human rights misdemeanour involved. Nevertheless, since we cannot find legally defined or politically accepted standard definitions of the GHRV, we can often find alternative, informal or working definitions

of GHRV, such as that found in Annex II of the Second Consultative Meeting Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms. According to the Report, GHRV means:

For purposes of this document gross violations of international law means unlawful deprivation of the right to life, torture, or other cruel, inhuman treatment or punishment, enforced disappearance, slavery, slave trade and related practices, deprivation of the rights of persons before the law and similar severe violations of fundamental rights and freedoms and norms guaranteed under applicable international law (Bassiouni, 2006: 251).

According to Condé, GHRV means: “(...) systematic violations of certain human rights norms of a more serious nature, such as apartheid, racial discrimination, murder, slavery, genocide, religious persecution on a massive scale, committed as a matter of official practice. Gross violations result in irreparable harm to victims”⁵ (Condé, 2004:103).

Moreover, for Shelton, GHRV usually differs in quantity and quality from individual examples of human rights transgressing which consecutively determine the scope and nature of remedies afforded. First, GHRV is often related to internal armed conflicts where some victims and perpetrators involved overcome the best efforts to secure redress. Second, a transition from authoritarian regime or conflict is usually followed by weak governments which rule over a weak economy where available material resources are mainly used to restructure and rebuild national democratic institutions leaving not enough funds to ensure reparations for all committed GHRV. Third, the social context of affording reparations in the cases of GHRV differ from the individual cases because they affect the broad sectors of the population and thus can be impossible to provide them fully. Generally, remedies and reparations used after GHRV might be balanced with other goals such as cessation and prevention of future conflicts, deterrence of person's crimes, rehabilitation of victims and society, and reconciliation of groups and individuals (Shelton, 2005: 389-390). However, policies created after GHRV have two main objectives, justice (to repair damages created as much as possible) and peace (to prevent the return of violence). Therefore, reparations are necessary concerning both achieving justice for victims and preserving peace among victims, perpetrators and fellow-citizens.

⁵ The thesis will rely on this definition of GHRV throughout the rest of the work.

There are ever increasing different legal systems and practices worldwide considering the advocacy and safeguarding of the individual rights of victims of GHRV in global human rights law. However, we shall examine the most critical mechanisms (worldwide, continental along with national), relevant human rights instruments, legal practices concerning remedies and reparations awarded, as well as their main advantages and disadvantages. Accordingly, we shall be able to achieve an improved understanding about the rights of the victims of GHRV considering their protection, main ideas involved, as well as popular legal trends and practices within international and domestic laws.

UNSC established, by the UN Charter's Chapter VII, *United Nations Compensation Commission* (UNCC) which had a role to manage compensation for individual victims and corporate entities which were subjected to unlawful Iraqi's forced entrance as well as control of Kuwait. UNCC worked as a non-judiciary body from 1991-2005 and provided compensations amounting to 52.5 billion USD to approximately 1.55 million claimants. The victims would submit their claims to their governments or United Nations Development Programme (UNDP) and United Nations High Commissioner for Refugees (UNHCR), which were then reviewed by panels composed of experts and the Governing Council. If claims had merit, they would be compensated through Compensation Fund created by the UNSC and financed by Iraqi's government's petroleum sales' revenues. UNCC provided a successful model of collective mass claims' resolutions which could serve victims' rights as envisioned in UNBPGRV. On the contrary, it had a negative impact on ordinary and impoverished Iraqis for the dictator's aggression (Bassiouni, 2006: 240-241).

Further, *United Nations Human Rights Committee* (HRC) has understood Article 2.3 of the ICCPR as prescribing an obligation of state-parties to perform adequate prosecution to remedy injury caused to direct sufferers as well as to those of close family ties considering "the right to life and humane treatment violations". Notably, only prosecutions of individuals liable for GHRV (arbitrary detention, torment, coerced disappearance, attempted murder, as well as extrajudicial executions) can guarantee to the victims non-repetition of similar crimes. Therefore, states fail to provide effective remedy when, for instance, do not conduct substantial investigations of the grave

crimes, enact amnesty laws, exercise irregularities in the criminal process (unreasonable delays or military court's jurisdiction), and when do not protect victims from harassment (Aldana-Pindell, 2004: 644-646).

Moreover, the United Nations General Assembly, United Nations Commission on Human Rights, and United Nations Economic and Social Council adopted UNBPGRV which proclaims solidarity with victims of GHRV and humanity at large, forms of reparations, access to justice and sanctions for those responsible for GHRV, which will be analysed further below. Also, UN adopted distinctive treaties and declarations which ensure the right to complain or get redress for severe violations of rights, for example, the right to life as well as humane treatment violations. For example, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) in Article 13 which requires from government authorities to allow access to justice and to promptly investigate the alleged torture cases. If the state miscarries to do so, the victim has a right to complain to the United Nations Committee Against Torture which will address the issue in its country report or other specific proceedings, for example, a visitation by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the concerned state. Similarly, Declaration on the Protection of All Persons from Enforced Disappearance (1992) provides in Articles 13 and 19, right to complain to the state authority, and duties of the government to investigate and secure sufficient redress (also rehabilitation) to the victims. United Nations Declaration on the Elimination of Violence against Women contains similar language in Article 4(d) (Aldana-Pindell, 2004: 647-650).

Besides, global human rights tribunals made clear some treaties' provisions to bring to trial the right to life or human treatment violations, which will be examined below. Additionally, human rights treaties provide provisions regarding investigation, prosecution along with punishment of GHRV on the part of the states which include genocide, slavery, torture, various acts of violence and forced disappearances, such as the Genocide Convention (Aldana-Pindell, 2004: 620). UN also established a *Truth Commission* Report on El Salvador as if investigating past human rights abuses as well as recommending remedies so that to deter and avoid resurrection of the past conflicts.

Moreover, ICTY was established formally on 25 May 1993 by the UNSC's resolution 827. The establishment was possible due to provided prerogatives of UN Charter's Chapter VII following reports about “shocking violations of international humanitarian law” in the ex-Yugoslavia which were understood to be a danger to “international peace and security”. During October 1992, Lawrence Eagleburger, a U.S. Secretary of State, initiated the creation of an expert commission at the UNSC to inspect claims about severe transgression of international legal norms in Yugoslavia. The commission led by Bassiouni confirmed allegations and called for the establishment of the ICTY to trial those liable for committed horrific crimes in the Balkan region. The Tribunal's statute had a legal authority to prosecute the following international crimes: serious disregard for the 1949 Geneva Conventions (Article 2), infringements of the war's laws and customs (Article 3), genocide (Article 4), and atrocities committed against humanity (Article 5) (Brown, 2009: 129-131). International prosecution of GHRV is necessary when national prosecution is unable to deliver justice to the victims, such as those related to international *ad hoc* tribunals of ICTY and ICTR.

The ICTY indicted 161 persons for various serious crimes endured in Croatia, B&H and Kosovo with different overall results from 1994 - 2017. On the one hand, it established a good sense that international court could manage trials by law for other institutions worldwide. It also clarified the existing components of worldwide crimes, such as attesting the use of “international humanitarian law to internal armed conflicts” instead of just international ones. It advanced application of humanitarian law to the legal regulation and punishment of sexual violence during wartime, such as that rape and associated violence can qualify as torture in humanitarian and customary law, as well as atrocities committed in contrast to humanity. Considering “Kunarac case”, ICTY found that the crucial element in determining rape crimes was no an element of force but a nonconsensual element. Finally, it formed an authoritative historical record, punished high profile leaders for committed crimes and gave voice to victims. The court did not provide, on the other hand, reparations to victims. It did not achieve reconciliation in Yugoslavia because individual criminal responsibility of a few convicted individuals could not politically and psychologically shift assumptions of collective guilt of one ethnic group or the other. Further, ICTY refused to criminally prosecute commanders of 1999 NATO's bombing of Serbia, considering civilian casualties, aimed at making

Serbia stop repression of Kosovar Albanians in Kosovo. The ICTY prosecutor produced a report about it but concluded The North Atlantic Treaty Organization (NATO) had no intention of deliberately attacking civilians which were seen by Serbian public as one-sided institution. In final, the ICTY transferred a dozen of unfinished and low-profile cases to national courts for completion (Brown, 2009: 129-137).

Similarly, ICTR was created by the UNSC based on the UN Charter's Chapter VII to trial dangerous violations of humanitarian legal norms inflicted during the civil war in Rwanda in 1994. A rapporteur of the UNHCR visited Rwanda, during the on-going Rwandan genocide, and recommended the creation of ICTR. The UNSC appointed a commission of specialists which concluded evidence about genocide committed by Hutu against Tutsi and possible retaliatory war crimes done by Rwandan Patriotic Front (RPF) against Hutu. The UNSC found that the Rwandan genocide was a “threat to international peace and security” and this directed the creation of ICTY (Tolley, 2009: 121).

Furthermore, the ICTR's statute incorporated in Article 2 norms from the Genocide Convention to the international trial crime of genocide (including conspiracy, incitement, attempted genocide, and complicity). In Article 3 codified standards of customary law implemented by the Nuremberg Tribunal (such as individual criminal responsibility for systematic murder, deportation, enslavement, extermination, imprisonment, torture and persecutions of civilians). Also, in Article 4 it provided to regulate national loaded conflicts based on Article 3 and Protocol II of the 1949 Geneva Conventions by global humanitarian law (such as killings and torture of prisoners, and using civilians as hostages). The court's results were mixed. Mainly, ICTR deterred, punished/retribution around 56 high-profiled Hutu indictees, established a historical record along with rape becoming a criminal act committed contrary to humanity. To the contrary, it did not ensure restitution, reparations, and national reconciliation in the aftermath of 800,000 killed persons. It prosecuted only Hutus (because of fear of Tutsis' *coup de etat*) (Tolley, 2009: 121-128). Afterwards, *gacaca* (Rwanda's traditional communal courts at village level) were established to achieve “truth, justice and reconciliation” *en masse* but defendants did not have access to lawyers and victims did not receive reparations for lost properties or rehabilitation (BBC News, 2012). Both *ad*

hoc international courts, ICTY and ICTR, were partially successful. They prosecuted the most responsible leaders, but they did not provide adequate reparations to victims of GHRV.

After dismay of WWII, and following subsequent genocides appearing in Cambodia, Rwanda, Srebrenica, etc., there was a necessity to form a long-lasting ICC as if securing the rule of international law in the face of severe infringements of global humanitarian as well as human rights laws inflicted by various individuals including governmental officials worldwide. By the adoption of the "Rome Statute" ICC was founded formally on 1 July 2002. ICC was formed as a result of almost a decade-long diplomacy, legal expertise, and efforts driven by over 200 NGOs, mainly governmental officials from Germany and the "rights-conscious societies of western Europe" interested in upholding global legal norms throughout the world. By November 2008, out of 139 signatory participants in the *Rome Statute*, 108 countries ratified the statute except U.S.A., Russia, China, India, Israel, Iraq, Libya, Qatar and Yemen (Johansen, 2009: 113-116). ICC has authority to prosecute GHRV cases if concerned national authorities fail to conduct any genuine investigation or prosecution of the specific crimes, based on the complementarity principle.

The court's statute provides jurisdiction for the most severe crimes of regard for humanity, such as genocides, criminal acts committed contrary to humanity as well as war related crimes in Article(s) 6, 7, along with 8. Further, the ICC's role was imagined as universal as if to enforce international law with broader jurisdiction, impartiality and equity. However, its results are partially universal. On the one hand, the court's statute obliged state parties to adjust their national legislation with international treaties regarding crimes-related provisions included within the Rome Statute. It also included obligations on states regarding cooperation, on-site investigations, the share of intelligence, ensuring witnesses to testify and to trace, seize or freeze the property of the accused person about committed crimes. It also has a deterrent purpose considering states' unwillingness to comply alongside the international rule of law together with willingness to oppose impunity regarding international crimes. On the other hand, the court's legal power to transform international relations as if enforcing humanitarian and human rights legal norms globally, founded on the reasonable application of worldwide

legal provisions, has been impaired by the mentioned non-party states' several politics which can be considered illegal under the treaty and UN Charter-based legal obligations and commitments (Johansen, 2009: 113-119).

Also, for Bassiouni, the ICC Statute ensures one of the essential recognition for victims as subjects of international criminal law. In contrast to the ICTY and ICTR judiciary practices, it provides reparations to the victims in Articles 75 along with 85 (entitlements to reparation as well as compensation). Further, it ensures a reparation fund considering sufferers in Articles 75 and 79. The Rome Statute arranges victim participation in various legal proceedings in Articles 57, 68(3) and 75, and safekeeping of survivors together with witnesses *via* Articles 43 along with 68 (Bassiouni, 2006: 230). Accordingly, for many legal scholars, ICC ensures a victim-centred approach toward safeguarding of the victims of GHRV and their rights.

At the regional level, there are many systems of human rights protection. However, three of them are the most prominent about the protection of victims' human rights within academic literature. These include the *Inter-American System*, *European* and *African* systems of human rights protection. For instance, the ACHR's Article 63, ECHR's Article 41, along with the protocol of the African Charter regarding creation of an African Court on Human and Peoples' Rights (AfCHPR) in Article 27 provide alternative venues for the victims to claim their reparations (Schleker, 2009: 332). All these systems provide both checks and alternatives about national authorities' failure to ensure adequate redress to the persons of GHRV.

Namely, victims' rights are protected by the Inter-American Commission together with Inter-American Court of Human Rights (ACtHR) in the Inter-American System. Victims can submit their claims to the Commission which reviews and tries to settle them with concerned state which a party to the ACHR. When the settlement is unsuccessful, the Commission submits the claim to the ACtHR for judgment which is obligatory for the state. Namely, ACtHR interprets Articles 8.1. (the right to be heard), 25 (adequate judicial recourse) and 1.1. (general duty of states to provide the full exercise of ACHR) as obligations of the state to prosecute GHRV implicated in the right to life and humane treatment, as was the case with forced and systematic disappearances in Honduras during the eighties. Also, the Inter-American Court found

that sufferers' rights to truth along with fairness regarding GHRV have been violated when states: adopt amnesty laws to shield wrongdoers legally, act recklessly to obstruct the criminal process and best interests of the victims in pursuit of truth and justice. Further, victims rights are also violated when there is unreasonable delay by the government's inaction or action in the criminal proceedings, when the national court lacks impartiality, or in the cases when criminal prosecutions resulted in sham/pretence, or the accused is acquitted (Aldana-Pindell, 2004: 622-634). For Schleker, Inter-American System on Human Rights represents the best progressive legal arrangement concerning the safeguarding of victims' rights since it is a victim-centric as if incorporating UNBPGRV standards, such as full reparation principles within its verdicts and decisions (Schleker, 2009: 334-335).

ECtHR secures juridical safeguarding of rights of human beings enlisted in ECHR for all European countries being associates of Council of Europe, a political body tasked with protecting rights of human beings, the rule of law and representative democracy in Europe. The ECHR contains only civil and political human rights. Nevertheless, ECtHR interprets ECHR's Article 13 (the entitlement to an adequate remedy) as prescribing duty of the state to ensure effective prosecution. Alternatively, it provides an entitlement to an adequate remedy of the victim of GHRV based on infringements of his/her right to life as well as humane treatment. Notably, ECtHR interprets Article 13 as requiring from states to conduct an effective investigation, identification, and sanction of persons in charge of extrajudicial killings, torment, malicious treatment, forced disappearances, robbery of homes and crops, as well as to provide payment of compensation where suitable. In addition, ECtHR interpreted in a few instances Articles 2 and 3 (right to life and forbiddance of torment) in combination with 1 (liability to recognize human rights enlisted in the ECHR) as if duty of state authority to lead official investigation, recognition along with punishment of individuals culpable for transgression of the right to life and inhumane treatment accusations. The plaintiff should provide to ECtHR evidence beyond reasonable doubt that he/she was not provided with an adequate remedy by the government regarding serious misdemeanours of his/her or close family members' human rights for the ECtHR to accept and finalise the claim. Suferer's right to an effective litigation has been violated when state's investigation lacked impartiality, unreasonably delayed, "seriously deficient", or resulted in a sham prosecution (Aldana-

Pindell, 2004: 634-644). On the one hand, ECtHR's judgments are obligatory for the state party. On the other hand, ECtHR leaves mostly to states a discretionary right concerning a proportionate amount and kind of reparations to be awarded to victims. Similarly, African Human Rights Mechanism is composed of African Commission on Human and People's Rights along with AfCHPR which require from parties to The African Charter to investigate, litigate, punish along with redress infringements of right to life together with humane conduct, such as slavery, torture, genocide and so on (Aldana-Pindell, 2004: 620).

Finally, at the national level, states have a legal mechanism, as a part of international law's obligation, to redress GHRV of international human rights law. For Bassiouni, there are at least three examples of ensuring redress for breaches of global human rights along with humanitarian norms at the state level, such as *universal jurisdiction*, the U.S.A. Alien Tort Claims Act (ATCA), and *specialised national courts*. Mainly, *universal jurisdiction* means civil or criminal prosecution of GHRV issued by the victim (national or alien) against the perpetrator (domestic or alien) on the land of a country for the crimes committed in another state on the basis that such violations are of concern for whole humanity and thus impunity is intolerable. The perpetrator can be state's agent or non-State actors, and victims should be able to receive compensatory damages. Further, ATCA provides to an alien residing in the U.S.A. to use civil action for violations of law of nations along with a U.S.A.'s treaty to obtain redress, such as in the cases of genocide, slavery, torture, war crimes, summary execution, arbitrary detention, forced disappearance, cruel, unusual and degrading treatment. For example, a victim of torture from Ethiopia stumbled across her perpetrator in the U.S.A. and had an opportunity to pursue *in personam* judicial proceedings against the suspect. Some claims are impossible to achieve success because the concerned state can be unwilling to enforce the verdict or the perpetrator has no assets to compensate the victim accordingly. An example of a *specialised national court* includes the Commission on Human Rights which was established by the *General Framework Agreement for Peace in Bosnia and Herzegovina* (DPA, Dayton Peace Agreement) with jurisdiction over GHRV based on sixteen human right documents, including ECHR, and competence of compensation. Individuals or their representatives could submit their cases to the Commission (Bassiouni, 2006: 232-238). In addition, for Shelton, there are other ways

to address victims' rights in the face of GHRV at national level, such as, national truth commissions, lustration laws, war reparations (Germany's post-WWII reparations for the Israel state), national compensation schemes, and non-monetary remedies (symbolic reparations and rehabilitation) (Shelton, 2005: 391-427).

Before the acceptance of UNBPGRV, there was a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (BPJVC) derived partly out of UDHR's Article 8 (the right to effective remedy). Article 8 sets principles about the government's obligation to ensure a harmed individual both a remedy along with redress within domestic criminal law in the cases of state's agent's abuse of power or crimes committed by other individuals. It is because the state's failure to protect the victim allowed the crime to happen. Therefore, the state owes to the victim compensation. BPJVC called for the generation of the mechanism or special procedures for victims' redress while treaty-based law did not. However, since it was a soft law, the states usually tried to avoid any responsibility for their own agents' crimes except those committed by the non-State actors until 2005 (Bassiouni, 2006: 247). Application of global rights of human beings together with humanitarian rules remained elusive considering the victims of GHRV.

Nevertheless, the historical context of ever developing worldwide human rights legal norms together with transitional justice mechanisms allowed for UNBPGRV to be approved by UNGA in New York by mid-December 2005. Namely, essential developments in negotiating UNBPGRV shifted from articles on the state responsibility fixated on relations between states to national affairs amongst countries and persons due to arguments that governmental duty to afford remedies for its misconduct was broadly recognized that an entitlement to an adequate remedy considering offenses of human rights together with even more confident of GHRV could be considered as an inevitable part of global customary law. There were, for instance, over 100 intranational conflicts with over 80 million persons killed after WWII whose human and humanitarian rights should be redressed effectively through new modalities and mechanisms by international law obligations. UNBPGRV encompasses human rights and humanitarian laws by victim-oriented principles and assertion of human and social solidarity instead of their different approaches to victims' rights protection. UNBPGRV encloses gross

violations and all misdemeanours of human along with humanitarian rights. The former was grounded on the present contingency of global legal rules found in the ICC's Rome Statute, for instance, in the moral obligation to investigate, involve in litigation as well as punish (principle 4), duty to ensure provisions for universal jurisdiction (principle 5) and inapplicability of the limitations rules (principles 6 and 7). The latter implies that in essence, all violations entail legal consequences (Boven, 2010).

Further, the notion of victim was based on general criteria expressed in 1985 BPJVC and reinstated in principles 8 and 9, to be a person (or its family members and dependents) who suffered mental or physical harm, impairment of fundamental rights, or economic loss, as well as that individuals are able to experience injury privately and publically. Non-governmental parties are likewise liable considering creation of procedures along with operations to provide sufferers remedy together with reparations based on rightful accountability as well as solidarity characteristic of humans (principles 3c along with 15). For example, an individual, legal person as well as entity should provide reparations to victims or the state, if the state already compensated the victims for non-governmental parties' illegal actions. The inclusion of non-governmental parties' liability in UNBPGRV also represent a victim-oriented perspective about victim's rights (Boven, 2010). UNBPGRV has not just been a product of existing international law on remedies and reparations, but it pointed out instruments, processes, modalities and approaches for their application which is the best visible in its structure composed of XIII sections encompassing 27 principles. Namely, it is composed of:

[O]bligation to respect, ensure respect for and implement international human rights law and international humanitarian law (Section I); the scope of the obligation (Section II); gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law (Section III); statutes of limitations (Section IV); victims of gross violations of international human rights law and serious violations of international humanitarian law (Section V); treatment of victims (Section VI); victims' right to remedies (Section VII); access to justice (Section VIII); reparation for harm suffered (Section IX); access to relevant information concerning violations and reparation mechanisms (Section X); non-discrimination (Section XI); non-derogation (Section XII); rights of others (Section XIII) (Boven, 2010).

Therefore, UNBPGRV represent the most comprehensive as well as a standard-setting human rights document about the appropriate safeguarding of the entitlements of victims of GHRV. Uniquely, UNBPGRV define full and adequate reparations in

Section IX as “restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition” (UNBPGRV princ. 18). *Guarantees of non-repetition* consist of various governmental, systematical transform measures, for instance, strengthening of “civil supervision over the military”, advancing the governance of law; and education programs about human rights for various public institutions and services. Further, it includes review and reforms of bad laws, mechanisms of the conflict prevention and resolution, and promotion of ethical conducts and protection among public officials (UNBPGRV princ. 23).

Reparations consist of all measures aimed to ensure good for sufferers’ of GHRV, for instance, obligations to ensure reparations for the harm suffered, programmes for reparations, enforcement of judgements about reparations, and providing full and effective reparations. *Restitution* implies standard which “restores the victim to the original situation before the gross violations of international human rights law and grave violations of international humanitarian law occurred” (UNBPGRV princ. 19). An illustration of restitution includes the responsiveness of humans’ rights, citizenship, family life, identity, and restoration of liberty, employment, return to survivor’s home and his/her property. However, *restitution in integrum* is never possible to achieve entirely as of practical reasons. *Compensation* refers to measures “provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case” (UNBPGRV princ. 20 and 19). It can also encompass compensation, for instance, regarding mental or physical harm; moral damage; ruined favourable circumstances (such as, education, social benefits and employment); expenses needed considering various assistance (professional along with legal services), or medical, social and psychological services. It also covers material damages, loss of earnings and earning potential (UNBPGRV princ. 20). Therefore, compensation represents a monetary type of reparation.

Rehabilitation consists of psychological along with medical care. It implies social and legal services as well (UNBPGRV princ. 21). The non-monetary rehabilitation is of crucial importance considering the well-being of survivors and their significant social reintegration in society. *Satisfaction* includes an extensive scope of measures. It includes, for instance, validation of the facts along with entire and official

acknowledgement of the truth as if it does not harm the survivors anymore. Alternatively, it implies active standards and rules directed at the ending of lasting contraventions. It also includes the pursuit for the whereabouts of the gone persons, for the very young kidnapped persons, and the search for the bodily remains of persons murdered, and collaboration in the restoration, naming and burying of the bodies (UNBPGRV princ. 22).

Further, *satisfaction* also encompasses the collective tradition of communities and the relatives; a governmental proclamation or a juridical verdict recovering the human dignity, the name and the victim's rights along with individuals closely related to the sufferer. Furthermore, it implies a communal apology, involving recognition of the facts together with confirmation of moral obligations; legal and governing penalties against individuals responsible for the misdemeanours; remembrance and memorial to the victims. It also means the incorporation of a truthful record of the abuses that occurred in worldwide humanitarian and human rights teachings as well as in educational books at all stages (UNBPGRV princ. 22). Reinstatement of the dignity of the victims requires necessarily respect and implementation of the mentioned measures. Even though, UNBPGRV presents principally soft law instrument which is not legally binding but has rather moral and political force. It advises states how to develop and implement national politics regarding promotion and safeguarding of the entitlements of sufferers of GHRV under existing global humanitarian along with human rights norms. Particularly, worldwide humanitarian together with human rights legal norms are part of legally binding customary and/or treaty-based laws. For example, the right to effective remedy and redress are found in treaties, or in the case laws considering the right to life as well as humane treatment of victims, which are derived from ICCPR, ECHR and the 1949 Geneva Conventions which are legally binding treaties. Additionally, UNBPGRV was used as reference by several governments, international, regional and national courts. For example, a few Latin American countries used it in creating legislation on reparations. ICC's Statute in Article 75 which is related to reparations uses its wording as well as the International Convention for the Protection of All Persons from Enforced Disappearances in Article 24. IACtHR referred to it in awarding individual and collective reparations (Boven, 2010). In final, for Bassiouni, UNBPGRV are prepared out of "victim-based perspective" so that to rationalise by way of consistent approach

methods and means through which victim's rights may be addressed (Bassiouni, 2006: 251).

Victim-focused international programs and norms appeared as a result of victim protagonists and experts worldwide who were interested in enhancing up the world's awareness of victims. Notably, victim advocates began to establish organisations and congresses to talk over various issues which affect victims, mainly victims of crime. *The First International Symposium on Victimology* happened in Jerusalem during 1972. Afterwards, other international symposia were held every three years worldwide on different themes of victimology, such as the process of victimisation, the wrongdoer-victim relationship, society's attitudes about victims, and kinds of reparations. Consequently, the *World Society of Victimology* (WSV) which is concerned with the promotion of victimology's shared knowledge in various programs and services, legislation and policies regarding victims' rights, was established at *The Third International Symposium on Victimology*. WSV lobbies UN and other relevant international organisations to adopt norms and programs referring to the rights and needs of victims. For example, 1985 BPJVC, the Rome Statute along with the Finalized Draft Text of the Rules of Procedure and Evidence for the International Criminal Court are influenced by the victim-focused international standards and growing attention being given to victims (Aldana-Pindell, 2004: 614-620).

Consequently, what does a victim-centred approach to the rights of victims of GHRV mean? Apart from the mentioned legal perspective on the victim-centered approach which includes effective remedy and full reparations, we can examine a theoretical perspective about it based on victimological research on domestic violence. Namely, there is no generally accepted view about what a victim-centred approach means actually. However, there are many theories with similar explanations about it. Further, various scholars and experts on victims' human rights provide different conceptualizations on victim needs and interests but they all essentially reflect the ones informed and mentioned in UNBPGRV. They do so both to explain victims' particular needs generally and to reaffirm victims' interests in more pragmatical manner as if informing various transitional justice approaches how to become more victim-centered to protect victims human rights more effectively.

For victims of international crimes, justice can be seen and delivered through the following lens: victims' needs which conceptualize procedural and substantive dimensions of justice. Victims' needs entail the following ones: emotional (professional rehabilitation from trauma, public recognition of human sufferings, and support and protection during judicial proceedings), informational (what are causes and context of GHRV, who might be responsible, and how to obtain redress), and practical needs (investigation, prosecution, and punishment of criminals, financial support, and provisions against further violence). Procedural dimension of justice for victims of GHRV include participation, protection, legal representation and support during judicial proceedings as well as request to reparations. Substantive dimension of justice is composed of the favourable judicial outcomes for the victims, such as truth, reparation and justice (effective remedy) (Moffett, 2014; Mallinder, 2008: 360-366). Consequently, victims are subjects which constitute justice process in a manner of the fulfillment of their specific needs or interests. However, victims' needs or interests also reflect effective remedy and both non-material and material prescriptive reparatory patterns provided by the UNBPGRV.

Furthermore, McKay distinguishes four conjugations at which a victim-oriented approach could be considered. These are *choices of measures to be taken*, the *design of measures*, *implementation* and *evaluation*. *Choices of measures to be taken* means that if measures chosen in the aftermath of GHRV do not match up with what victims find important, the measure employed will be less effective. Therefore, both UNCHR and The Office of the High Commissioner for Human Rights (OHCHR) recommend that domestic discussions with survivors of GHRV, as well as in harmony with global human rights standards, are necessary for the creation of a holistic transitional strategy or developmental programs. *Design of measures* means that victims should have a contribution to the design of particular measures for better satisfaction of victims. For example, consultations with victims about the form of reparations in national reparation programs were held in Peru and Chile. IACtHR involved psychologists, various experts, and victims' views in creating reparations awards. *Design of measures* may also involve discussions with victims and mediation among stakeholders (McKay, 2013: 948-949).

Implementation encompasses the provision of regular information to victims and victims' regular participation in judicial proceedings or any other reparation process. Lastly, *evaluation* implies that quantitative and qualitative surveys or other evaluations about measures being taken to address human rights violations are important to reveal where such process betrayed victims' expectations and where can be improved due to time (McKay, 2013: 948-949). McKay's multifold pragmatical recommendations about what a victim-based approach could be for effective protection of victims' rights provided that they are by rights of human beings standards enshrined within UNBPGRV, positively can amount to more effective safeguarding of the entitlements of victims of GHRV.

Mainly, For McKay, victims should be put at the centre of all phases employed after human rights violations, such as individual complaints, reparations programmes, truth commissions, criminal proceedings, and so on. It is because if this is not done victims will feel unsatisfied by what is made to repair violation at the personal level. However, any measure undertaken will also fundamentally fail to achieve an important objective such as reconciliation, at the communal level (2013: 948). Therefore, in the face of present governmental corruption or incompetence, pretence, complex social, economic, cultural and political factors, or even divergent views among individual victims or victim organisations about different redress issues, victims should be given a central role through a consultation process to express their particular concerns. They should also be informed adequately by their legal representatives about their rights, supported by psychologists and other experts regarding their needs and best interests. They should also participate in the course of all criminal legal proceedings phases to repair what was taken from them adequately, with balanced and considerable respect to offenders' human right to a fair trial or other societal interests of concern for all.

In sum, a growing collection of global law and judicial practice has happened over the second half of XX century which under global victim's rights movement made governments gradually more legally, ethically and politically responsible regarding the respect and protection of the victims of GHRV. The peak of such a movement is endorsement of UNBPGRV instrument which represents the best perspective for the establishment of the governmental victim-focused politics to redress GHRV adequately.

The document contains existing international human rights and humanitarian norms and provides extensive standard-setting recommendations of victims human rights effective protection and implementation. The document was influenced by victomological studies on victims' specific needs and interests in domestic violence set up but it became prescriptive with respect to governments' legal obligations and duties in relation to providing an effective remedy and full damages concerning the sufferers of international criminal acts. Controversially, the very spirit of the instrument is still regularly challenged with both national political unwillingness, corruption and incompetence and complex international transitional justice legal-political projects to ensure prompt promotion and protection of victim's rights to remedies and reparations.

3.3. THEORIES OF JUSTICE

The next part of the third chapter will examine each of three theoretical perspectives about purposes of reparations for victims, that is, *compensatory justice*, *retributive justice* (Finnis's theory of desert-focus retribution belongs to this category), and *restorative justice*. According to Carolin Schleker, the *compensatory justice* focuses on repairing the harm done by the perpetrator to rectify moral imbalance and inequality amongst wrongdoer and survivor. Further, the *retributive fairness* emphasises the punishment of perpetrator as a type of reparation. Finally, *restorative justice* seeks to redress committed wrongs not by punishing wrongdoer but through his/her societal reintegration as if expressing remorsefulness for the inflicted crimes, common apology and forming the historical truth about the past events (Schleker, 2009: 330). However, each of these three ideal types of reparation justice theories might be in interplay with each other in reality. For example, ICTY may punish a perpetrator for mass crimes in B&H by a long sentence (retribution), but this may also entail compensation to the victims at the national level in other judicial proceedings (compensation), as well as create historical records about societal truth (restitution). Therefore, we will also use these ideal reparation theories types to assess which kind of justice theory has been achieved or denied in B&H. It will be measured by kinds of problems or benefits individual victims' of GHRV share in B&H on fulfilment and protection of their human rights to remedies and reparations provided as such by the UNBPGRV document. It will

be assessed later in the case study part of the thesis. Finnis's theory of desert-focused retribution justice and which also includes civil (besides the criminal ones) vindications of the rights of victims to compensations will be assessed here and applied later within the case study part of the thesis as well.

Shelton refers to Aristotle's concept of *compensatory justice* to point out that lots of the present-day legislation of remedies is grounded on it. According to Aristotle:

What the judge aims at doing is to make the parties equal by the penalty he imposes, whereby he takes from the aggressor any gain he may have secured. The equal, then, is a mean between the more and the less. But gain and loss are each of them more or less in opposite ways, more good and less evil being gain, the eviler and the less good being loss. The equal, which we hold to be just, is now seen to be intermediate between them. Hence we conclude that corrective justice must be the mean between loss and gain. This explains why the disputants have recourse to a judge; for to go to a judge is to do justice ... What the judge does is to restore equality (Aristotle, 340 B.C./1955, in Shelton, 2005: 10).

Accordingly, there are three main characteristics considering the *compensatory justice* as follows: a) the litigating parties should be considered as undifferentiated; b) one party usually inflicted a damage to another party, as well as c) the purpose of remedy is to recover the sufferer to the state or circumstance the person was in earlier than the harm occurred. Aristotle's *compensatory justice* concept, however, was applicable only to wrongful acts conducted among persons and not to those carried out by community contrary to a association or by the state in opposition to the person. However, *compensatory justice* path can ensure the grounds for society's legal remedies such as to those wrongs committed against individual or society in the context of rights of human beings infringements. Mainly, rights of human beings norms establish a minimum order of non-interference with rights of others which allows them personal developments through the pursuit of their projects or goals equally. Further, since human rights norms are demonstrative of regard for the person's intrinsic human dignity, their violations mean the inability of the sufferer to perform self-fulfilment on account of an unjust action of trespassing. Therefore, all conducts which are rights-infringing attack the *equality* and *dignity* of the victim. Finally, since one's life options have a significant existential value for him/her, their impairment or denial means injustice and requires compensation or rectification as if restoring what was lost or something equally valuable (Shelton, 2005: 10-11).

Furthermore, *retributive justice* seeks to incorporate a punishment against a perpetrator for a committed wrong. This kind of sanction reaffirms the fundamental values of the society that disregard for a victim's rights as well as those of others diminishes the criminal's moral claimant standing. The punishment is justified by looking backwards considering the just deserts than forward to deterrence. Considering GHRV, for instance, torment, punishment cannot restore a victim to a previous state of his/her well-being, but it can impose a penalty, restrain repetition of the wrongdoing and place society together with the victim in condemning the harm. There is a view about *retributive justice* that civil remedies cannot compensate effectively one's suffering or loss and that the victims hand over their rights to retribution to the state in return for safeguarding along with imposition of criminal law. However, retribution's role is left almost unclear. Punishment and retribution are associated with emotions of revenge, anger and hatred which are viewed by some persons as inappropriate emotions despite the victim's harm suffered. Nevertheless, for others, retributive feelings of victims are seen as a part of their self-respect for taking their entitlements sincerely. Likewise, indignation is also seen as an adequate reaction to injustice along with immorality as well as normal desire to observe the wrong thwarted (Shelton, 2005: 12).

Moreover, criminal punishment for committed GHRV is usually seen as adequate about other types of sanctions. However, extreme punishments are usually avoided in global human rights legal norms, for instance, the death penalty. Namely, the purpose of retribution is to restore morality and not to inflict immoral punishment which might be disproportionate or cruel, for instance as it is in *lex talionis* (the law of retaliation). Nevertheless, criminal violation of human rights both wrongs the victim's well-being and sends a message that the victim's entitlements might not be necessary as if not abstaining from trespassing them in pursuit of one's goals. Therefore, punishment communicates a message to wrongdoers that inflicted act was wrong. It acknowledges the victim's sufferings and honours his/her moral claims. Mainly, retributivism asserts punishment so that to negate wrong and reaffirm right as well as to reassert these values of society and structures that create or preserve that kind of behaviour (Roht-Arriaza, 1995, in Shelton, 2005: 13).

Finnis's notion of retributive justice together with punishment for wrongdoings sets desert-focused retributivism (impersonal justice), where penalty is necessary on behalf of the entire society and not a particular victim to correct any serious shake up of a country's moral order and to reconstitute the equilibrium of economic and social relationships in society (Kramer, 2013: 182). According to Finnis, the justification for punishment is found in the idea that: "(...) the law-abiding [citizens] have the right that government and law nullify the advantage he [the offender] gained by his lack — indeed, abandonment — of the self-restraint needed to respect the demands implicit in the law's definition of offences" (Finnis, 2011a: 12).

Finnis grounds his concept of *retributive justice* and punishment mainly on Thomas Aquinas's work titled *Compendium Theologiae* (Compendium of Theology) in which Aquinas deliberates on purposes of punishment, differences between applications of civil and criminal laws and compensation for a wrongful act based on our practical and moral intelligibility. Namely, punishment against the offender is not to be understood regarding pain or emotions but on the grounds of our practical and moral intelligibility that the offender willingly took advantage of freedom, thus causing inequality and owing debts to fellow countrymen, community's law and the common good. The essence of punishment is the excessive will of the offender which acted against the relevant law or moral norm which prescribed promotion and preservation of the common good. Punishment thus restores the order of just equality as if offenders are brought back into equality because they took too much freedom or autonomy on the part of their will to act. Punishment, therefore, sets in order the guilt of wrongful willing, so the purpose of punishment is remedial (deterrent, reformatory) (Aquinas, 1485/1947, in Finnis, 2011a: 174-175).

Further, Finnis refers to Aquinas's differentiation between civil law (one's duty to compensate) and criminal law (one's liability to punishment). Both of them are concerned with the restoration of upset equality through recompense — the former looks to the losses incurred by specific persons and the latter to a kind of advantage gained over all other members of the community. In civil matters, compensation implies restoring to specific victims what they have been deprived of, for example, taken goods. The civil court reaffirms a moral obligation that the offender has discharged. Notably,

the court must ensure the plaintiffs' rights for all injurious losses, the penalty of which is the award of damages or compensation (*reparations; restitution; satisfactio*). In criminal matters, the court is authorised to uphold penalties with a view considering the wider public good (*publicae utilitati*). It means government upholds retribution for the sake of "proportionate equality of a just distribution of advantages and disadvantages" as if removing advantage the offenders gained in preferring their own will against the community's common good. Therefore, punishment does not negate crime but the advantage of pursuing one's purposes against the law which provides the order of equality (equilibrium). The punishment is future-oriented to deter similar wrongdoings, and it cannot be imposed on behalf of the victims but in the name of the community of the law-abiding citizens. Punishment is thus retributive and not retaliatory. It is composed of two elements: subjection of the wrongdoer's will and restoration of equality between law-abiding citizens. Criminal penalties include fines, imprisonment, and compulsory labour for the community and victims' good, and so on. Nevertheless, since there is no "natural measurement of punishment", they are all chosen by the judge reasonably with an exclusion of the capital punishment since there is no natural/rational requirement for its imposition (Finnis, 2011a: 175-179). According to Schleker, Finnis's desert-focused retribution theory is *retribution justice* theory about reparations regarding violations of victims' rights. It is multifold as including the punishment of the perpetrator, and deterrence for justice disturbance in a democratic political order, which can be found in the notion of the weight of cost-benefit actions of rational actors (Schleker, 2009: 330).

Moreover, *restorative justice* concepts appeared as preferences to retribution along with care deficit for the victims' needs in new crime prevention techniques. Research around it suggested that these kinds of programs reduce crime, so, it led to their applications to managing human rights nonobservances, such as GHRV. *Restorative justice* is composed of *procedural* and *substantive* elements. The former brings together victim and perpetrator and the later, instead of punishing wrongdoer, seeks to reintegrate him/her while providing redress for victims. Redress encompasses remorse, apologies, reconciliation, forgiveness and reintegration. For example, truth commissions created in Australia and Canada about the social status of the indigenous peoples represent some of these *restorative justice* programs. They can establish authoritative information or

truth about past abuses and therefore contribute to countering state lies, the creation of a shared history and reconciliation. Besides, remedies provided to victims, such as an official apology, availability of health and mental well-being services, monetary reparations, rituals and commemorations can provide their social reintegration and rehabilitation. However, one of the controversies surrounding *restorative justice* is that it sometimes appears to sacrifice the needs of individual victims, that is hard truths for the sake of desires of the majority and reconciliation. However, it is necessary for individual victim's healing to be provided so that their voices are heard, truth attained symbolic and real redress along with guarantees of non-repetition ensured (McGuire, 1985, in Shelton, 2005: 16).

Similarly, for Cyanne E. Loyle, in an article titled *Restorative versus Retributive Justice*, a *restorative justice* approach seeks to “rebuild” the human respectability of sufferers, peace to the society, and the rule of law through institutions, for instance, truth authorities, official acknowledgements together with redress schemes. Proponents of this approach argue that human rights infringements are not exclusively concerning law (international or domestic) but likewise injuries of individual victims and communities which cannot be adequately addressed through punitive measures employed by *retributive justice* approach which are focused on the crime or perpetrator itself. Therefore, the *restorative justice* approach focuses on the broader patterns of violence as if establishing an official narrative about the past human rights violations and victims which leads to social healing and reconciliation between victims and perpetrators. However, Loyle reckons that *retributive justice* approach (justice) is often firstly applied to establish individual criminal responsibility of perpetrators and then *restorative justice* approach (peace) to address more extensive social healing in the cases of GHRV. Therefore, both approaches can be in interplay or complement each other to bring justice to the victims, perpetrators and war-torn societies (Loyle, 2013: 235-240). Even though *restorative justice* was initially established to meet victims' complex moral and psychological needs, because *retributive justice* could not address them wholly apart from used punitive measures, this approach remains contested by individual victims whose personal traumas are not adequately addressed or do not fit with the established official narrative about their victimhood.

3.4. TRANSITIONAL JUSTICE AND PEACE-BUILDING APPROACHES IN THE PROMOTION AND PROTECTION OF INDIVIDUAL VICTIMS' HUMAN RIGHTS TO REMEDIES AND REPARATIONS FOR GROSS HUMAN RIGHTS VIOLATIONS

The last part of the third chapter will deal with transitional justice and peace-building processes related to respect and protection of individual victims of GHRV to human rights to remedies and reparations in post-conflict transitional democracies, such as B&H. In order to do this, we will define transitional justice as:

(...) an approach to systematic or massive violations of human rights that both provides redress to victims [criminal prosecution, truth-seeking, reparations] and creates or enhances opportunities for the transformation of the political systems [from authoritarian to liberal democracy], conflicts, and other conditions that may have been at the root of the abuses [reform of institutions and peace-building] (U.N., 2008).

Further, we will explain the concept of transitional justice, link it with democratic peace theory which is backed up with sufficient historical evidence about global liberalizations of different regimes, and further within the case study of the thesis we will be able to examine and evaluate specific existing transitional justice programs or approaches towards realizations of individual victims' human rights to remedies and reparations in B&H with respect to the UN's victim-centred approach and normative standard settings to remedies and reparations.

The concept of transitional justice is two fold ideally: legal (concerned primarily with addressing serious past violations of international law) and political (preoccupied with establishment of stable liberal democratic institutions and peace). The term “transitional justice” was coined after WWII but its origins span even to the Ancient times when mass crimes were mediated partially through legal provisions of amnesties as if guaranteeing social certainty (Binder, 2013: 9-11). In the contemporary understandings of transitional justice the relationship between law and politics is rather complex. Namely, law is formed by the political circumstantial and law itself builds up the transition from autocratic toward democratic political system. In the eventuality of radical political alteration, the role of law is composed of the following features which enable normative shift from a illiberal to a liberal order: criminal justice (punishment), historical investigations, reparations, administrative justice and transitional

constitutionalism. Mainly, transitional punishments throw lights on the relationship among concepts of state's democratic liability and personal rights in creations of liberal public politics. Historical justice examines and redefines the former regime's repressive past and such narrative as public knowledge is also used to recreate the political identity of the state. Reparatory justice repairs past wrongs as if initiating respect and protection of individual rights crucial for the formation liberal state together with the rule of law. Alternatively, it plays also political role by enabling development of new political and economic turnouts in the political society. Administrative justice uses public law provisions to redefine the relationship of individual toward specific political community, such as democratic participation, leadership and political membership. Transitional constitutionalism creates constitutions and bears new transformative objectives of political order (Teitel, 2000: 6-8). Consequently, transitional justice is informative of symbolic rule of law which balances ideal conception of justice with specific political realism of the country that gradually delivers liberalization of political regime.

Historical repetition of mass crimes is replaced and imagined rationally as a chance of creating a liberal democracy where victims of GHRV and citizens have their human rights equally respected and protected as persons and actors of global law. Further, in the times of radical political change, legal symbolism represents an important alternative to retaliations through rational redefining of individual rights, status, responsibilities, and limits of state power which imitate the idealistic version of the rule of law in consolidated liberal democracy. However, human rights' role in transitional justice also plays an important normative role. It enables transcending law's traditional connection to politics as if bridging the theoretical gap between positivism and natural law (Teitel, 2000: 215-221). Therefore, transitional jurisprudence pursues non-ideal conception of justice (atypical for liberal democracy). However, it seeks "compromise" justice between ideal justice (legal prospectivity, regularity and generality) and political realities (past abuses, authoritarian political culture and practices, balance of power) in the country. It is because otherwise political "change" would not be possible to achieve in transitional political period. However, the law has transformative potential to bring about the normative liberal change through the gradual establishment of liberal

democracy and democratic practices where ideal justice might be achievable in foreseeing future.

On the one hand, in the aftermath of GHRV the whole societies' values can be destroyed and related legal and political institutional framework, such as work of parliament, judiciary, prosecutor and police services can be politicised, unstable, weak and under-sourced. On the other hand, there is GHRV for which transitional justice seeks to address liability along with reparations for harmed individuals, reaffirm the dignity of persons together with citizens, and prevent the resurrection of mass violence. Therefore, the task of transitional justice in restoring societal fragility and in determining legitimate answers to massive human rights violations is quite challenging and different from general human rights promotion and protection at the international level (International Center for Transitional Justice [ICTJ], n.d.). However, transitional justice encompasses human rights as complementary concerning guarantees of victims' rights, along with developments of the law governance together with liberal democracy which ought to be understood to protect optimally human dignity of citizens and human beings.

Transitional justice's goal is establishing a liberal democratic system, which is grounded in democratic peace theory's principles about the absence of wars between similar liberal regimes as well as optimal protection of human rights. For example, transitional fairness strategies have been implemented in societies worldwide which endured political transformations from authoritarian or semi-authoritarian to democratic political regimes, often faced with severe challenges of dealing with GHRV or past injustices and in the search for sustainable and long-term peace. Notably, it has been deployed in Latin America's Southern Cone, after civil wars in Central America, during South Africa's Apartheid, behind the breakdown of the Soviet Union together with communism in the Eastern European countries and the Balkans.

Mainly, there are four traditional; transitional justice approaches in dealing with GHRV and societal fragilities, that is *criminal proceedings*, *reparations*, *truth-seeking*, and *reform of institutions*. *Criminal prosecutions* entail legal criminal proceedings in establishing a criminal responsibility for the most responsible persons (often political and military leaders) for inflicted global mass crimes (such as genocide, war crimes and

atrocities committed contrary to humanity) beyond a reasonable doubt. Nevertheless, *criminal prosecutions*, which can be international and domestic, can be combined with other strategies such as *reparations programs*, *truth-seeking*, and *institutional reform* to fight against impunity gap as a consequence of GHRV and numbers of victims and perpetrators involved. *Reparations* transitional justice approach serves to recognise the legal obligations of individuals, group or state to redress outcome of violations because of failure to prevent them, direct infliction, or more generally to address the causes of past abuses or to ensure their non-recurrence. It includes financial compensation, restoring political and civil rights, removing unjust criminal convictions, granting access to education, health care, land and physical rehabilitation. They can be implemented as a result of litigation or administrative programs. They can also be symbolic such as the right to truth and memorialization. *Reparations* need to be victim-centred to be effective entirely (ICTJ, n.d.).

Truth-seeking is a transitional non-judicial justice approach which aims to establish a historical record (based on truth and facts) about past human rights abuses (events, causes and impacts), and to preserve memory (museums, architectural memorials and commemorations) about it to avoid repetition of GHRV. It is based on both victim's entitlement to have information and truth regarding disappeared family members and causes of GHRV as well as on the government's moral and legal obligations to provide transparency and accountability about it so that to uphold democratic government and the rule of law. *Truth-seeking* approach thus promotes an individual and communal healing after GHRV. These transitional justice approaches are complementary to each other as if prosecutions address individual accountability while truth-seeking stresses a broader social context through acknowledgement and restricting the culture of denial of GHRV. *Institutional reform* as a transitional justice approach presents acknowledgement of victims as human rights holders while seeks to establish confidence among state establishment and fellow citizens. It includes the following justice concerned measures: *vetting* (an official examination and sanction of potentially abusive and corrupted officials from the restructuring of public service); *structural remake* (reconstruct institutions as if improving legitimacy and integrity through ensuring independence, representation, accountability along with responsiveness). Further, *institutional reform* encompasses *oversight* (creation of oversight bodies within

governmental institutions to secure civilian governance accountability) and *transforming legal frameworks* (creation of new or transformation of existing legal frameworks to ensure safeguarding and advocacy of human rights, such as adoption of constitutional amendments or international human rights instruments). Lastly, it also includes *disarmament, demobilisation, and reintegration* (disarmament of the former military forces and paramilitary formations along with ensuring services for ex-soldiers to reintegrate into civil community) and *education* (various programs of interests to employees and governmental officials regarding human rights and useful humanitarian standards) (ICTJ, n.d.).

Besides, some transitional justice scholars point out that *peacebuilding* and *reconciliation* are also important transitional justice approaches. Namely, for Labonate, *peacebuilding* implies a set of activities directed at reconstructing the fundamentals of peace once the conflict is over. It is tightly related to human rights in this flux. There is a liberal peacebuilding approach which focuses on strengthening economic, social and political capacities of persons and groups, including victims, within civil society based on fundamental human rights. Alternatively, there is also a republican peacebuilding approach which focuses on strengthening state's political, economic and social institutions, through republican governmental practices, such as public dialogue, constitutional development, political representation, and advancement of state capacity in protecting human rights of citizens (Labonate, 2009: 197-200). The peacebuilding's avenue of approach is influenced by democratic peace theory. Namely, it is straightforwardly engaged in creating societies and institutions respectful of human rights and peace cultures, which in turn makes possible protection of victims' human rights to remedy and reparations.

Finally, *reconciliation* is a complex process aimed at rebuilding and building relationships in the aftermath of GHRV (ICTJ, n.d.). For Lina Strupinskienė, there are *political, economic, and social types of reconciliation*. Each of them can be applied to an *individual, collective* and *national* levels as well as be either *thin* or *thick*. Political kind of reconciliation at the individual thin level means the existence of the will to participate in joint public institutions but as a thick implies trust in newly formed institutions and citizens. At the collective thin level means working on common

beneficial projects but as a thick indicates working mutually regardless of group gains. At the thin national level signifies power-sharing but as a thick means the past-related responsibility, orientation toward the law governance along with human rights. However, economic reconciliation at individual thin level means a pragmatical daily economic cooperation but as a thick present irrespective of ethnicity a daily economic activity. At the thin communal level it implies mutual engagement in a beneficial economic activity but as a thick regardless of group gains means participation in economic activity. At the thin national level, it shows cooperation across ethnic lines in economic activities but as a thick signifies economic equality and justice. Finally, social type of reconciliation at the individual thin level means interethnic tolerance and peaceful coexistence but as a thick shows empathy and forgiveness. At the thin communal level, it implies cooperation but as a thick implies stopping of communal violence. At the thin national level, it means peaceful coexistence but as a thick implies acceptance of the single narrative of the history (Strupinskienė, 2016: 4).

In summary, the goal of “compromising fairness” is both addressing the entitlements of the sufferers of GHRV effectively and establishing liberal democracy which is understood to be the best possible political order considering the safekeeping of rights of human beings and preserving of international peace among similar orders. This concept is partly influenced by the horrors of WWII and subsequent authoritarian intra-states conflicts which cannot be rejected by the principles of international law, as well as with empirical evidence which supports assumptions of democratic peace thesis that liberal societies do not lead the armed conflicts hostile to similar societies, thus contributing to peace internationally and nationally.

Considering victim-centred approach in rights safeguarding of the sufferers of GHRV, transitional justice reparation approach is entirely by its principal UNBPGRV instrument. Other transitional justice approaches also seek to create institutional and social conditions considering the adequate safeguarding of victims’ rights. However, the applicability of the transitional justice approaches is particular for every country, and they depend on concrete political, legal and social conditions of the states. It means that some of them are applied as it fits relatively best its primary goals. Transitional justice thus represents a lengthy and dynamic legal and political process. There are many

challenges related to the government's unwillingness to cooperate or implement specific transitional justice strategies and measures fully, such as complicity of governmental officials in war crimes or weak institutions and civil society. Consequently, the victims' of GHRV might not receive ideal liberal conception of justice equally and in a dignified manner but transitional justice process should be regularly informed and evaluated based on the victim-centered approach considering the effective safeguarding of survivors' needs as well as interests in line with mentioned international humanitarian along with human rights laws. In the fourth chapter, we shall be able to identify, evaluate, and apply proposed ethical and legal standards of the victim-centred approach enshrined in the UNBPGRV, tenets of theories of justice (including Finnis's theory), and specific transitional justice approaches with respect to effective advocacy and safeguarding of victim's remedies and reparations for GHRV in B&H.

In the third chapter, we have examined legal, genocide, and transitional justice theories which support sufficient remedies together with reparations for survivors of GHRV. Further, we also analysed different legal systems and especially UNBPGRV document which is based on victim-centred approach regarding adequate advocacy and safeguarding of victims' rights to remedies and reparations. Also, the main theories of fair-treatment considering victims' reparations were described. Lastly, transitional justice concept and approaches were presented. Notably, various scholars agree that victims of GHRV have a specific traumatic status and derogation of rights for which they are entitled, need or deserving to have effective remedy and reparation ensured for the harm suffered. On the one hand, adequate redress of victims' rights enables individual and social healing of the victim, and on the other hand, it prevents unsatisfaction, resentments and retaliation by victims in the aftermath of GHRV as a serious threat to other human beings and peace.

Further, victims' rights are protected in both the treaty-based and soft laws. Global victim's rights movement after WWII made governments gradually more legally, ethically and politically responsible than ever regarding the effective remedy and reparations awarded to the victims of GHRV. The culmination of such a movement is adoption by the UN of a comprehensive victim-centred (victims' needs) document which encompasses both human rights and humanitarian norms, recommends new

models, mechanisms and schemes for effective implementation and protection of victim's rights and sets new standards concerning available full reparations for the victims of GHRV worldwide. UNBPGRV represents the best vision regarding the creation of the national victim-centred politics in the aftermath of GHRV which is still challenged with political unwillingness and incompetence, lack of material resources, various individual factors, and so on, to ensure prompt promotion and protection of victim's rights to remedies and reparations.

There are three main ideal theories of justice concerning the purposes of redress awarded to sufferers of rights nonobservances. These are compensatory, retributive and restorative justice. Compensatory justice repairs the damage done by the perpetrator to improve moral imbalance and inequality among perpetrator and victim. Retributive justice stresses the punishment of perpetrator as a type of reparation. Restorative justice seeks to redress wrongs not by punishing perpetrator but through his/her reintegration into society as if expressing remorse for the crimes, founding the societal truth considering the preceding events and providing healing for survivors. However, each of these three ideal types of reparation justice theories might overlap with each other in reality. For example, a perpetrator can be punished and obliged to provide compensation, and he can apologise to the victim simultaneously.

The primary goals of transitional justice as a lengthy and dynamic legal and political process is providing redress for the victims of GHRV and establishment of the liberal democracy which is understood to protect citizens' human rights and peace optimally. Transitional justice encompasses many innovative approaches to the creation of institutional and social conditions favourable for the achievement of its primary goals. Reparation approach is fully compatible with the victim-centred approach of UNBPGRV in the protection of rights of victims of GHRV. However, there are many obstacles driven by governments in democratic transitions considering the adequate implementation of transitional justice strategies, such as weak institutions, economy and civil society, the complicity of state agents in GHRV, and so on. Even though, the survivors' of GHRV may face many challenges of non-ideal liberal conception of justice (inequality and humiliation) during a period of political change, transitional justice approaches and governments politics must be always informed and analysed based on

the victim-centered approach which protects victims' needs and interests in harmony with international humanitarian law along with human rights norms.

In conclusion, we have examined ethical and legal standards for the redress of victims' rights, the victim-centred approach enshrined in the UNBPGRV, tenets of theories of justice (including Finnis's retributive justice theory), and specific transitional justice approaches with respect to adequate advocacy and safeguarding of victim's entitlements to remedies as well as reparations in relation to GHRV. In the fourth chapter, based on this knowledge and measures, we shall be able to identify, evaluate, and propose some new viable and ethical ideas concerning gathered empirical data and improvements of a national system of the advocacy and safeguarding of victim's entitlements to remedies and reparations for GHRV in B&H.

CHAPTER 4.: THE CASE STUDY OF VICTIMS OF GROSS HUMAN RIGHTS VIOLATIONS TO INDIVIDUAL REMEDIES AND REPARATIONS IN BOSNIA AND HERZEGOVINA

The fourth chapter is reserved for the case study of the victims of GHRV to individual remedies and reparations in B&H. The first part will describe causes and consequences of the Bosnian war as well as the ICTY's role in prosecution and creation of the historical record about those accountable before the international law regarding major rights contraventions in B&H from 1992-1996. Further, the existing domestic legal mechanism together with human rights instruments considering the protection of the victims' rights will be examined. Victims' actual voices considering severe rights misdemeanours in Srebrenica and Prijedor, which is the focal point of the thesis and the case study, will be analysed and evaluated concerning national and international standards of human rights protection. The next sub-chapter will explore how to reaffirm moral claims to legality of those forms of remedies and reparations compatible with UNBPGRV which do not exist or are violated in those communities through the usage of Finnis's theory of rights of human beings. The final sub-chapter of the fourth chapter will explore whether there is any current transitional justice related approaches and programs in B&H related to recognition, safeguarding and enjoyment of individual victims' entitlements to remedies and reparations, as well as evaluate them about the safeguarding of rights of the victims' of GHRV.

4.1. EXPLANATIONS OF THE WAR IN BOSNIA AND HERZEGOVINA

The war in B&H during the nineties cannot be examined solely without an understanding of a broader political context and secession processes which led to it in the former Yugoslavia. After the death of a charismatic communistic leader Josip Broz Tito in 1980, a break up of Yugoslavia starting with Slovenia, Croatia, B&H and Kosovo during 1991-1999 was inevitable.

For Mark Thompson, there were four factors contributing to Yugoslavia secessions: weak central institutions of Yugoslavia, rising of aggressive nationalism in Serbia, the collapse of communism in Europe and Yugoslavia around 1990, and Yugoslav People's Army's (YPA) stronghold of Balkan Serbs nationalism. The Yugoslavian federal system became gradually ineffective during the eighties because its three main pillars started to decay. First, Tito's death brought an end to his prestige and cult of a charismatic personality. Second, League of Communists of Yugoslavia, which was the main ruling federal party of Yugoslavia, weakened its political coherence. Third, YPA did not endure a necessary democratic change. At the same time, Slobodan Milošević, the former head of the Serbian League of Communists, primarily used an on-going political and related economic crisis to encourage restiveness, historical grievances, and bitterness over allegedly "inferior-victim" position among 36 per cent of Yugoslavia's Serbs population. For instance, he validated publically Serbia's Academy of Sciences and Arts (SANU) proclamation from 1986 that Serbs in Kosovo (the sacred land of Serbian culture) became subject of 'physical, political, legal, and cultural genocide' driven by around 80 per cent of the ethnic Albanians (Thompson, 2005: 1170; Serbian Academy of Sciences and Arts [SANU], 1986).

Far away from objective truth, majority of Serb intellectuals, journalists, and artists supported the unity of all Serbs at any costs while Milošević exercised a more comprehensive political initiative of re-centralisation of Yugoslavia under Serbian hegemony through intimidation, and political and military power over other republics. The transition from communism and economic democracy (individual non-freedom and non-satisfaction) to liberal democracy, therefore, was not peaceful in Yugoslavia because of the aggressive Serbian nationalism led by Milošević (Thompson, 2005: 1170-1171). Simultaneously, communism falls in Eastern Europe by 1989 due to political and economic problems caused by often centralised, repressive, elitist, and the totalitarian dictatorship of one communistic party and burdensome bureaucratic system which could not deliver declared absolute equality and economic progress practically while impairing individual autonomy and enrichment.

Even though the myth of brotherhood and unity of South Slavs in Yugoslavia was de facto over after Tito's death, which slowly but surely paved the way to more open public

debates about ethnic-nationalist ideas and sympathies, Slovenians, Croats and Bosnian Muslims did not want to be subjected to Milošević's idea of centralized Yugoslavia under Serbian hegemony. Slovenia was the first Yugoslavian republic to approve multiparty political vote-casting during beginning of 1990. In the same year, it declared sovereignty in July and held a referendum on independence by the end of the year. By the beginning of 1991, the European Communities recognised Slovenia's independence. Likewise, Croatia declared independence on 25 June 1991 while gaining international recognition afterwards. However, their statehood and declaration of independence were forcefully challenged by YPA's military interventions (Repe, 2009: 138-143).

Namely, YPA was a guardian of the former Yugoslavia's communistic regime. At the times of fall of communism in Europe, the rise of the democratisation process and national ideas, and weaken Yugoslavian federal communistic system, the chiefs of YPA staff align themselves gradually with Milošević's idea of re-centralised Yugoslavia. However, intent and methods of such leadership were quite authoritarian as if replacing effective legal and political means of public affairs with force and intimidations against peaceful transitions to independent states. For instance, both Milošević and YPA saw the 1974 Yugoslavian constitution as the cause of dissolution because it guaranteed to six republics the status of states (except foreign policy, currency, a uniform market and defence). Milošević denied the Yugoslav constitution's provisions and definitions regarding more decentralised federal system and autonomy while threatening with war and states of emergencies his opponents. YPA's military leadership prepared for a military takeover in Kosovo and Slovenia. Notably, after Serbia imposed supremacy in Kosovo, Slovenia faced limited intervention over a few months and with 83 casualties. Croatia led homeland war against Croatian Serbs rebel forces, YPA soldiers, and Serbian paramilitaries who captured eastern part of the country and southeastern part newly renamed "The Republic of Serb Krajina" from 1991-1995. The Croatian war for independence and statehood took 13,233 lives, 1,149 missing persons, and 33,043 wounded on the Croatian side. Over 200,000 persons fled away, 20,000 houses were demolished, and a significant number of mainly Croatian Serbs were killed too (Repe, 2009: 139-144). However, the Bosnian war was the fiercest military conflict in the region during 1992-1995.

Notably, according to the census of 1991, B&H was an ethnically mixed country. Bosnian Muslims composed 44 percentage, Bosnian Serbs 31 percentage, Bosnian Croats 17 percentage and others 8 percentage of the population. Despite many ethnically mixed marriages, cities and neighbourhoods, as well as a firm existence of Yugoslavian nationalism, ruling ethnic parties exploited their previously suppressed nationalistic sentiments and myths about unjust group sufferings during WWII to blame others for it and further their nationalistic goals. For instance, 164,000 of Serbs, 75,000 of Muslims, as well as 64,000 of Croats were killed during WWII, but in reality members of each ethnic group were both enemies, such as Chetniks and Ustashas, and friends such as Communistic Partisans. During the nineties, these lines became blurred in a nationalistic sense and fueled by political and military support from Belgrade and Zagreb. Notably, the European Community recommended to B&H and other Yugoslav republics, to decide through referendums whether they would love to become independent states during the apparent dissolution of Yugoslavia in 1991. The referendum on the independence of B&H was held on 29 February 1992. Sixty-seven per cent of the national population voted (mainly Muslims and Croats did it while Serbs boycotted generally) with the final results of 97 per cent of those who voted supported the independent state of B&H. Meanwhile, Bosnian Serbs led by a politician Radovan Karadžić and a general Ratko Mladić decided to boycott the B&H government's decisions about independence as well as the Constitution, and with the political support of Belgrade and YPA's military weapons brought from Slovenia and Croatia declared the Republika of Srpska unilaterally during 1992 (Repe, 2009: 144-145).

By 12 May 1992, the Serb plan was to occupy eastern and northern parts of B&H, unify with The Republic of Serb Krajina in Croatia, and to break resistance in Sarajevo. They engaged in widespread politics of ethnic cleansing driving ethnically mixed territories homogeneous through massive killings, rape of women, forceful detention of men in concentration camps, terror, organised deportations of civilians, destruction of religious objects, and so on. Bosniaks and Croats had a weak resistance, and they also fought against each other from 1993-1994 due to Croatian president Franjo Tuđman's nationalistic aspirations and military campaign to create a Croatian puppet state called "Herceg-Bosna" in Herzegovina. UN-led unsuccessful neutral politics of peacekeeping missions in B&H while Europe was ineffective and divided among Britain and France

favourable of the Serb side and Germany and the United States on Muslim and Croats sides of peace negotiations (Repe, 2009: 144-145). After a series of unsuccessful peace plans and mass war crimes culminating in the Srebrenica genocide conducted by Republika Srpska Army and Serbian paramilitary units in July 1995, NATO bombed Serb forces as if forcing them to sign DPA on 14 December 1995 finally.

According to Christina M. Morus, in a book titled *Bosnian Genocide: the Essential Reference Guide* the causes of the GHRV in B&H were interrelated modern linkage of material conditions (economic collapse of the Yugoslavia during the eighties), political opportunism (political vacuum misused after Tito's death by religious-ethnic elites), and nationalist propaganda (Milošević's "Great Serbia" and Franjo Tuđman's "Great Croatia"), which resulted in 50 percentage of B&H houses wiped out, 2 million persons uprooted, 50,000 women raped, and 100,000 victims dead (Morus, 2016a: 25-33). Namely, coming next to the downfall of the Soviet Union, the strategic geopolitical importance of Yugoslavia, as a leader of the Non-Alignment Movement against U.S. (liberal) and U.S.S.R. (communistic) imperialism, was lost. The West lost interests in supporting a milder version of Yugoslavian communism, and as a result, political stability and economic opportunities ensured by the neutrality of the Cold War vanished. Economic downfall and weak national leadership disillusioned people with "Brotherhood and Unity" and paid a way to political opportunism of religious and nationalist elites. They became culturally relevant through framing Tito's suppression of their ethnonationalism as a negation of their authentic ethnonational culture and history. Cultural and historical elements were used then to put spin between past and present events as if to reclaim "ethnic Serbian unity" and to blame "ethnic otherness" as a solution to the Yugoslavian crisis. Mainly, instead of promoting historic ethnic cooperation (as Tito did), nationalists blurred historic complexities as if 500 years of Ottoman domination, Ustashes mass crimes during WWII, and Tito's repression of Serbs became the history of Serb's victimisation that framed "Serbian aggression as self-defence". Periods of peace and cooperation among different ethnic groups as well as material conditions and choices behind Yugoslavian modern crisis were denied and replaced by nationalist myths about historical inevitability of contemporary conflicts in the region and B&H (Morus, 2016a: 26-27).

Likewise, according to Smail Čekić, a Bosnian historian, the causes of the serious human rights violations in B&H were more ideological than political, reaching to even Serbs' nationalism in XIX century, which can be found in Ilija Garašanin's book "Načertanije" and Petar II Petrović Njegoš's book titled "Gorski Vijenac" about homogeneous community of the Great Serbia, resulting in double human casualties than those Morus has asserted above. Particularly, the reasons for the so-called "Bosnian genocide"⁶ are to be found in "Great Serbian" ideology. The *Great Serbian ideology* is composed of two main principles and ideas: the creation of a *Great Serbia state* through territorial expansion in the Balkans and annihilation of non-Serbs in that imagined state so that to achieve "*all Serbs in one state*" nationalistic ideal. He traces those kinds of historical facts from the beginning of XIX century onward, based on numerous Serbian nationalistic documents which propagate radical ideas and methods for the realisation of the Serbian criminal nationalistic ideology. For example, Čekić points out to the so-called Serbian "Hajduk" rebels led by Matejo Nenadović by the beginning of XIX century who considered that "God is to be served by gifts of providing sacrifices of others' blood" (Čekić, 2011: 12-13). Hajduk was a gang member that robbed and killed people of other ethnicities.

Further, "Načertanije" (1844) sets that historical mission of Serbia is the realisation of its national goals as if the creation of Serbian-Slav empire to even up for the fall of the Eastern-Roman empire in the XV century. "Gorski Vijenac" (1847) promotes intolerance and religious hatred to "wipe out the country of non-Christians". Čekić finds similar ideas in politics and practices of the Kingdom of Serbia (1718–1739), in linguistic nationalism as if "Serbs all and everywhere" reminiscent of a teaching of a Serbian linguist Vuk Karadžić (1787-1864), as well as in documents of secret organizations named "Unity or death" and "Serbian defense". Moreover, he emphasises "racial prejudices" and "Serbian race" ideas found in a document by Jovan Cvijić (1908), Ivo Andrić's elaborate about emigration of Albanian Muslims to Turkey as a matter of national interests (1939), Moljević's tractate titled "Homogenius Serbia" (1941), in mass crimes committed against Muslims in Serbia and B&H driven by

⁶ Bosnian genocide is an often used scholar term among historians to denote all GHRV committed against non-Serbs during the nineties in B&H. However, it does not represent a valid legal qualification of GRHV committed in B&H.

Chernick's leader Draže Mihajlović (1941-1945), Vase Čubrilović's nationalistic study about "Minority Problems in New Yugoslavia" (1944), religious nationalism of Serbian Orthodox Church, SANU's Memorandum (1986) about nationalistic unity of Serbs, and so on (Čekić, 2011: 13-14; Šarić, 2010). Čekić sees in these ideas, documents, programs and related mass crimes inflicted upon non-Serbs in the Balkans, and especially in B&H, periodic continuity of great human sufferings and physical destruction reminiscent of Great Serbia ideology as the leading cause of the Bosnian genocide as well as reasons for the final genocidal act, its denial. There are many genocide scholars and especially historians from the Balkans who agree with his assertions.

Nevertheless, there are mainly western political scientists and historians who do not find direct causes of the contemporary GHRV conducted in B&H in the so-called "Great Serbian" ideology, but in rather political opportunism of regional nationalistic politicians, collapse of European communism, as well as in media's nationalistic propaganda which mashed up people's perceptions about real political and economic crisis of the communistic system with primordial ethnic-nationalist myths mentioned previously by Morus. Similarly, for Marko Attila Hoare, "ancient ethnic hatred" was not a cause for the Bosnian genocide since Serbs, Croats and Bosniaks lived in relatively peaceful coexistence during one thousand long periods of time. However, institutionalised religious segregation and class difference between Muslim landlords and Serb Orthodox peasants arising from Ottoman period until the creation of Yugoslavia caused antagonism of subordinated Orthodox Christians toward Muslims which can be understood as rather a precondition for the genocide (Hoare, 2014).

According to Morus, ICTY calculated 104,732 persons were killed during the Bosnian war. Namely, there were 55,261 civilians (38,000 were Bosnian Muslim along with Croat while 16,700 Serb victims) and 47,360 soldiers (28,000 Bosnian Muslim, 6000 Bosnian Croats and 14,000 Bosnian Serbs). ICTY estimated that 20,000 – 50,000 females (predominantly Bosniaks) were ravished. It also established that 50 per cent of Bosniak and Croat and 25 per cent of Serb houses were destroyed or damaged. 2.2 million were displaced civilians of which over million never returned to their previous homes but integrated into other communities in B&H or abroad (Morus, 2016b: 39-41). Also, for Sarajevo's Research and Documentation Center (RDC) there were 130,000 –

150,000 persons dead (including missing persons). Accordingly, 40 per cents were civilians and 60 per cent military and police individuals. Of the total number of dead persons during the Bosnian war, 66 per cent Bosnian Muslims, 25 per cent Bosnian Serbs, 8 per cent Bosnian Croats along with 1 per cent of other ethnic groups were dead. Regarding civilian victims, 83 per cent were Bosnian Muslims, 10 per cent were Bosnian Serbs, 5 per cent Bosnian Croats together with 2 per cent were persons belonging to other ethnic groups (Morus, 2016b: 39-41).

Even though victims of GHRV during the war were of different ethnic origins, ICTY and RDC findings confirmed simultaneously that the majority of the victims, both military and civilian ones, were among Bosniaks. Results were based on proven findings of a specific character of GHRV, such as Sarajevo siege, concentration camps in Prijedor, Srebrenica genocide, mass crimes in Eastern Bosnia, in which mainly Bosniaks were targeted through a politics of ethnic cleansing by the Bosnian Serbs. Nowadays, politicians still try to manipulate victim statistics or support those official narratives and memories which do not represent genuinely authoritative historical records, facts or dignity of the victims but rather their own narrow-minded personal, political party or (pseudo) ethnic-nationalistic interests.

4.2. INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA'S HISTORICAL RECORD AND DENIAL OF GROSS HUMAN RIGHTS VIOLATIONS IN PRIJEDOR AND SREBRENICA

UNSC created the ICTY under Resolution 827 to prosecute individuals liable for major infringements of the 1949 Geneva Conventions, customs of war, atrocities committed contrary to humanity along with genocide in the former Yugoslavia. Notably, it was understood that by prosecuting individuals responsible for GHRV in Yugoslavia, the Tribunal would restore and maintain peace in the Balkans and contribute to international peace and security. Applications of two main principles of international law that is an *individual responsibility*, and *equal protection* of both sides through investigation of the most responsible offenders and strict admissibility of evidence results in accurate ICTY's historical record about the character of mass crime(s). Namely, the ICTY establishes a limited explication of truth based on the rules of admissibility of evidence

as if only case-concrete facts are considered (not general social facts) about the case. Consequently, established facts become indisputable as if setting “beyond the reasonable doubt” standard against various kinds of denial and historical revisionism about it (Subašić & Ćurak, 2014: 134-135; Teitel, 2005; The International Criminal Tribunal for the former Yugoslavia [ICTY], n.d.-b). Therefore, once founded “beyond the reasonable doubt” the ICTY's historical record is authoritative and cannot be denied reasonably.

Notably, according to ICTY's historical record, it was established in Milomir Stakić case that in Prijedor, a city located in the North West of B&H, occurred an illegal *coup d'etat* to found a Serbian municipality as a part of an imagined purified Serbian state. The ICTY charged 27 and convicted more than 13 individuals for widespread and systematic crimes done by Bosnian Serbs against non-Serbs in Prijedor, known as ethnic cleansing. During wars in Slovenia and Croatia in 1991, there was an influx of Serb refugees into the municipality. Serbian paramilitary overtook a local transmitter station on August 1991, and pro-Serb political propaganda broadcasted Serbian Democratic Party (SDS) interviews that only Serbs wanted to preserve, while non-Serbs to destroy Yugoslavia. By 27 December 1991, SDS representatives resolved to overthrow Prijedor's legitimate authorities. On 7 January 1992, Serb politicians proclaimed the Assembly of the Serbian People with Stakić as its president. By 30 April 1992, 1,500 armed Serb men took control over Prijedor “without a single bullet fired”. Soon after taking over of Prijedor, Bosnian Serb military, police and political units conducted most of the GHRV against mainly Muslims, such as mass killings, arbitrary detention in camps, torture, rape, forceful deportations, and so on (ICTY, 2006; *Prosecutor v. Stakić*, 2003). The most notorious examples of intentional discriminatory ethnic policy administered against non-Serbs in Prijedor were established in Omarska, Trnopolje and Keraterm detention camps cases.

Omarska camp was formed for non-Serb detainees where they were inhumanely treated from late May until August 1992. The Tribunal found that 3,334 persons were held in Omarska. Notably, there was a climate of fear and violence in the camp where prisoners were beaten, molested, raped, killed and humiliated. The ICTY found Duško Tadić (the President of a local SDS party), Miroslav Kvočka, Dragoljub Prcać, Mlado Radić,

Zoran Zigić, Milojica Kos, Biljana Plavšić, Radovan Karadžić, and others guilty for atrocities committed opposed to humanity along with infringements of global humanitarian legal norms. Further, the Tribunal found Dušan Sikirica, Damir Došen, Dragan Kolundžija, Predrag Banović and others, guilty for “persecutions on political, racial or religious grounds“ of non-Serbs in Keraterm⁷ camp from 24 May – 5 August 1992 (ICTY, 2001). There were 1,500 detainees in Keraterm camp who were terrorised, degraded, sexually harassed, beaten and over 150 was killed. Besides, there were many other established mass crimes committed in Prijedor, such as 800 killed Muslim persons in Kozarac on 24 May 1992; or 200 civilians taken from Trnopolje camp and Tukovi area who were killed at Korićanske Stijene found in the Darko Mrđa case (ICTY, 2006; *Prosecutor v. Tadić*, 1997; *Prosecutor v. Sikirica et al.*, 2001; *Prosecutor v. Mrđa*, 2004; *Prosecutor v. Plavšić*, 2003; *Prosecutor v. Karadžić*, 2016).

Furthermore, ICTY established on the far side of any well-reasoned doubt that Serb forces from B&H (mainly Army of Republika Srpska, ARS), Serbian paramilitary forces (The Scorpions), and Greek Volunteer Guard executed 7000 – 8000 Bosnian Muslim men in Srebrenica from 11–18 July 1995. The Tribunal found that the majority of men and boys were prisoners of war (POW) along with nonmilitary persons who were executed as well as not killed in combat. Further, it established that mass killing of two-three generations of men, forcible transfer of 25,000 of elderly, women and children, destruction of their homes and mosque were “well-planned and coordinated“ activities with intentions to eradicate the Bosniak community in Srebrenica which constitutes “an act of genocide“. The ICTY established facts about the worst mass crime in Europe since WWII based on numerous forensic evidence from exhumations, intercepted military communications, demographic experts, documents, perpetrators' admissions of guilt and victims testimonies in Radislav Krstić, Dražen Erdemović, Dragan Obrenović and a dozen of other cases (ICTY, 2005; *Prosecutor v. Radislav Krstić*, 2001; *Prosecutor v. Dražen Erdemović*, 1996; *Prosecutor v. Dragan Obrenović*, 2003). Also, the ICJ upheld that soldiers of ARS committed the Srebrenica genocide.

⁷ The author's uncle, Esad Islamović, who was a police officer, was arbitrarily detained without due process and tortured in Keraterm camp, according to a former prisoner of the camp Ante Tomić's testimony before the ICTY.

The ICTY established an accurate historical record about war crimes in B&H to combat denial of the truth about mass crimes and to help society to face truthfully its recent history as well as develop peace. However, this is partially true with respect to establishing a historical record about GHRV but not with respect to combating denial of the GHRV in local communities, for instance, those of the government of Republika Srpska considering the ethnic cleansing campaign in Prijedor and the Srebrenica genocide, which the entity's government officially label as “Serbian defensive-liberation war“ and not as ethnic cleansing or genocide proved beyond reasonable doubt as such before the ICTY (Subašić & Ćurak, 2014: 138). The Tribunal's and regional governments' roles are mainly responsible for overall partial success of the ICTY in bringing justice to victims of GHRV.

Namely, for Teitel, ICTY in Hague prosecuted the most responsible individuals for GHRV in the region and B&H as if bringing international criminal justice (it is a retributive part) to ethnically persecuted citizens because the gravity of such mass crimes is understood to be committed against the whole humanity. However, the Tribunal often lacked effective (national) enforcement mechanism of its statute and judicial decisions, such as custody over a local indictee or control of substantial evidence, as well as a political authority which could successfully translate legal facts into narrative of truthfulness about the past abuses easily understandable to locals and of importance to achieve a thick reconciliation (Teitel, 2014: 84-89). The ICTY also established the so-called Outreach program (1999) to enable local communities in the Balkans to deal with the past by the historical record of the Tribunal. The Outreach program encompasses a range of activities, such as capacity building for the local judiciary, dissemination of various information materials, websites and social media outlets, visits and cooperation with younger generations, media and grassroots communities about the ICTY's legacy. Therefore, besides criminal prosecution, the Tribunal contributes to the peace and stabilisation of the region in harmony with UN Charter's Chapter VII (ICTY, n.d.-a). Nevertheless, the Outreach program promotes the Tribunal's historical record in the region, but its acknowledgement and reconciliation depend ultimately on local communities and governments.

Moreover, the state has legal and ethical obligations to confirm facts, public and full disclosure of truth. Further, it should issue an official administrative statement or judicial decision related to the truth about GHRV as if recovering the dignity, rights and respectability of the victim. The government should also apologise publically and acknowledge culpability for GHRV. The government should also ensure tributes and commemorations to the victims as well as an accurate historical record of GHRV in “educational materials at all levels“ by global humanitarian and human rights standards and provisions (UNBPGRV princ. 22). Contrary to this, for Dax Saxon, the Serb community in the Balkan region despise the ICTY as a “political anti-Serb Tribunal“. It is because their perception of it is under Serbia's political elite's skilful nationalistic manipulations generated through most of the media. According to Serbian nationalistic portrayal, Serbs are victims of Muslims and Croats' past and potential contemporary mass crimes while ICTY is viewed as just another instrument of other nations to victimise and persecute the Serbs (Saxon, 2006: 563-567).

Likewise, the Croatian community was hostile toward ICTY's indictments against Croatian persons under indictments of perpetrating major crimes at the expense of Serb and Muslim ordinary citizens. It was especially prevalent among Croatian nationalist groups which claimed that Croats were heroic victims in their Homeland war against Serb aggressors. The Muslims have mixed feelings about the ICTY. On the one hand, they see it as a “friend“ because of an assumption that it would prosecute Serbs and Croats responsible for GHRV against them. On the other hand, Bosnian Muslims did not understand that some of their officers and soldiers should be accused of war crimes or that those responsible for GHRV could get a symbolic sentence for their cooperation during trials or expression of somewhat “remorse“ (Saxon, 2006: 563-567).

Nevertheless, the government of Republika Srpska denied the conduct of GHRV as well as responsibility for any of the deliberate crimes amid the Bosnian war. After the war in B&H, the Republika Srpska governments continuously denied GHRV as well as ICTY's historical record about it as if using more profound political and cultural strategies of denial. For example, the Republika Srpska government claimed in an official report (2002) that only 1,200 Muslim combat soldiers were killed in Srebrenica. However, under political pressure by European Union (EU), U.S.A. and especially by Office of

the High Representative (OHR, responsible for the application of civil aspect of the DPA), Republika Srpska government recognised in a new report inquiry (2004) that 7,800 Bosnian Muslim men were killed in Srebrenica. It issued a public apology for “a war crime of enormous proportions” (Wilson, 2005: 942). The entity government switched from a literal denial of the Srebrenica genocide to an interpretative denial of not calling it the genocide.

However, for Gerard Toal, in 2010, Milorad Dodik, a Bosnian Serb politician, asserted to a Serbian local media that:

‘we [Bosnian Serbs] cannot and will never accept that event [Srebrenica] ... as genocide’ to avoid political and legal consequences for the entity to be labelled as the product of genocide. Also, Dodik sees the equation of the Serb people victimhood in the region with that of the majority of Bosnian Muslim victims as an important rhetorical and tactical part of successful electoral politics (Toal, 2013: 194).

Dodik, the 2015 President of Republika Srpska, also called the Srebrenica genocide as “the greatest deception of the twentieth century” (Clark, 2016: 3). On 14 August 2018, the National Assembly of Republika Srpska annulled its own official 2004 report on Srebrenica mass crime as being allegedly “biased” and called for the creation of a new governmentally appointed “international investigation commission” about it. Dodik initiated and led the 2004 Srebrenica report's repeal officially (Radio Free Europe, 2018). Consequently, a vast majority of the killed Bosnian Muslim victims are minimised and equalised politically with those of Serb victims in the Srebrenica area and the character of the Srebrenica genocide was redefined as being not genocide.

Further, the local government and Bosnian Serb citizens in Prijedor deny the ethnic cleansing conducted against non-Serbs during the nineties through a memorial culture of monuments and indifferent attitudes about it. For example, there is an over-representation of 60 monuments with the official storylike of the supposed “Serbian defensive-liberation war” that happened allegedly in Prijedor 27 years ago. The standard memorial inscriptions proclaim: “the fighters who died in the homeland war, 1991-1995. They bravely used a possibility of dying”, or they were executed by “Muslim extremists in the war of defence and liberation”. Alternatively, they “bravely died for the fatherland of Republika Srpska”. Facts about greater sufferings of non-Serbs in Prijedor's notorious camps (Omarska and Trnopolje) are still institutionally denied by the local government as if “at the state level, there must be a minimum consensus about

[monuments]“, or [monuments] erection would “provoke interethnic hatred“ (Subašić, 2013; Subašić and Ćurak, 2014: 138). However, the adoption of laws against denial of GHRV is obstructed by Bosnian Serb politicians and Milorad Dodik's political party at the state level because they are considered as a danger to the Republika Srpska's survival as well as hinder personal or political opportunism. Besides, political elite and Serb citizens do not participate in reconciliation meetings, do not ensure full support for the missing non-Serb persons and do not participate in camp commemorations in Prijedor (Subašić, 2013). Denial of facts and moral responsibility for committed GHRV against non-Serbs in Prijedor do not contribute to meaningful reconciliation along with safeguarding of rights of human beings and opportunities equally for all.

Accordingly, for Cohen, an *official denial* is public, organised, collective, initiated, structured and supported by the state (or government). It is not a personal but ideological denial because it is built into the facade of state. Namely, social conditions causing GHRV to merge with official denial techniques. For example, in democratic order, it is more subtle, as it uses specific public agenda, interpretative denials, selective concerns, spins and suitable victims (Cohen, 2001: 32-33). Similarly, for Dimitrijević, *official denial politics* such as politics of denial (“we did nothing wrong“) and politics of silence (minimises past wrongs for a better future) reject facts and partially or wholly moral responsibility for GHRV because of ideological reasons (Dimitrijević, 2011: 43-85). Therefore, the governments of Republika Srpska officially deny the Srebrenica genocide, ethnic cleansing in Prijedor, and ICTY's historical record based on a different official narrative about allegedly Bosnian Serb's victimhood myth and liberation fiction (grounded in a lingering Serbian nationalism). It is also found in various political strategies, such as in a specific public agenda of a “credible non-genocidal“ non-state (entity) actor that has a right to self-determination and freedom in international relations instead of atonement for barbarism, serious breaches of the international rule of law and adequate reparations for the Srebrenica genocide victims. Srebrenica genocide is interpreted as rather a “war crime“ or “mass crime“ than genocide. The nature and the number of the killed Bosnian Muslims in the entity's official Srebrenica reports are often manipulated whereas killed civilians are left out or replaced with dead combat soldiers or their numbers altogether are reduced significantly through particular

concerns. Bosnian Serb victims are generally considered to be suitable victims who defended themselves.

Besides *official denial politics*, there are *cultural denial* and *denial of moral responsibility* for committed GHRV present in Prijedor and Srebrenica. Namely, for Cohen, *cultural denial* does not acknowledge repression, exclusion, and discrimination of ethnic or religious groups (or their members) openly. It is collective and informal denial whereas people act as knowingly believing in untruthful information. They simulate loyalty to senseless slogans and kitsch and self-censure themselves at collective and organisational levels to cover secrets and maintain an excellent public image (Cohen, 2001: 33-36). Likewise, for Dimitrijević, a *culture of denial* represents a denial of GHRV and reparations to a specific victim group and its members by a particular transitional democratic society (Dimitrijević, 2011: 86). Mainly, local Serb government in Prijedor initiated and erected 60 monuments in the memory of fallen Bosnian Serbs soldiers under an unreal slogan of “Serbian defensive-liberation war“. On the contrary, non-Serb civilian victims are considered as either former enemies, “collateral damage“ or “others“ irrespective of objective facts and truth about their greater human sufferings, such as *coup de etat* and ethnic cleansing campaign led against them in Prijedor. Therefore, local Bosnian Serb authorities and majority of citizens knowingly believe in untruthful information about the events that happened in Prijedor 27 years ago. Namely, Bosnian Serbs are collectively portrayed and informally driven to be presented in a good public image as both victims and heroes of the allegedly “defensive-liberation war“ in Prijedor and Srebrenica. However, a memory of the non-Serb victims of the ethnic cleansing campaign, proven beyond a reasonable doubt by the ICTY, is repressed in a public sphere and adequate reparations (justice) denied by local Serb authorities and citizens based on their ethnic otherness.

Further, for Cohen, *denial of human rights* can be based on *righteousness*. It entails non-transcendental justifications grounded on, for example, a binding ideology of ethnic purity whereas alternative values can override universal moral values, such as those found in international human rights instruments, under certain circumstances or concerning certain people (Cohen, 2001: 162-163). Similarly, for Charny, *denial of responsibility* for genocides means “renewed humiliations of survivors and all others

who care about the destruction of human life“ (Charny, 2010: 520). For Dimitrijević, *denial of moral responsibility* for mass crimes committed implies “Ethics of Evil“, that is an exclusive national moral relativism, according to which only the nation can say that a genocide is morally good or bad despite practice or courtesy about what is good or bad that is shared by the majority of people worldwide (Dimitrijević, 2011: 85-133). Consequently, Bosnian Serbs political elites and supportive citizens deny individual and collective *moral responsibility* for GHRV in Prijedor and Srebrenica. Particularly, it is based on a fiction of a “Serbian defensive-liberation war“ derived from Serbian aggressive nationalism (“Great Serbia“ ideology and a victimhood myth) associated with exclusive national moral relativism (national honour and unity) which set extraordinary social conditions and relative moral standards for justifications of such mass crimes against others and their consequent denial. Further, they do not acknowledge ICTY's historical records adequately. Alternatively, they do not respect global human rights along with humanitarian legal standards regarding safeguarding together with enjoyment of the victims' entitlements to remedies along with reparations for GHRV based on “universal values“ (such as equal human rights and human dignity). For example, for Kofi Annan, a former United Nations Secretary General, “universal values” exist in the Charter of the UN and UDHR. They include: peace, equal rights, freedom, human dignity and social progress (Annan, 2003). Besides, they do not wholeheartedly participate in reconciliation meetings, do not ensure adequate support for the missing non-Serb persons and do not participate in camp commemorations in Prijedor and Srebrenica Potočari Memorial.

For Charney, there is also *self-serving opportunism* as a type of denial of genocides by non-perpetrators or non-bigots for the personal and collective interests of careerism, pragmatism, exhibitionism, and realpolitik (Charny, 2010: 520). For example, Milorad Dodik, a Bosnian Serb politician, while he was a political opposition in the entity in 2008, he admitted to a local media that: “I know perfectly what happened in Srebrenica. It was genocide in Srebrenica. It was established by the Hague Tribunal. That is an indisputable legal fact“ (Al Jazeera Balkans, 2019). However, when Dodik became later a prime minister of the entity he often engaged in the denial of the Srebrenica genocide for the sake of personal careerism, exhibitionism and the entity's realpolitik. These kinds of denials weaken social conditions for fair-mindedness and historical truth. Also,

for Charney, there is *nationalistic hubris* as a denial of the importance of other ethnic groups' genocides except its own. Denier does not care, is indifferent, expresses open antagonisms and celebrations toward genocide of the former perpetrators, or the uniqueness of one's own people's genocide (Charny, 2010: 522). For example, Biljana Plavšić, a former President of Republika Srpska and accused war criminal, in a recent interview with a scholar Olivera Simić pointed out: "I would do the same again". Plavšić was sentenced for crimes against humanity in B&H to eleven years by the ICTY, but she never felt sincere remorse or responsibility for it. She usually considers Bosnian Muslims genetically inferior while ethnic cleansing justified on the allegedly ethnic superiority of Serbs (Simić, 2018).

In sum, the ICTY established historical record about GHRV in Prijedor and Srebrenica beyond reasonable doubt. Controversially, ICTY's authoritative record about GHRV in the entity is denied by the consecutive governments of Republika Srpska and supporters of such humiliating and inhuman public discourse. Notably, there are many different kinds of denials in interaction, which can be called the *conjunctive denials* of the GHRV in Republika Srpska. For instance, there are official denial politics, moral denial, cultural denial and self-serving opportunism. Some of denials are created and officially supported by the entity's government while other denials are inspired personally and in joint efforts with others constitute an extensive denial of GHRV in the entity, that is *conjunctive denials*.

4.3. THE STATE AND ENTITY'S FRAMEWORKS FOR THE PROTECTION OF INDIVIDUAL VICTIMS' HUMAN RIGHTS

B&H represents a specific political as well as cultural contingency within which GHRV occurred during the nineties. For instance, the Srebrenica genocide and the ethnic cleansing in Prijedor. It also represents a particular national legal system which provides judicial remedies and damages to the sufferers of GHRV. Then, the question to be answered will be: which institutions do work on victims' rights to a remedy and reparations in B&H? Which human rights instruments are primarily applied in the protection of the victims' entitlements to redress in B&H? What are the roles of these institutions in providing a remedy and reparations for victims?

DPA was endorsed in Paris by the end of 1995. It was signed to ensure on the one hand peace and stability in B&H and the Balkans, (General Framework Agreement for Peace in Bosnia and Herzegovina [DPA], Annex 1-A and Annex 1-B) and additionally as a new constitution of BiH (DPA Annex 4). The DPA provides for the state government of B&H and entities governments of the Federation of Bosnia and Herzegovina (FB&H) along with the Republika Srpska to be parties to the legal arrangements of the DPA (DPA Annex 4). Notably, DPA contains the following annexes to the mentioned parties: “1-A, Military Aspects; 1-B, Regional Stabilization; 2, Inter-Entity Boundary; 3, Elections; 6, Human Rights; 7, Refugees and Displaced Persons; 8, Commission to Preserve National Monuments; 9, BiH Public Corporations; 10, Civilian Implementation; 11, International Police Task Force” (Pajić, 1998: 125). In this way, any of the mentioned levels of governments represents a particular autonomous administrative party which is responsible for respect and law enforcement of the DPA in conformity with internationally recognised standards set in it (Lewis, 2001: 74-76). The UNSC gave to the NATO a mandate to monitor the fulfilment of the military conditions of the DPA under Annex 1-A (Pajić, 1998: 126). OHR who has substantially great political powers in this regard, oversees the civilian provisions of the Agreement (DPA Annex 10).

Furthermore, the DPA provided for the establishment of the Commission on Human Rights, comprised of a Human Rights Chamber along with an Ombudsman institution (DPA Annex 6, art. 2, para. 1). It also created the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) (DPA Annex 7, art. 7) (CRPC) as distinct institutions to ensure sufficient redress for sufferers of GHRV.

The Human Rights Chamber was a court of the last instance with many roles varying from considering reported along with obvious breaches of human rights together with freedoms, to providing remedies, binding judicial decisions, and legal precedents. For example, primarily severe and systematic human rights violations as if the inquiry of claims of maltreatment as well as other human rights crimes so that to bring perpetrators to justice. Further, it had the authority of deliberating the repossession of pre-war property, the entitlement to life, arrest along with detention, missing persons, the entitlement to a fair hearing in civil and criminal proceedings. It also had a mandate

over discrimination in employment and other areas, expulsions, pensions, and freedom of expression (DPA Annex 6, art. 8).

Further to this, it was composed of fourteen members, the Federation of Bosnia and Herzegovina (FB&H) appointed four, the Republika Srpska assigned two, plus eight foreign members selected by the Committee of Ministers of the Council of Europe (DPA Annex 6, art. 7, para. 2). It was founded at the beginning of 1996, and worked until 31 December 2003 when integrated with the Constitutional Court of B&H where developed into an indispensable section of the Human Rights Commission. However, applications considering infringements of rights to the Human Rights Chamber could be made directly by each Party to Annex 6 or from each victim of a breach (an individual, NGO as well as group of persons) or even victim's representative acting on behalf of the allegedly deceased or missing person (DPA Annex, art. 8, para. 1). The Human Rights Chamber's rulings were definitive as well as obligatory for the respondent Parties which had legal duties to implement them fully. However, in the instances of disregard considering the decision made by the Human Rights Chamber, they were then forwarded further to the OHR and the Organization for Security and Co-operation in Europe (OSCE) for observation of compliance (DPA Annex 6, art. 9).

The Ombudsman conducts investigations of alleged human rights violations. It also attends administrative hearings and meetings, may examine all official documents with confidentiality of all information provided, may issue special reports to any government organ or agent by offering to him/her conclusions and recommendations with which the person concerned should comply. The Ombudsman is allowed to pursue an investigation initiated by himself/herself as well as by every Party or individual regarding encroachment of rights of human beings. The Ombudsman has also prerogatives to launch legal proceedings in the front of the Human Rights Chamber grounded on report of rights contraventions, as well as arbitrate in every litigation in front of the Chamber. At the beginning of the first five years of the Ombudsman's work, he or she will be appointed by the OSCE. Afterwards, he/she will be nominated by the Presidency of B&H. In the case of non-compliance with Report, it will be forwarded to the High Representative for monitoring of compliance (DPA Annex 6, art. 4, 5 and 6).

The CRPC was a quasi-judicial administrative body with the mandate to accept as well as to deliver decisions on any demands for the immovable property ownership in B&H. For example, it was responsible for determination of property ownership, the reestablishment of the estate, fair compensation instead of restitution, to value the property for damages, establishing methods of claim registration, inspection, evaluation and assessment of claims and evidence of ownership, the establishment of a national database of cadastral data. The CRPC was comprised of nine members, that is, two Bosniaks from the FB&H, two Croats from the FB&H, and two Bosnian Serbs from the Republika Srpska. Each one of them representing his/hers owns the ethnic group. Additionally, the President of the ECtHR appointed also three foreign experts (DPA Annex 7, art. 9, 11 and 12).

Its decisions were final, and legally binding over local courts or administrative bodies' decisions, and in principle, they constituted conclusive proof of pre-war ownership and other property rights with the primary goal that "all refugees and displaced individuals have the right freely to return to their homes of origin" (DPA Annex 7, art. 1, para. 1). The international community (i.e. OHR, UNHCR, UNDP, OSCE) importantly pushed for the comeback of refugees and internally displaced persons (IDPs) to their former hometowns or real estates before any other abiding solution. The CRPC made decisions mainly by the claim document and the available evidence by the claimant. The High Representative had authority for monitoring of observance of the signatories with the CRPC's settlements until 2003 when the CRPC finished its mission.

The DPA, as the Constitution of B&H in Annex 4, provides a legal framework of totally sixteen human rights instruments enlisted therein in Annex 1 in the advocacy along with safeguarding of human rights nationally. Namely, as described concisely by Pajić these fundamental human rights documents are:

Annex I (Annex I being an annex to the constitution). Annex I to the constitution, entitled "Additional Human Rights Agreements To Be Applied in Bosnia and Herzegovina", lists the following documents: 1948 Genocide Convention; 1949 Geneva Conventions and 1977 Protocols; 1951 Refugee Convention; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 Racial Discrimination Convention; 1966 International Covenants on Human Rights and Optional Protocols; 1979 Convention on Discrimination Against Women; 1984 Torture Convention; 1987 European Torture Convention; 1989 Convention on the Rights of the Child; 1990 Convention on the Protection of Migrant Workers; 1992 European Charter for Regional and Minority

Languages; and 1994 Framework Convention for the Protection of National Minorities (Pajić, 1998: 130).

However, ECHR along with its Protocols represent the core legal act in securing respect for rights along with the safeguarding of the victims' entitlements to a remedy and reparation in B&H (DPA Annex 6, art. 1 and Annex 4, art. 2, para. 2). In addition, *The Law on the Protection of the Civilian Victims of War* (LPCVW) related to the sufferers of the civil conflict in the Republika Srpska (International Commission On Missing Persons [ICMP], 2007).

In sum, the DPA expedited the return of IDPs and recreation of the previous multi-ethnic society. The CRPC and the Human Rights Chamber as Dayton institutions played significant roles in the post-war political and cultural context in securing human rights to citizens of B&H. Notably, these institutions protected entitlements to remedy along with reparation to survivors of GHRV. However, from 1 January 2004 onwards, new legal cases claiming breaches of human rights are regularly determined by the Constitutional Court of B&H, and as with other Council of Europe member countries, applications can be brought to the ECtHR when national remedies are entirely exhausted.

Domestic courts prosecuting war crimes at first instances include at the entity levels ten cantonal courts of FB&H, five regional tribunals of Republika Srpska, as well as the Brčko District's Basic Court. If a victim finds the verdicts (including appeals) at the lower judicial instances unjust he/she can file it to the higher ones, for instance, the Supreme Court of Republika Srpska or the Supreme Court of FB&H (second judicial level). Finally, a victim can appeal to his/her cases to the Constitutional Court of B&H (directly) or the Court of B&H. Besides Constitutional Court of B&H, the Court of B&H's The War Crimes Chamber division, from 9 March 2005, prosecutes individuals responsible for GHRV in B&H pursuant to UNSC Resolution 1503 (2003) as well as 1534 (2004) to assist ICTY in prosecution of a big number of middle and lower war crime figures. As of 2016, The War Crime Chamber deals with 550 unresolved GHRV cases which include 4,500 perpetrators (Ainley & Kersten, n.d.). The complex legal system and often ineffective (politically biased) judicial proceedings regarding war crimes prosecutions (composed of three legal instances) are often time, money, and health consuming for survivors of GHRV.

Nevertheless, a right to redress for sufferers at the entity level of Republika Srpska is two-fold: for the so-called “civilian victims of war” (ICMP, 2007: 1) and as a right to reparation also relates to the soldiers of the Army of Republika Srpska.⁸ Notably, according to *Law on the Realization of Rights for Compensation of Material and Non-Material Damages which Occurred during War Activities from 20 May 1992 till 19 June 2016* (LRCDW):

Right for reparation ... have those persons whose applications were received after 19 June 2001, only if damages endured are in a casual relationship with performing military service and activities related to defence in the period from 20 May 1992 till 19 June 1996 (LRCDW art. 5).

Notably, the “civilian victims of war” are described as, a person whose damage to the body was caused by torture, rape, arbitrary arrest (detention, concentration camp, internment, forced labour) — an individual who was wounded by an enemy with damage inflicted on the body of 60 per cent minimum. “Civilian victims of war” are also persons who died, disappeared, or killed. Further, it is an individual who was wounded during military operations (bombardment, grenade, street fightings). It is also a person who was injured by stray military material, or by the diversionary military actions of the enemy (ICMP, 2007: 2-3). A right to reparation, under certain criteria, also have children, parents and spouses of the “civil victims of war” (ICMP, 2007: 3). Further to this, the mentioned law provides that persons who were members of the enemy's formations have no right to reparations. Mainly, according to LPCVW: “Right provided by this law cannot realise those persons who were members of enemy formations, that is accomplices of enemies” (LPCVW art. 4). According to the testimonies of the Bosniak victims in Prijedor, LPCVW of Republika Srpska has many discriminatory and inadequate provisions that do not adequately redress their sufferings. Mainly, it is the most relevant law they can use it in this entity to get inadequate reparation for trauma, and victimisation they experienced. Notably, those who were arbitrarily detained in detention camps in Prijedor for example, and afterwards were released, and joined the Army of B&H, have no opportunities to benefit from a claim to reparation at all. Even though they could be tortured, illegally detained, raped, inhumanely deprived, victims are not allowed to enjoy these rights as they are considered enemies by this law (LPCVW art. 4).

⁸ The Army of Republika Srpska was founded on 12 May 1992.

Further to this, the CRPC did not provide any compensation scheme after the war in B&H because it believed that it would prevent refugees and IDPs from coming back to their homes as if consequently empowering ethnic cleansing (Garlick, 2000: 80). At the entity level of Republika Srpska, a provision on compensation is partially covered by the mentioned law as in a threshold of BAM 351,00 for “civil victims of war” (LPCVW art. 9; OSCE, 2012: 14). The average net salary in B&H and Republika Srpska is BAM 838,00 for 2016. Therefore compensation threshold for “civilian victims of war” is two and one-third times lower (Agency for Statistics of Bosnia and Herzegovina, 2019), and regularly under the minimum standard of decent living. A local magazine “BUKA” referred to Labour Union of Republika Srpska which estimated that an average net salary in B&H amounted to BAM 816.00. It covered only forty-four per cent of the consumer basket per month which stood to BAM 1,868.00 in 2016 (BUKA Magazine, 2016). Further, according to the same law, a person has a right to a reparation within five years starting from the very moment he/she was wounded or his/her close family members killed. Alternatively, up to one year from the moment a body remains of disappeared relatives were found (LPCVW art. 33). Therefore, the law did not give a reasonable period for so many victims to have a fair, well-timed chance to use their right to reparation at all.

Furthermore, rehabilitation was addressed distinctly neither by national or by the entity government of Republika Srpska for the victims of GHRV in Srebrenica or Prijedor. The only provision at the entity level is a provision of professional rehabilitation. Nevertheless, its regulation is feeble, as it is explicitly related to the public disability insurance fund, and not specifically in any way addressed for the non-Serb victims (LPCVW art. 21). It means that many such traumatised victims cannot participate in existing rehabilitation processes in society which may encourage profoundly official denial politics of their trauma and sufferings or as if sharing the same rehabilitation facilities or services with the former disabled soldiers of ARS. Therefore, the rehabilitation process is mainly self-secured and self-funded without help from the government of Republika Srpska. Notably, the mainly Bosniak victims' non-governmental organisations: such as "Izvor", or Udruženja Žena BiH Initiative “Srcem do Mira” from Prijedor through workshops (Dowling, 2013: 32) or/and in cooperation with NGO named "Medica Zenica“ ensured rehabilitation.

Consequently, LPCVW is not by UNBPGRV for the victims of GHRV. Notably, UNBPGRV provides in 18 Principle that individual victims of GHRV ought to be ensured with “full and effective reparation“ that are specific and proportional to circumstances of each case. However, LPCVW excludes prejudicially and in anticipation a big group of non-Serb victims who were the victims of GHRV but after joining Army of RB&H became automatically labelled by this law the enemies without rights to reparations for harm suffered at all. Further, UNBPGRV provide in 25 Principle non-discrimination clause for victims of GHRV concerning any ground while the mentioned law ensures tacit discrimination against non-Serb persons based on their specific ethnic status, as mentioned above. Moreover, UNBPGRV provide in Principles 6 and 7 no statutes of limitations for victims of GHRV while the entity's law does it considering time limitations allowed to claim reparation for GHRV. Notably, a person has a right to a reparation within five years when he/she was wounded or close family members killed. Alternatively, up to one year when a body remains of disappeared relatives were found. Besides, UNBPGRV provide in Principle 10 that victims of GHRV be treated humanely, considering respect for their dignity and rights through special care and avoidance of retraumatization in the administration of justice and reparations while the mentioned law's Article 21 provides no adequate rehabilitation services for the victims. It directs them at “public disability insurance fund“ and services which unadvisedly renders shared experiences with some of the former perpetrators of such crimes (UNBPGRV princ. 18, 25, 6, 7, and 10; LPCVW art. 4, 33, and 21).

Moreover, Republika Srpska adopted LRCDW on 30 June 2005, to accept responsibility to compensate damages to members of ARS for endured harm while performing their military service during the war. Additionally, the entity government regulates this liability for reparations by the *Constitution of Serbian Republic of Bosnia and Herzegovina* which was adopted in 1992. Namely, the Constitution proclaims that: “It is prescribed duty of all citizens to protect and defend the sovereignty and territorial integrity of Republika Srpska and Yugoslavia” (S.R.B&H Const. art. 109). The Constitution continues that: “Every citizen with a weapon or in any other way who participates in defence is a member of armed forces” (S.R.B&H Const. art. 110). The mentioned laws affirm reparations not based on UNBPGRV set of global human rights

and humanitarian legal and normative standards respective of human dignity, but based on a duty to defend Republika Srpska territory during 1992, which was not internationally or nationally, politically or legally, recognized as a legitimate state or non-state actor. Besides, the level of benefits provided to civilian victims of war (mainly non-Serbs in Prijedor and Srebrenica) by LPCVW (Article 9) are set on average to 70 per cent of the advantages given to (mainly Bosnian Serb) “war veterans” with the same health conditions as if discriminating individuals’ with the same needs based on their different social statuses (OSCE, 2012: 14), or apparent political nationalistic priorities. Therefore, the entity’s mentioned reparation laws are not aligned fully with UNBPGRV standards about effective recognition along with safeguarding of human rights of a victim's of GHRV as well as they are not conclusive of the ICTY's authoritative historical record about the ethnic cleansing in Prijedor or the Srebrenica genocide.

Beside inadequate reparation laws for victims of GHRV in Republika Srpska, the Constitutional Court of B&H's constitutional case law and entity's sham judicial practices often testify about denial of justice to victims of GHRV in Republika Srpska. Notably, in *Selimović & others v. the Republika Srpska*, the forty-nine Bosniak claimants to the Human Rights Chamber claimed a transgression of their entitlements as the absence of facts on the outcome together with locations of their unaccounted for relatives in Srebrenica. The Human Rights Chamber found a breach of Article 3 (The entitlement of being not kept in slavery, servitude, alternatively to carry out forceful along with violent work). It also found a transgression of Article 8 (Freedom of expression) of the ECHR together with discrimination under Article II(2)(b) of the Human Rights Accord. The violations occurred as results of the Republika Srpska's failing to ensure available facts demanded by the complainants considering their lacking family members along with administrating a truthful inquiry into the mass slaughter that occurred in Srebrenica. Further to this, it found that the Republika Srpska contradistinguished versus the claimants being of Bosniak inducement. It asserted that this GHRV is especially horrendous since WWII mass crimes. Moreover, these recent violations reflect an uttermost lack of concern and interest by the entity government regarding the suffering of the Bosniak community (*Ferida Selimović et al. v. Republika Srpska*, 2003). Namely, a state or a government's failure to conduct a meaningful

investigation of GHRV in Srebrenica on requests by disappeared victims' family members represents a *denial of justice*.

Consequently, it is about a downfall of ensuring an effective remedy as if undertaking a meaningful investigation for committed wrongs against Bosniaks which is related to “the right to life and humane treatment violations“ under a ratified ECHR. Namely, ECtHR interpreted considering some instances Articles 2 (entitlement to one's life) and 3 (forbiddance of torment) in combination with 1 (liability to acknowledge human rights enlisted in the ECHR) as if duty of state authority to lead official investigation, discovery as well as punishment of persons liable for transgressing of the right to life and inhumane treatment accusations (Aldana-Pindell, 2004: 634-644). According to an INGO “TRIAL International“, which advocates for victims' redress in the face of impunity for international major crimes:

At a session held on March 22, 2018, the Constitutional Court of BiH adopted S.A.'s appeal against the decisions of the Supreme Court of Republika Srpska and Banja Luka District Court regarding the costs of the proceedings. The Constitutional Court found that ordering the victim of wartime rape to pay the costs of Republika Srpska Attorney's Office in a trial against this entity, aimed at achieving compensation for the harm she suffered was a disproportionate and excessive burden on the appellant. This was determined to be a violation of the right to property and the right to a fair trial as provided for in the Constitution of BiH and the European Convention on Human Rights and Fundamental Freedoms (TRIAL International, 2018).

Consequently, we can apply Condé's definition of denial of justice which means:

The legal effect of a ruling (decision, judgment, order) of a judicial, quasi-judicial, or administrative forum, which resolves an actual case and controversy in a way that does not fully comply with procedural and substantive standards under any international human rights legal norms binding on the state and under national law consistent with such international norms and applicable to the particular case (Condé, 2004: 63).

Accordingly, *procedural rights* or *norms* represent procedural provisions provided within human rights treaties which allow to a person, group or state to request obedience of the state with legal obligations of treaty's *substantive rights* or to redress their violations. The right to a fair trial (violated by the Republika Srpska's Supreme Court along with District Court of Banja Luka) is an example of the *procedural right* or *norm* which was impaired against a victim of “wartime rape“ who wanted to achieve compensation for the harm suffered.

Therefore, we may assert that mentioned entity's laws, as actual human rights instruments in Republika Srpska regarding entitlements to redress for the civilian

victims of the GHRV are not adequately designed laws for victims to enjoy their victims' human rights entirely. Further, the Constitutional Court of B&H's constitutional case law and entity's sham judicial practices also testify about *denial of justice* to victims of GHRV in Republika Srpska. However, they instead reflect the government of Republika Srpska institutional political and legal profound discrimination against mainly non-Serb civilian victims in Republika Srpska, based on their ethnic origins and related group differences. The specified laws do not represent adequate legal instruments which would be by international human rights guidelines for survivors to be look upon fairly considering recognition of human dignity. Namely, "Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered" (BPJVC Annex-A, para. 4). Additionally, they do not provide adequate measures for victims as if they, "should be treated with humanity and respect for their dignity and human rights ... moreover, to ensure their safety, physical and psychological well-being and privacy, as well as those of their families" (UNBPGRV princ. 10).

4.4. A VOICE OF THE SURVIVORS OF GROSS HUMAN RIGHTS VIOLATIONS IN PRIJEDOR AND SREBRENICA

It was conducted field-trip research questionnaires with 45 victims and survivors of GHRV violations in Srebrenica and Prijedor, and with 5 local political representatives, during April and May 2019. The purpose was to compare these gathered empirical data with the UNBPGRV normative standard provisions about remedies and full reparations (restitution, satisfaction, compensation, non-repetition, and rehabilitation), that is their related forms which will enable us to evaluate which kinds of forms of remedies and reparations are respected, protected, violated or denied to individual victims of GHRV in Srebrenica and Prijedor nowadays. It was also conducted meetings with a couple of representatives of local Bosniak victims' organisations. Consequently, we will be able to identify in this subchapter, on the basis of empirical data gathered from the questionnaires with the victims of GHRV which forms of human rights to remedies and

reparations are specifically violated as well as which specific type(s) of denial prevails nowadays in B&H (and reasons for it).

Mainly, a demographic structure of correspondents resulted in 45 victims of GHRV of which 22 were from Prijedor and 23 from Srebrenica. The questionnaires were done with 10 female and 12 male survivors in Prijedor and 10 female and 13 male victims in Srebrenica. Apart from gender representation of victims, the research comprehended ethnic criteria of totally 44 victims of Bosniak and 1 of Croat ethnic origins, who were directly and primary victims of GHRV in those mentioned cities. Also, out of 22 survivors of mass crimes in Prijedor 2 persons were also political representatives in a local governmental assembly. It was also done with one president of local Bosniak victims' detainee's organisations in Prijedor titled "Prijedor 92". Besides, the questionnaires were conducted with 5 non-victims of GHRV, males, of Bosnian Serb ethnic origins. 3 of them were political representatives in Prijedor municipality while 2 others were from Srebrenica local government.

The questionnaires were managed evenly and anonymously with each person based on the same questionnaire designed out of 30 questions including the entire range of full reparations of UNBPGRV for victims of GHRV. Data evaluation was conducted based on specific questions related assessment and overall assessment of individual victims' affirmative or negatory responses to the questionnaires specific questions based on the UNBPGRV forms of entitlements to remedies and reparations, such as: *restitution* (enjoying of rights of human beings, family life, identity, and nationality, restoration of liberty, restoration of employment and return of property, and homecoming); *compensation* considering any economically calculable injury or loss (misplaced favourable circumstances, containing education, job, along with social welfare; bodily or psychological hurt; moral loss, expenses necessary considering juridical or professional service, pharmaceutical as well as medicinal services, along with psychical and societal help; material recompense and deprivation of income, containing detriment of making profit potential) (UNBPGRV princ. 19 and 20).

Further, it included: *rehabilitation* (legal along with social services, and medical along psychological care); and *satisfaction* (confirmation of the facts along with entire and public revelation of the truth in a way that does not make any more damage or endanger

the security and interests of the sufferer; the pursuit for the locations of the gone persons, for the existence of the kids kidnapped, and for the bodily remains of persons murdered, and collaboration in the restoration, naming and burying of the bodies (UNBPGRV princ. 21 and 22). Moreover, it consisted of: communal apology, involving recognition of the facts together with confirmation of moral obligations; a governmental proclamation or a juridical verdict recovering the human dignity, the name and the victim's rights along with individuals closely related to the sufferer; remembrance and memorial to the victims; juridical and governing penalties against individuals responsible for the misdemeanors; incorporation of a truthful record of the abuses that occurred in worldwide humanitarian and human rights teachings as well as in educational books at all stages) (UNBPGRV princ. 22). Finally, *guarantees of non-repetition* related to preventive measures regarding control and conflict resolution of potential GHRV (civilian control of security and military forces; self-government of judiciary; civil and military legal procedures in accordance with global guidelines of fair dealing and neutrality; protection of persons in media, legal, health-care occupations and human rights advocates; promotion of international ethical standards in public services; ensuring human rights education in all social sectors; promotion of systems for avoidance together with resoluteness of social conflicts; as well as reforming laws causing GHRV) (UNBPGRV princ. 21, 22 and 23).

Therefore, if overall answers given by individual victims are certainly more affirmative than negatory then, we will reach the conclusion according to which the Republika Srpska's government adequately respects and protects individual victims' human rights to remedies and reparations in Prijedor and Srebrenica and *vice versa*. Accordingly, we are now also able to assess which specific types of human rights to remedies and reparations are more denied or more allowed. For example, which patterns of reparations among restitution, rehabilitation, satisfaction, repayment, along with guarantees of non-repetition are more respected or violated? Alternatively, are material types of reparations more violated than non-material ones?

The results of gathered empirical data in Prijedor show for *restitution* that restoration of personal liberty was partially possible with 13 voices, and 6 for negative and 6 for affirmative answers. Enjoyment of human rights was partially successful with 17

answers, plus 5 for “no“ and 3 for “yes“. Partial enjoyment of ethnic and religious identity amounted to 15 and 10 to positive voices. Enjoyment of family life resulted in 18 voices given for partial experiences of it and 7 for affirmative answers. Enjoyment of B&H's citizenship was affirmed by a majority of 18 voices and by 7 of partial satisfaction with it (respondents in Prijedor, personal communications, April and May, 2019).

Homecoming was answered by 23 affirmative answers and 2 of partial satisfaction. However, restoration of employment was answered unanimously by 25 negative remarks. Some persons were unemployed before the war. Finally, the return of property was partial by 13 answers and 12 voices for its affirmation. (respondents in Prijedor, personal communications, April and May, 2019). In sum, on the one hand, restitution forms were in the majority partially affirmed due to the engagement of international institutions UNDP, UNHCR, OSCE, OHR and CRPC which saw restitution of property rights and return of victims to their homes as a precondition of reconciliation and fulfilment of Annex VII of the DPA. On the other hand, it is impossible to achieve restitution entirely due to material and practical reasons. The only sufficiently negative results were related to restoration of employment or perceived institutional discrimination of non-Serb victims based on inadequate employment which was not ensured effectively by the entity or local governments in Prijedor.

Further, *rehabilitation*, which includes legal along with social services, and medical together with psychological care, was answered by 24 voices negatively and by 1 person positively (respondents in Prijedor, personal communications, April and May, 2019). Consequently, only one person of Bosnian Serb ethnic origins who answered affirmatively about rehabilitation forms proves that the entity government did not put many efforts in creating adequate rehabilitation-related provisions, funds, and practices for the victims of GHRV.

Further to this, *satisfaction's* form of confirmation of the facts along with entire and official acknowledgment of the truth was answered by 13 negative marks, 2 positive, 9 partially, and one abstained. Majority of the victims claimed that the entity's government denies the truth and facts about GHRV:

Q.: Did entity and state institutions confirmed the facts and fully disclosed the truth about gross human rights violations to an extent that does not pose a threat or harm to the safety and interests of victims or not? A.: No. They [Republika Srpska governmental institutions] even deny them (S. Musić, personal communication, April 30, 2019).

The pursuit for the whereabouts of the gone persons was answered negatively by 17 victims, by 5 for partially, and 3 for positively. The survivors claimed that the state government provided a lookup for disappeared individuals with the support of the ICMP while the entity's government did not. The investigation for the very young persons kidnapped in Prijedor was answered only by 5 persons as if partially while 20 abstained. The search for the bodily remains of persons murdered, and collaboration in the restoration, naming and burying of the bodies was answered by 21 individuals as partially and while 4 of them abstained. They claimed the state's support, the entity's indifference, and local authority's symbolic financial support for collective burials. A governmental proclamation or a juridical verdict recovering the human dignity, the name and the victim's rights along with individuals closely related to the sufferer was answered negatively by 20 persons and by 1 as “partially“ while 4 abstained (respondents in Prijedor, personal communications, April and May, 2019).

A communal apology, involving recognition of the facts together with confirmation of moral obligations, was matched by 13 negative answers, while 6 partially admitted and 6 abstained. Some persons claimed that entity and local authorities' deny GHRV while others asserted that some of the governmental officials appeared symbolically at the mass burials of the victims. Legal and governing penalties against individuals responsible for the misdemeanours was answered as “partially“ by 22 persons, by 2 affirmatively, and while 1 person did not answer it. The state's public prosecutor and the Court of B&H's prosecution of GHRV was slow or lacked capacities while the entity's prosecution of it was functional but rarely punished the perpetrators. Remembrances along with memorials to the victims were answered negatively by 15 survivors, by 6 as “partially“ and by 4 affirmatively. For survivors, there were no commemorations for non-Serb victims of GHRV officially in Republika Srpska. Lastly, incorporation of a truthful record of the abuses that occurred in teachings as well as in educational books at all stages was answered negatively by 18 persons, while 3 persons abstained, 2 answered affirmatively and 2 as “partially“. There were no clear accounts or consensus about it neither at the state nor entity's governmental level (respondents in Prijedor,

personal communications, April and May, 2019). In summary, almost all forms of satisfaction were answered negatively but the search for the bodily remains of murdered persons, restoration, naming and burying of the bodies, and juridical and bureaucratic penalties against individuals responsible for the infringements which are contributable either to the state level or satisfy a minimum of judicial functionality.

Further, *compensation* for physical or mental harm was answered negatively by 25 voices. Wasted opportunities involving social benefits, education as well as employment were also answered negatively by a majority of 23 voices and 2 positive ones. Moral harm, expenses needed for judicial or professional help, medical assistance along with medicine, and psychological together with social help were answered negatively by all 25 interviewers from Prijedor. Medical services were mainly paid allegedly by the victims themselves. Survivors witnessed mainly about private self-funding regarding their education, for example. Material deficits along with fall of profits, covering falling of making money potential was answered by 19 negatives and 6 “partially” answers. Some of the victims explained that there was not even a chance for it. However, the entity's government allowed non-Serbs to claim compensation for unlawful discharge from their jobs due to ethnic origins, but over two-thirds of them could not access it due to weak public budget hampered by chronic governmental corruption practices (respondents in Prijedor, personal communications, April and May, 2019).

Guarantees of non-repetition such as nonmilitary monitoring of safety along with those of military forces were answered negatively by 19 votes, and 6 abstained. The recent doubling of the entity's police forces by the government was seen as contra civil society's viability. Civil and military legal procedures by international standards of fairness and impartiality were answered by 20 persons negatively, with 1 vote affirmative, 2 votes indicating partiality and 2 votes being abstained. Independence of judiciary was answered by 19 negative results, by 3 related to partiality, and by 3 votes abstained. The victims asserted that judiciary was not independent but political which was why the country appeared as dysfunctional. Protection of persons in media, legal, health-care professions and human rights defenders were answered by 17 negative votes and by 8 partially effective. Some persons claimed that B&H is unsecured country

because of frequent attacks aimed at journalists, LGBT groups, national and religious minorities. Providing human rights education in all social sectors was answered by 11 negative votes, by 6 as partially adequate, and by 8 abstained. Promotion of international ethical standards in public services was answered by 12 individuals as partially successful, by 10 abstained and by 3 affirmative voices. Promotion of mechanisms for prevention and resolution of social conflicts was answered by 15 negative votes, by 7 abstained, by 2 affirmative and by 1 as partially successful. Some victims mentioned the existence of Bosnian Serb's nationalistic associations, monuments and unresolved attacks on Bosniaks as the evidence for it. Finally, reforming laws causing GHRV was answered by 16 negative votes, by 5 partially adequate and by 4 abstained. Some claimed that the laws prohibiting torture at the state level were obstructed by Serb politicians while existing at the entity level discriminates against them (respondents in Prijedor, personal communications, April and May, 2019). In sum, all forms of *guarantees of non-repetition* were answered negatively by the victims of GHRV except the promotion of international ethical standards in public services attributable to decent and somewhat professional behaviour of the governmental officials.

The gathered empirical data in Srebrenica showed similar results. Briefly, for *restitution* that: restoration of personal liberty was negative with 17 voices, 5 in part, and 3 for affirmative answers. Enjoyment of human rights was also negative with 16 answers, plus 7 for “partially” and 2 for “yes”. Partial enjoyment of ethnic and religious identity amounted to 16, 3 negative and 6 positive voices. Enjoyment of family life resulted in negative 11 voices, 9 for “partially” and 5 for affirmative answers. Many survivors lost some of the family members. Therefore, family life was never like it was before the war. Enjoyment of B&H's citizenship was partially affirmed by a majority of 13 voices and wholly by 12 individuals. Homecoming was answered by 21 affirmative answers, by 2 negative and by 2 regarding partial satisfaction. However, restoration of employment was answered by 24 negative remarks and by 1 positive. Finally, the return of property was partial by 17 answers and 8 voices for its affirmation. As with Prijedor's victims, the majority of victims restored immovable property but with ruined houses (respondents in Srebrenica, personal communications, April and May, 2019). In sum, the results for restitution were mixed. Return to one's place of residence was only

affirmed due to active engagement of the worldwide actors in the realization of the DPA's Annex VII related to homecoming of refugees along with IDPs. Enjoyment of ethnic and religious identity, enjoyment of citizenship and return of property was partially satisfactory. However, renewal of personal freedom, fulfilment of entitlements, family living, along with restoration of employment were overwhelmingly negative.

Moreover, *rehabilitation*, which encompasses psychological along with medical help, as well as social together with judicial assistance, was answered by 23 voices negatively and by 2 people positively (respondents in Srebrenica, personal communications, April and May, 2019). In comparison with Prijedor's victims of GHRV, Srebrenica genocide victims also did not get substantial support regarding rehabilitation of their trauma by the government of Republika Srpska.

Furthermore, *satisfaction's* form of confirmation of the facts along with entire and official acknowledgment of the truth was answered by 20 negative remarks, 2 positive, 3 as if partially. As with Prijedor's victims of the ethnic cleansing, the majority of the Srebrenica genocide survivors claimed that the entity's government officially denies the truth considering the genocide. The pursuit for the whereabouts of the gone persons was answered negatively by 21 victims, by 2 for partially, and 2 abstained. The survivors of the Srebrenica genocide claimed that some of braver persons among them in search for their loved ones located hundreds of mass graves with bodily remains of hundreds of missing persons while the entity's government did not participate. The investigation for the very young kidnapped persons was answered only by 7 persons as if partially while 18 abstained. The search for the bodily remains of persons murdered, and collaboration in the restoration, naming and burying of the bodies was answered by 20 votes negatively, by 3 partially, by 1 affirmative and by 1 vote abstained. A governmental proclamation or a juridical verdict recovering the human dignity, the name and the victim's rights along with individuals closely related to the sufferer was answered negatively by 20 persons and by 5 as "partially" (respondents in Srebrenica, personal communications, April and May, 2019).

A communal apology, involving recognition of the facts together with confirmation of moral obligations, was matched by 20 negative answers, while 6 admitted as being partial. Legal and governing penalties against individuals responsible for the

misdemeanours was answered as negative by 17 persons, by 6 in part and by 2 affirmatively. Commemorations and tributes to the victims was answered negatively by 19 survivors, by 4 as “partially“ and 2 did not provide answers. Lastly, incorporation of a truthful record of the abuses that occurred in worldwide humanitarian and human rights teachings as well as in educational books at all stages was answered negatively by 23 persons, while 1 person answered as “partially“, and 1 individual answered affirmatively (respondents in Srebrenica, personal communications, April and May, 2019).

Further, *compensation* for physical or mental harm was answered negatively by 23 voices and by 2 votes partially. Wasted opportunities involving social benefits, education as well as employment were also answered negatively by a majority of 25 voices. Material deficits along with fall of profits, covering falling of making money potential was answered by 25 negative votes. Moral harm, expenses needed for judicial or professional help, medical assistance along with medicine, and psychological together with social support were all answered negatively by all 25 interviewers (respondents in Srebrenica, personal communications, April and May, 2019). In sum, all forms of compensation were consistently inadequately ensured or mainly neglected in implementation of the existing LPCVW for the non-Serb victims of GHRV by the government of Republika Srpska.

Guarantees of non-repetition such as nonmilitary monitoring of safety along with military forces were answered negatively by 19 votes, 1 admitted as if partially, and 5 abstained. Civil and military legal procedures by international standards of fairness and impartiality were answered by 20 persons negatively, with 2 votes affirmative, 2 votes indicating partiality and 1 vote being abstained. Independence of judiciary was answered by 20 negative results and by 5 related to partiality. The victims asserted that judiciary was not independent but political since political parties nominated their similar candidates to be judges. Protection of persons in media, legal, health-care professions and human rights defenders were answered by 15 negative votes, by 7 as partially effective, by 2 as affirmative and by 1 abstained. Providing human rights education in all social sectors was answered by 16 negative votes, by 5 as partially adequate, by 3 abstained and by 1 affirmative vote. Promotion of international ethical standards in

public services was answered by 10 individuals as unfavorable, by 9 as partially successful, by 4 affirmatives and by 2 abstained voices. Promotion of mechanisms for prevention and resolution of social conflicts was answered by 15 negative votes, by 7 abstained, by 2 affirmative and by 1 as partially successful. Reforming laws causing GHRV was answered by 21 negative votes, by 3 abstained and by 1 affirmative (respondents in Srebrenica, personal communications, April and May, 2019). Lastly, results for all forms of *Guarantees of non-repetition* were answered negatively by the Srebrenica sufferers.

Therefore, the overall answers given by individual victims are certainly more negative than positive ones. Consequently, we may conclude that the entity government of Republika Srpska does not adequately acknowledge and safeguard private victims' entitlements to remedies together with reparations in Prijedor and Srebrenica based on the results of empirical research conducted in these cities. However, which modes of reparations among restitution, rehabilitation, satisfaction, compensation, and guarantees of non-repetition are more respected or violated? Restitution as a type of reparation is more respected than other types as if partially in Prijedor and negatively in Srebrenica. All other kinds of redress, for instance, rehabilitation, satisfaction, compensation, along with guarantees of non-repetition are more disrespected or denied both to the victims of GHRV in Prijedor and Srebrenica by the entity and local governments of Republika Srpska nowadays. Alternatively, are material types of reparations more violated than non-material ones? Restitution which represents a material kind of reparation is partially fulfilled while all others, that is rehabilitation (non-material), satisfaction (non-material), compensation (material), and guarantees of non-repetition (non-material) kinds of reparations are violated altogether. In summary, the government of Republika Srpska denies individual victims of GHRV in Prijedor and Srebrenica adequate protection of their human rights to remedies and reparations, that is justice by global humanitarian along with human rights norms as set in, comprehended as well as recommended by UNBPGRV.

Which forms of human rights to remedies and reparations are specifically violated as well as which specific type(s) of denial prevails nowadays in B&H (and reasons for it)? Apart from restitution (material reparation) which is partially fulfilled due to political

pressure and economic sanctions (developmental aid) driven by external international political and humanitarian actors, such as UNHCR, UNDP, OSCE, OHR, and some developed liberal democratic governments which are guarantees of the DPA implementation, such as U.S.A., United Kingdom, and France, all other types of material and non-material reparations are significantly neglected to the victims of GHRV by the government of Republika Srpska. Accordingly, severe and weighty denial of adequate and full reparations to victims of GHRV amounts to multifold types of *conjunct denials*. The *conjunct denials* encompass: official denial politics (initiated by the entity government, systematic, and for “suitable [Serb] victims”), cultural denial (collective and informal denial practices; profound exclusion and discrimination of the entitlements of a victim affiliated with another [non-Serb] ethnic or theological victim groups), denial of moral responsibility (“renewed humiliations of survivors”, non-transcendental justifications based on binding ideology of ethnic purity; exclusive national “moral relativism” instead of universal values and ethical standards found in human rights), and self-serving opportunism (political and personal opportunism related to careerism, pragmatism, exhibitionism, and realpolitik). The reasons for the *conjunct denials* might be multifold as well: a criminal ideology of “Great Serbia“, nationalistic hubris, lack of sufficient material resources, Bosnian Serbs' relative moral standards of “honour and unity“, various types and motivations of personal and political opportunism, and so on.

Consequently, the government of Republika Srpska's induced and supported *conjunctive denials* of a victim's human rights to effective remedy and reparations are not reasonably in line with UNBPGRV and standards proclaimed in its preamble. For example, UNBPGRV affirm in its Preamble utmost importance of the mentioned principles and guidelines because they “by their very grave nature, constitute an affront to human dignity“ (UNBPGRV pmbl, para. 6). Further, the instrument reaffirms the principles of the BPJVC (1985) as if:

[V]ictims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims (UNBPGRV pmbl, para. 4).

Finally, UNBPGRV confirms “the international legal principles of accountability, justice and the rule of law” (UNBPGRV pmbl, para. 10), together with adoption of a victim-centered approach in relation to human solidarity with victims of GHRV and humanity at large, so that the victims can benefit from remedies and reparations found in existing worldwide human rights along with humanitarian laws instruments (UNBPGRV pmbl, para. 10 and 11). In conclusion, the *conjunctive denials* of GHRV driven by the governments of Republika Srpska (for example, case law, academical articles, sham judicial practices, media reports and empirical pieces of evidences found in Prijedor and Srebrenica) amounts to avoiding being responsible for serious injustice carried out against non-Serb persons during the nineties (ICTY's historical record) and also failure to ensure effective remedy (access to justice: investigation, prosecution and punishment) and full reparations for them. It amounts, therefore, to denial of justice under 15 obligatory international human rights instruments provisions which are codified in Annex 4 (Constitution) of the DPA, such as ECHR, the 1949 Geneva Conventions or ICCPR, and which obliges parties to respect, protect, fulfill and ensure adequate implementations of such legal provisions, as right to effective remedy and reparations.

4.5. APPLICATIONS OF THE THE BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND FINNIS’S HUMAN RIGHTS THEORY

The sub-chapter will explore how to reaffirm moral claims to legality of those forms of remedies and reparations compatible with UNBPGRV which do not exist or are violated in those communities through usage of Finnis’s theoretical proposition on human rights which will allow us to justify individual victims’ entitlements to remedies along with reparations based on the ontological universality of human rights (basic goods necessary for individual’s well-being secured by absolute and derived human rights normatively fairly corresponsive with the UDHR and other rights documents), the correlativity of

duties and rights (what is owed), and the concept of desert-focused retributive justice and punishment (criminal deterrence and civil reparations).

Notably, if one survivor's some family members are still missing in Prijedor from the period of the Bosnian Serbs' ethnic cleansing campaign against non-Serbs, then considering Finnis's ontological theory of universality of human rights of individuals, thus the government, the rule of law, and individuals should provide him/her just like to any other individual/citizen of that community respect and protection for his fundamental interest to participate in a basic human good of knowledge based on truth (or another basic good of life and its corresponding human rights to life, freedom from torture, slavery or forced labor), which is good for his/her own well-being, just like for any others' well-being rather than ignorance (or death in the case of later basic human good). According to Vesna Bešić and Lejla Biogradlija: "The bodies of 760 victims from the 1992 Prijedor massacre and 1,000 others from the 1995 Srebrenica genocide have yet to be found" (Zorlu, 2018). This further means, that a person A (private person or governmental official), owes to him/her (person B) disclosure of information about his missing family members, because that person B has moral claim right against person A's duty for what is owed/taken from that person B (both information about his missing family members' whereabouts and/or his missing family members) to know their whereabouts because that is good for his well-being and well-being of others that government is obliged to promote and secure through positive law and human rights. Moreover, finally, a person who did this horrible crime deserves to be punished by deterrence of a long-time imprisonment on behalf of the entire society to repair for serious agitation of a country's moral order, and for person B's well-being this further provides civil vindications of the rights of victim to compensations against those (private persons or government) who owe to that person B what is taken from him/her in that particular case.

Notably, UNBPGRV asserts that governments bear obligation to: "Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law" (UNBPGRV princ. 3b). Similarly, UNBPGRV claims that governments bear obligations to ensure: "Verification of the facts and full and public

disclosure of the truth (...)” (UNBPGRV princ. 22b). In the same Principle related to satisfaction as type of reparation states have duty to conduct: “The search for the whereabouts of the disappeared (...)“ (UNBPGRV princ. 22c). Therefore, Finnis's theory of human rights fairly corresponds with UNBPGRV provisions related to recognition together with safeguarding of individual victims' human rights to remedies along with reparations.

Similarly, if one survivor of GHRV still cannot enjoy a rehabilitation adequately as a type of reparation in Prijedor or Srebrenica related to the period of the Bosnian Serbs' ethnic cleansing campaign or genocide against non-Serbs, then considering Finnis's ontological theory of universality of human rights of individuals, thus the government, the rule of law, and individuals should provide him/her just like to any other individual/citizen of that community respect and protection for his fundamental interest to participate in a basic human good of life based on the capacity for one's life development, which is good for his/her own well-being, just like for any other human being's flourishing rather than impairments or even death of such fundamental aspects of one human being's flourishing because of prolonged (transgenerational) trauma and genocide-related PTSD. This further means, that a person A (private person or government official), owes to him/her (person B) creation of such social conditions which will ensure adequate psychological and medical care or related public services, because that person B has moral claim right against person A's duty for what is owed/taken from that person B (both a life of his missing family members and/or impairment of his fundamental aspects of human being's flourishing) to heal his/her trauma effectively because that is good for his well-being and well-being of others that government is obliged to promote and secure through positive law and human rights. Furthermore, finally, a person who did this harmful crime (killing of a family member or torture) deserves to be punished by deterrence of a long-time imprisonment on behalf of the entire society to repair for serious turmoil of country's moral order, and for person B's well-being this further provides civil justifications of the rights of victim to compensations against those (private persons or government) who owe to that person B what is taken from him/her in that particular case (UNBPGRV princ. 3b).

Moreover, UNBPGRV points out: “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations“ (UNBPGRV princ. 16). Particularly, UNBPGRV asserts that: “Rehabilitation should include medical and psychological care as well as legal and social services“ (UNBPGRV princ. 21). Accordingly, Finnis's theory of human rights fairly corresponds with UNBPGRV provisions related to recognition and safekeeping of individual victims' human rights to remedies and reparations.

In summary, the sub-chapter tested Finnis's theory of human rights to morally justify the legality of individual victims' human rights to remedies and reparations, derived from UNBPGRV, where they do not exist or are violated in the Republika Srpska. Mainly, in the case of disappeared persons as if legally regulated form UNBPGRV asserts that governments bear obligation to ensure: “Verification of the facts and full and public disclosure of the truth (...)“ (UNBPGRV princ. 22b), and, “The search for the whereabouts of the disappeared (...)“ (UNBPGRV princ. 22c). However, empirical data gathered in Prijedor provided the majority of 22 negative answers while in Srebrenica 21 negative ones for this form of reparation (satisfaction). Therefore, we applied Finnis's theory of the ontological universality of human rights (basic goods necessary for individual's well-being, such as respect and protection for survivor's fundamental interest to participate in a basic human good of knowledge based on truth about disappeared family members which should be provided likewise to anyone), the correlativity of duties and rights (what is owed, both information about his/her missing family members' whereabouts and/or his missing family members), and the concept of desert-focused retributive justice and punishment (criminal deterrence to repair for serious agitation of country's moral order and civil reparations to compensate for personal harm). Similarly, we applied Finnis's theory of ontological universality of human rights about rehabilitation as a kind of reparation successfully. Therefore, further arrangements of reparations, for instance, compensation, restitution or guarantees of non-repetition can pass similar tests as well. Therefore, Finnis's human rights theory can reasonably fair ensure moral claims for legal recognition of reparations for victims of GHRV.

4.6. TRANSITIONAL JUSTICE IN BOSNIA AND HERZEGOVINA AND ITS EVALUATION

The last section of the fourth chapter will examine whether there is any current transitional justice related approaches and programs in B&H related to acknowledgment, safeguarding and realization of individual victims' entitlements to remedies and reparations, as well as those related specifically to peace-building in B&H. We will refer to literature related to transitional justice and peace-building in B&H which are of concern for victims' rights, and evaluate them on victims-centred approach to victims' human rights to remedies and reparations.

There are four traditional, transitional justice approaches in dealing with GHRV (*truth-seeking, criminal prosecutions, reparations, and institutional reform*). Besides, some scholars stress that *peacebuilding* and *reconciliation* are also transitional justice approaches. *Truth-seeking's* role is to establish a historical record about GHRV and secure memory about it to avoid repetition of mass crimes. There were various ambitions to constitute *National Truth and Reconciliation Commission* in B&H (TRC) from 1997-2006. However, the project fell because of three obstacles: political opposition, the competition among ICTY and TRC, as well as TRC lacked legitimacy among victims' organisations. Namely, the TRC project had a "high degree of external intervention" aimed primarily at local actors to avoid being hijacked by nationalist politicians, but it ended up lacking legitimacy and relying on its international promoters. ICTY and TRC are both transitional justice mechanisms, but their creations depended on external funding and preferences and interests of powerful international subjects. Divisions, rivalries, unreconciled agendas, and different priorities among victims' organisations and local NGOs left the transitional justice project without legitimacy. *Criminal prosecutions* seek to establish criminal responsibility of individuals for GHRV beyond a reasonable doubt. They can be international and domestic. In the case of B&H, ICTY found the majority of totally 90 sentenced persons guilty considering grave crimes done in B&H. Nowadays, the Court of B&H's the War Crimes Chamber works on 550 war cases with 4,500 identified perpetrators. The victims of GRHV often experience criminal prosecutions as not timely while ICTY's verdicts symbolic for the mass sufferings endured (Dragović-Soso, 2016: 292-310).

Reparations serve to address the responsibility of individuals, group or government for contraventions of rights of human beings that occurred because of failure to avoid them, infliction directly, to address causes of their occurrence and ensure non-repetition. In B&H, reparations are awarded mainly by the B&H's Constitutional Court as well as Court of B&H's the War Crimes Chamber. They include both material (mainly compensation for the harm) and non-material (such as apology) kinds of reparations. The ICTY did not provide any form of reparation. The entity's district courts and Supreme Court of Republika Srpska rarely ensures redress to the sufferers of GHRV, according to the testimony of the victims of GHRV from Prijedor and Srebrenica (interviewees in Prijedor and Srebrenica, personal communications, April and May, 2019). Further, there is no national reparational fund for the victims of GHRV in B&H. According to Mark Freeman: "(...) lack of political will, denial of wrongdoing, and scarcity of resources make it extremely difficult to develop a comprehensive reparation program," (Freeman, 2004: 11). Many laws related to preservation of truth and memory about GHRV of victims, as if regulating forbiddance of denial of GHRV or promoting reconciliation through common memorials is blocked by the politicians from Republika Srpska at the state level, who see the legislation as a danger to personal opportunism and "entity's survival", according to testimony of the survivors from Prijedor and Srebrenica (Subašić, 2013).

Institutional reform represents a transitional justice approach which recognises victims as human rights holders while trying to develop mutual trust between citizens and public institutions. It can be composed of different modes, for instance, vetting, structural reform, reconstructing legal structures, and disarmament, demobilisation and reintegration (DDR). *Vetting* was partially successful. Namely, the United Nations Mission in B&H vetted 24,000 police officers from 1999-2002. One-third of applicants were declared ineligible because of their war-related criminal backgrounds. In another vetting process, OHR created the High Judicial and Prosecutorial Councils to check professional adequacy of 1000 applicants, that is prosecutors and judges from 2002-2004 (Freeman, 2004: 11). However, victims of GHRV in Prijedor and Srebrenica complained about some of the war criminals still working in the police as well as the appointment of judges and prosecutors is controlled by ruling nationalistic political parties because of which judiciary is not independent, but inefficient in securing the rule

of law in the country (respondents in Prijedor and Srebrenica, personal communications, April and May, 2019).

Structural reform entails restructuring institutions to provide accountability, independence, representation and responsiveness. According to Edita Đapo and Ognjen Ridić: “B&H has been stagnating in its economic development, and ... B&H’s government must improve its tax system, governance, engage in the fight against corruption, speed up the business deregulation and privatisation in order to accelerate economic growth” (Ridić & Đapo, 2016: 99). There is no transparency of the government and chronic governmental corruption practices, for example, do not serve public interests of citizens prescribed by the Constitution, such as peace and prosperity, or by the standards of the governance of law, but particular interests of certain pseudo-nationalistic or religious elites. Consequently, victims of GHRV and all citizens cannot have their rights respected and protected effectively if such governance is created to serve mainly its particular interests, as is the case in being the most corrupted country in the Balkan region. Consequently, victims of GHRV cannot have adequate reparations and social justice served. *Transforming legal frameworks* represents the creation or reform of existing legal framework to ensure better protection of human rights. Implementation of the DPA lacked progress as well as safeguarding of basic rights of human beings was weak due to the dominance of war criminals and warlords in the public sphere until 1998. By 1998, *The Bonn Powers* (providing extensive legal, executive and judicial powers to OHR by Annex X of the DPA in relation to civil implementation of the Agreement) were enacted by OHR which resulted in the formation of the Court of B&H, strengthening of central institutions, vetting process of police and judiciary, and better protection of IDP’s and refugees’ freedoms and property rights (Moratti & Šabić-El-Rayess, 2009).

DDR in B&H happened gradually with monitoring of the international actors who had legal authority in implementing military side of the DPA that is a NATO-led Implementation Force (IFOR) which was a peace enforcement force. The Dayton Agreement’s Annex 1B stressed that upon cessation of conflict, B&H should downsize their ethnic armies from 400,000 totally to 55,000 soldiers in FB&H and 56,000 in Republika Srpska (Moratti & Šabić-El-Rayess, 2009: 12). In 2005 were formed the

Armed Forces of B&H whereas the Bosniak - Croat Army of the FB&H and the Army of Republika Srpska became the unified army. IFOR occasionally organised disarmament public action as if former soldiers would give away their arms for the public safety voluntarily, but there is still a common perception among civilians that majority of citizens kept their guns at home because of general lack of trust in the governments or members of other ethnic groups.

Peacebuilding encompasses a set of actions aimed at reassembling the foundations of peace after the conflict. For David A. Hoogenboom and Stephanie Vielle, the peacebuilding process in B&H did not foster reconciliation or social trust among individuals and communities which are crucial elements for the long-term peace. It is because the international actors were mostly preoccupied with the creation of democratic institutions, employment of international law, and verdicts of war criminals coming from B&H. For instance, ICTY's top-down approach toward institutions of governments instead of civil society as if bottom-up failed to build up accountability and restoration among its citizens. There was not much community outreach, and education about the ICTY was insufficient among Bosnian Serbs who perceived it as a distant and isolated court which targets members of their group. Therefore, B&H's society resumes suffering from inter-ethnic hostility and dominance of national sentiment at the local level which can be mobilised by pseudo-nationalistic elites around ethnic identities. However, Hoogenboom and Vielle see failure in disconnection from individuals and communities fearful of conflict, which can be optimally "assessed and addressed by local NGOs" to be effective, provided that a regular founding by the international community is ensured (Hoogenboom & Vielle, 2010). Similarly, the European Union adopted a top-down approach regarding reconciliation in B&H which consequently ignored broader public consultations with victims and civil society in addressing the legacy of the Bosnian war (Rangelov & Theros, 2009).

Finally, *reconciliation* is a complex process aimed at rebuilding and building relationships in the aftermath of GHRV. Lina Strupinskienė conducted field-trip research to classify what kinds of reconciliation forms exist between members of different ethnic groups, including representatives on non-Serb victims' organisations, in Prijedor during 2013. She found first a thin economic reconciliation (trading, hiring,

acknowledging each other's presence) which amounted gradually to a tick economic reconciliation of full cooperations at individual, communal and national levels, according to her interviewers. Further, Strupinskienė pointed out at a thin social reconciliation at individual and communal levels (characterised by pragmatic and peaceful interactions, and day-to-day cooperation in the local community). On the contrary, a thick social reconciliation was not matched among interviewers due to "not openly engaging with the past" at the state position. Lastly, political conformity followed economic and social ones in Prijedor depending on gained trust through small examples of cooperation. However, a thick political reconciliation was not achieved because it requires acknowledgement of guilt publically, honest involvement with the past, denunciation of wrongdoings, along with harmonisation throughout the unique interpretation of the war events at the national level (Strupinskienė, 2016: 13). Consequently, Prijedor's case of only fully achieved a thick economic reconciliation as well as both thin social and political reconciliation is representative of insufficiency of the good governmental will at the entity and state levels to ensure really meaningful social and political reconciliations among citizens and members of different ethnic groups without any political pressure driven by the international community actors.

Accordingly, whether individual victims of GHRV in B&H have their human rights to remedies and reparations respected and protected or violated and denied by transitional justice approaches employed in B&H? Namely, the results of transitional justice considering protection of victims' entitlements in B&H are diversified. Notably, criminal prosecutions, DDR, transforming legal frameworks, and thin reconciliation forms put up important the safeguarding of their rights as if creating advantageous legal, military and social conditions for the survivors generally. On the contrary, reparations, truth-seeking, structural reform, vetting, republican peacebuilding "top-down" *modus operandi* and thick forms of reconciliations were not successful in their implementation, and survivors of GHRV are not able to enjoy their human rights fully. Therefore, it is prevalent a shared responsibility of international actors and local political actors about it. Notably, the former lacks a clear vision/politics and "bottom-up" transitional justice approaches (liberal peacebuilding approach) about the needs of victims, victims' organizations, citizens and local communities. The later lacks good and sound political will as well as adequacy of political leaders in ensuring more effective respect and

protection of victims' rights. However, transitional justice has a significant transformative legal-political potential which can be used to reinvent and improve through different modes and approaches suitably of forming new political and legal turnouts and social conditions to provide adequate safeguarding of the victims' rights.

In the fourth chapter, we have examined that even though the ICTY established beyond reasonable doubt historical record about GHRV in Prijedor and Srebrenica, there are many different types of denials in interplay, such as official denial politics, cultural denial, moral denial, and self-serving opportunism which can be called the *conjunctive denials* of the GHRV in Republika Srpska. Some of them are initiated and supported officially by the entity's government and let to live on their own while others are motivated individually and joint together with others in whole kind of denial of GHRV.

Further, the government of Republika Srpska's *conjunctive denials* of GHRV supported as such by presented case law examples, sham judicial practices, academical articles and media reports about denial of GHRV, and empirical evidences conducted in Prijedor and Srebrenica, is not only responsible for grave injustice inflicted upon non-Serb persons during the nineties (ICTY's historical record) but also failed to provide effective remedy (access to justice: investigation, prosecution and punishment) and full reparations for them. It amounts, therefore, to *denial of justice* under obligatory international human rights instruments provisions which are codified in Annex 4 (Constitution) of the DPA, such as ECHR in Articles 1, 2, 3, and 13, or ICCPR in Article 2.3, and which requires from parties to respect, protect, fulfill and ensure enjoyment of such legal provisions, as right to effective remedy and reparations.

Besides, we may assert that the results of transitional justice in B&H concerning victims' human rights are rather mixed. On the one hand, criminal prosecutions, transforming legal frameworks, DDR, and thin reconciliation forms contributed significantly to the protection of their rights to remedies and reparations as if creating favourable legal, military and social conditions for them in general. On the other hand, truth-seeking, reparations, vetting, structural reform, republican peacebuilding "top-down" approach and thick forms of reconciliations were not quite successful in their application, and thus victims of GHRV are not able to enjoy their human rights fully. Consequently, there is a shared responsibility of international actors in the lack of a

clear vision/politics and “bottom-up” transitional justice approaches (liberal peacebuilding approach) about the needs of victims, victims’ associations, citizens and local communities as well as the lack of political will and inadequacy of political leaders in ensuring better respect and protection of victims’ rights. Nevertheless, transitional justice is not a closed but rather a complex and dynamical political-legal process which can be reinvented and improved through different modes and approaches favourably of creating new political and legal opportunities and social conditions to secure adequate safeguarding of the victims’ rights in B&H.

Namely, a victim-oriented approach to promotion and protection of individual victims of GHRV to remedies and reparations and human rights education can contribute to the complete along with active responsiveness of victims’ rights and contribution to national and international peace as proposed solutions of the thesis to the case study of victims of GHRV to individual remedies and reparations in B&H. Particularly, UNBPGRV asserted that: “(...) in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large“ (UNBPGRV pmb1, para. 11). What does that mean? It means that safeguarding of victims' entitlements to remedies and reparations was felt to be based not on the purely legal perspective of enforcement of their rights by lawyers but on rather public along with human solidarity. It is because victims' rights law is compartmentalised as such between global human rights, criminal law, humanitarian law, or different national criminal laws as if creating gaps and overlaps of victims' rights being ineffectively addressed. In turn, it leads to the usage of these gaps by governments to create legal vacuums driven by incompetence and corruption, or focusing on a conflict-centric approach as if disregarding sufferings experienced by victims (victim's perspective) and effective and adequate redress of sufferers' entitlements to remedies along with proportionate reparations (Bassiouni, 2006: 204-205).

Therefore, in the situation of GHRV and redress of individual victims' human rights in B&H, victim-oriented approach is necessary to set effective normative standards provided by the historical evolution of worldwide human rights legal norms as a kind of

global law as well as to bridge existing legal and governmental gaps in addressing individual victims' human rights for victims' well-being, which can be found in on-going denial politics, political opportunism, corruption, incompetence, and so forth. According to Amnesty International: "Access to justice and reparation for past crimes remained limited [in B&H] due to a lack of commitment to adopt, and secure adequate resources for state-wide programs" (Amnesty International, 2016).

Also, human rights education (HRE), can contribute to human rights advocacy, respect as well as safeguarding of victims' entitlements to remedies and reparations, and peace. According to Richard Pierre Claude, HRE represents: "a long term strategy to construct innovative programs of teaching and learning to advance human development, peace, democracy, and respect for the rule of law" (Claude, 2009: 100). The idea of HRE is based on the UDHR's Article 26 provisions about the right to education and interrelated universal educational goals of the UDHR such as complete personal human development, the tolerance promotion, and furtherance of the UN peace aims. Briefly, the reasons beyond these goals were madness and violence of war affiliated politicians during WWII, promotion of the shared positive vision of the world after WWII, and citizenry education and empowerment to claim their human rights and ask for redress for violations committed by government officials (Claude, 2009: 100). It means a preventive obligatory elementary and secondary education about human rights, enactment of the constitutional provision about HRE, community-based programs of HRE considering concrete care to respect of rights of the survivors of GHRV, peace-related HRE programs involving non-discrimination, consideration of everybody's dignity, well-being, and empathy, and so forth. The goal of these programs would be to develop the human rights culture correlative with the culture of peace instead of a culture of denial of GHRV in B&H's multiethnic post-conflict democratic society. Accordingly, citizens and victims will be able to have their rights appreciated as well as safeguarded and to live in a long-term peace with more certainty.

CONCLUSION

By examining changeable depiction of the recent Bosnian war and Republika Srpska's official denial politics of GHRV in Prijedor and Srebrenica along with denial of victim's human rights to adequate remedy and reparations for harm suffered, the thesis has laid out how denial of justice to the non-Serb survivors of mass war crimes still inform and constitute their lives in a internationally illegal and degrading manner. Namely, the ICTY found beyond a reasonable doubt that the ethnic cleansing in Prijedor and Srebrenica genocide (ICJ did for the genocide as well), as widespread patterns of GHRV, were solely responsibility of Republika Srpska. Similarly, there is a common consensus among NGOs and academic community based on both the ICTY's historical record and their researches that majority of GHRV and destructions were conducted by the ARS against non-Serbs, mainly Bosnian Muslim civilians, women, their houses and religious objects. Therefore, the most significant numbers of victims of mass war crimes who still look for justice, considering damages endured in B&H, are non-Serbs from the government of Republika Srpska.

Even though an interdisciplinary research approach brings unique understandings into denial phenomenon, it restrains a certain number of applicable theories to the case study of the thesis. Notably, John Finnis's theory of the ontological universality of rights of human beings proposes a list of the timeless and spaceless essential human goods (for instance, life and knowledge) in which, human beings understood as rational persons, through their innate capacities (practical reasoning, deliberations and choices) actively participate so that to flourish personally, collectively and as humanity. These goods constitute moral fabric of every society and their denial to other persons by governments or specific individuals represent injustice which has to be repaired. If, for example, the government of Republika Srpska does not protect one's life or does not disclose information about missing non-Serb person to his/her family, it has violated victim's family entitlements to redress in a sense that it has not allowed the victim's family to participate equally in the essential goods of life and knowledge, whereas such fundamental interests are secured morally and legally by human rights to other Serb persons who participate in them and which are suitable for their well-being. Human rights are thus understood as natural or moral rights which protect one's fundamental

interests to flourish while participating in the necessary goods. Further, human rights are also correlative with duties of the Republika Srpska entity or particular wrongdoer's moral obligations, for instance, to return stolen private properties or rebuild the destroyed houses not by their liberty to do so but by the non-Serb victim's claim to be given back the very thing or issue that has been taken from her or what is owed (justice) to him. Many non-Serbs' houses have been rebuilt by international developmental aid and not by the entity government's help and reparations. Lastly, Finnis's retributive punishment notion of severe crimes to restore society's moral order is compatible with international criminal justice standards about individual criminal accountability for GHRV.

On the contrary, theories on denial in psychoanalysis cannot adequately explain infringements of individual victim's rights to redress because they are concerned primarily with one's natural self-defence health mechanism which safeguards one's personality and life in the face of extraordinary events or enormous danger. However, Stanley Cohen's sociology of denial examines various denials of human sufferings and offers enormous classifications about it. For example, Cohen differs interpretive denial as not a denial of facts but the apparent meaning of human sufferings. Notably, when it is applied in the public sphere it denies that ethnic cleansing happened in Prijedor, but "population exchange" or "Serbian defensive-liberation war" through euphemisms or invented public narrative. Alternatively, it interprets the Srebrenica genocide as not the genocide but "terrible event" or "mass crime". Consequently, interpretative denial, which is currently a part of the official denial politics in Republika Srpska, denies historical experiences and legal meanings of non-Serbs' human sufferings in Prijedor and Srebrenica. Besides, it denies to victims' rights to adequate reparations, such as public and factual acknowledgement of GHRV, proclamation of recovering human dignity to the sufferers or incorporation of the historical record about GHRV in educational materials at all stages. Cohen calls for socially responsible human beings to human sufferings in our society or globally and proposes various responsive models, for example, truth commissions, criminalising denial of the past, and memorialisation.

Furthermore, denial of GHRV in genocide studies ensures many classifications about the denial of justice for the victims of mass war crimes. Namely, it is usually systematic

as if composed of moral, ideological, and political aspects. For example, denial of moral responsibility for GHRV continued humiliation of victims, exclusive national moral relativism or righteousness of ethnic purity is all patterns of moral denial of victims' rights. For example, the former president of Republika Srpska Milorad Dodik's regular denial of Srebrenica genocide or the negation of the ethnic cleansing of non-Serbs by local governmental officials in Prijedor and by those who support such public discourse represent moral denials of victims' rights to truth, memory, human dignity, and equal rights. Further, ideological aspect is about some form of explicit national or racial ideologies (such as "Nazi-Germany", "Great Serbia", anti-Semitism, or Islamophobia) which are used as public programs of action for the creation of such imagined homogeneous societies that lead to severe infringements of rights of human beings belonging to other national or racial groups. For example, ICTY found that Republika Srpska engaged in ethnic crimes against non-Serbs in Prijedor to create "pure Serb state" or in Srebrenica during mass killings of males and forceful deportation of civilians from area to disable future reproduction and existence of the Bosnian Muslims in the territory. Consequently, after the establishment of the governmental structures such ideology is usually incorporated in the public pillars and affairs of such territory because of which the non-Serb victims of GHRV cannot adequately realise their human rights.

Notably, the political dimension of denial enables materialisation of ideological one through various intense patterns of political and cultural strategies of denial of moral responsibility for GHRV and associated victims' rights, such as control and attack on the sufferers' identity or destruction of historical truth and memory. For example, the accurate historical record about GHRV of non-Serbs in Prijedor and Srebrenica is not included in the educational materials in entity's schools at all. Entity's governmental media and memorial culture still promote specific official agenda, interpretative denials, selective concerns, spins, and suitable victims of "Serbian defensive-liberation war". Besides, except for restitution (as of enormous engagement of international community in B&H considering the implementation of part 7 of DPA related to the going back to the pre-war homes as of the peace accord) the rest of modes of reparations (rehabilitation, satisfaction, repaying and non-repetition) are importantly and worryingly impaired for the majority of the non-Serb victims based on the empirical

data taken during the recent field-trips in the entity. Consequently, systematic denial of genocide and GHRV are especially dangerous for peace because victims want to regain their liberty and dignity back, as the theory of genocides by the oppressed suggests, while former perpetrators of mass crimes might be interested in more violence, hatred, stereotypes, and amnesty. Therefore, Charney recommends organising the conferences on denial of genocide including human rights standard settings to counteract genocide denialists' propagation of human violence and decent people's norms. Besides, the thesis assumes based on the democratic peace and human rights theory that protection of the victims' rights in B&H transitional democracy is optimal to be achieved through consolidation of liberal democracy and improvements of transitional justice and other public programs based on particularly the victim-centred approach of UNBPGRV and human rights education.

Lastly, denial of justice in a strictly legal sense means a failure by the government to provide an effective remedy (access to justice: investigation, prosecution and punishment) and full reparations to the victims of GHRV for the grave harms suffered. Governments owe ensuring adequate remedy and reparations to the injured parties based on a juridical notion of human dignity, according to which every human being has inner value by common humanity that forbids states to violate it by unnecessary and disproportionate interference or inaction. The government of Republika Srpska, which is found to be responsible for GHRV in Prijedor and Srebrenica committed against non-Serb victims, is legally obliged as the participatory party to the DPA, to enable access and redress to the victims of GHRV. Notably, the consecutive governments of Republika Srpska have legal and ethical duties under obligatory international human rights instruments provisions which are codified in Annex 4 (Constitution) of the DPA, for instance, ECHR in Articles 1, 2, 3, and 13, or ICCPR in Article 2.3, and which requires from parties to respect, protect, fulfil and ensure enjoyment of such legal provisions, as right to adequate remedy and reparations for the right to life and humane treatment, not to deny justice to the non-Serb victims of GHRV.

However, Republika Srpska subsequent governments legally deny justice to the non-Serb survivors of GHRV through creation of inadequate and unsound laws (in which former non-Serb detainees who afterwards joined Army of B&H are labelled

prejudicially as the enemies who have no rights to reparations), sham judicial proceedings (in which the non-Serb rape survivor has to pay by herself expenses of judicial proceedings to the entity for the case in which she is the proven victim). Further, legal provision considering amount of material reparations provided for majority of the non-Serb victims are insufficient for a dignified life and grave harm suffered. Controversially, there are no meaningful and *sui generis* official legal considerations by the Republika Srpska governments for the non-Serb victims of GHRV, such as official factual and full apologies, rehabilitation programs, reparation funds, memorialisation and remembrance events. In sum, the government of the Republika Srpska violates individual victims' entitlements to a remedy along with reparations after the occurrence of GHRV.

However, it has international and constitutional legal and ethical obligations to ensure existence and functionality of the valid legal standards of official and judicial respect, protection and fulfilment of non-Serb victims' rights for GHRV endured. Notably, UNBPGRV's victim-centric standards are optimally recommended for creation of such governmental public politics. Accordingly, an interdisciplinary and holistic approach of the thesis about phenomenon of denial and denial of justice to victims of GHRV in B&H has been necessary to conduct to better understand particularly the complex philosophical and historical experiences of transgressions of entitlements to the victims of GHRV and to be able to find possible optimal recommendations about their better protection.

Situated on the mentioned findings, the future human rights experts should primarily take into account UNBPGRV's victim-centric standards when analysing and evaluating various transitional justice programs concerning sufficient safeguarding of sufferers' rights to remedy and reparations in transitional democracies. Human rights advocates, NGOs and survivors of GHRV in B&H should use the same victim-centric approach when creating local projects or national programs to improve the victims' rights following international human rights normative standards and designs proposed within UNBPGRV, notably where B&H's central and entity governments have failed to deal with ethically and legally. The reasonable and morally conscious political representatives and leaders of all governmental structures of B&H should form the fund

for the victims of GHRV, enact laws which propose national commemorative dates, reconciliatory memorials, and adequate rehabilitation programs for all victims of GHRV in B&H. The governmental officials should also criminalise national denial of GHRV in B&H because such politics, practices and debates do not lead to ideally open democratic society or one's self-fulfilment but re-traumatic experiences for the victims of GHRV as well as of concern for the common-sense citizens of B&H because of their specific collective philosophical and historical experiences related to GHRV. Public universities should create educational programs in genocide studies as well as in human rights to analyse, educate and reproduce honest and communal knowledge of relevance for the public good and governmental politics, about history of GHRV in B&H and importance of human rights and peace culture for long-term peace and prosperity of the country, region and humankind.

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APPENDIX 1. ETHICS COMMISSION FORM FOR THESIS



HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES ETHICS COMMISSION FORM FOR THESIS

HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES HUMAN RIGHTS DEPARTMENT

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1. Does not perform experimentation on animals or people.
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Haris Subašić
19/02/2020

Name Surname: Haris SUBAŠIĆ
Student No: N13149548
Department: Human Rights
Program: Human Rights
Status: MA ☒ Ph.D. Combined MA/ Ph.D.

ADVISER COMMENTS AND APPROVAL

Prof. Dr. Harun TEPE

Telefon: 0-312-2976860

Detaylı Bilgi: <http://www.sosyalbilimler.hacettepe.edu.tr>

Faks: 0-3122992147

E-posta: sosyalbilimler@hacettepe.edu.tr

APPENDIX 2. THESIS ORIGINALITY REPORT



**HACETTEPE UNIVERSITY
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**HACETTEPE UNIVERSITY
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19/02/2020

Name Surname: Haris SUBAŠIĆ

Student No: N13149548

Department: Human Rights

Program: Human Rights

Status: ☒ Ph.D. ☐ Combined MA/ Ph.D.

ADVISOR APPROVAL

APPROVED.

Prof. Dr. Harun TEPE
Prof. Dr. Harun TEPE