# 1

## Introduction

### Urgencies of the Past and the Future

#### 1.1   Two Global Imperatives

Preventing mass atrocities from resurging has been a global imperative since the end of World War II when the international community vowed that atrocities such as the Holocaust would 'never again' be repeated. Since then, the vow of 'Never Again', like the one myself and other participants of the memorial walk in Thessaloniki made in 2013, has symbolised different political actors' commitment to non-recurrence of gross human rights violations across the world. This commitment was followed by concrete developments in law and practice, particularly as international human rights law (IHRL) burgeoned.[1] When, in the last decade of the twentieth century, some of the most horrendous war crimes since World War II were committed in places like Rwanda and former Yugoslavia, mass atrocities became a key threat to international security and new regulatory models were sought after.[2] Consequently, multiple mechanisms have been devised to aid the goals of preventing both the occurrence and the recurrence of mass atrocities as the international human rights regime further

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[1] The 1948 Convention on the Prevention and Punishment of the Crime of Genocide is a symbol of such global actions, as the treaty was created as a direct response to the Holocaust meant to signal the international community's commitment not to let such atrocities happen again. See the United Nations Office on Genocide Prevention and the Responsibility to Protect, *Genocide Convention*, www.un.org/en/genocideprevention/genocide-convention.shtml accessed 9 May 2024.

[2] Jelena Subotic, 'Truth, Justice, and Reconciliation on the Ground: Normative Divergence in the Western Balkans' (2015) 18 Journal of International Relations and Development 361, p. 363; Kathryn Sikkink, 'From State Responsibility to Individual Criminal Accountability: A New Regulatory Model for Core Human Rights Violations' in Walter Mattli and Ngaire Woods (eds.), *The Politics of Global Regulation* (Princeton University Press 2009) pp. 121–50.

developed and the international criminal justice regime began to be devised. One of the more prominent policy models underpinned by these legal regimes has been transitional justice, as a set of tools, mechanisms, and practices which states transitioning from conflict and/or authoritarianism are advised or even conditioned to implement in order to 'deal' with their problematic pasts and prevent recurrence of atrocities.

This book tells a story about the efforts to prevent renewed conflict through the global project of transitional justice and uncovers what is often invisible in the evaluation of transitional justice processes – securities of the self, identities, anxieties, and uncertainties – and how they matter for any attempt to ensure a long-lasting 'Never Again'. The purpose is to rethink the scope and meaning of non-recurrence as a largely neglected yet core aspect of transitional justice by empirically investigating how post-conflict societies make sense of it in the everyday and how the very project of transitional justice shapes such everyday understandings. Ultimately, I reassess transitional justice as a force of global governance. To do this effectively, I draw on my extensive field and desk research in Bosnia and Herzegovina (BiH), a country devastated by war thirty years ago and one of the key recipients of transitional justice-related interventions in the 1990s and early 2000s; a transitional justice laboratory.

The book is interested in transitional justice as a rapidly growing *global project* consisting of legal norms, mechanisms, and policies on correct and appropriate 'dealing' with the past exported to dozens of countries transitioning from conflict and/or authoritarianism. Since the 1980s, the imperative to 'deal' with past state-sponsored violence by confronting it and not greeting it with widespread impunity, like was the case for much of human history, has been growing in both scope and reach. Over time, transitional justice began to be characterised through its constitutive elements as it travelled from Latin America in the 1980s, to Eastern Europe, the Balkans, Rwanda, and South Africa in the 1990s, until it was fully integrated into the work of the United Nations and, subsequently, numerous international organisations in the early 2000s. The mechanisms and tools of transitional justice, most notably criminal trials, truth and reconciliation commissions, reparations, and measures of institutional reform such as vetting begun to be discussed as a 'package' of measures, underpinned by specific international normative commitments, for instance, the anti-impunity norm or the right to truth. While there is an understanding that not all possible measures of

transitional justice could be applied in all contexts,[3] for a couple of decades there has been an increased understanding, if not a consensus, around the idea that past violence and injustice must be dealt with and accounted for.[4] To ensure that the past is dealt with, numerous external actors rush to aid the country affected by such violence, occasionally even before peace is negotiated. In this sense, transitional justice became a matter of global governance.

The two global imperatives of 'Never Again', or ensuring a peaceful future, and 'transitional justice', or dealing with the past, come hand-in-hand. As this book will show, each of the core tools of transitional justice has been advocated for in both academic and policy circles for its potential to contribute to non-recurrence of mass atrocities or the overall conflict in the specific context to which transitional justice has travelled. Not only is dealing with the past through transitional justice tools seen as overall beneficial for 'Never Again' but also non-recurrence itself has become an overarching telos of transitional justice. Ensuring non-recurrence of violations, scholars have claimed, remains 'the most important aim of transitional justice'.[5] Consequently, at the level of international transitional justice policy and advocacy there is an understanding that transitional justice 'can contribute to prevention' of recurrence.[6] As a form of global governance, transitional justice exists, inter alia, to put 'Never Again' to practice. Yet, the compatibility between the two global imperatives is rarely questioned by scholars and policymakers.

In forthcoming chapters, I reevaluate the connections and disconnections between these two contemporary imperatives by interrogating people's experiences of the 'Never Again' promise and perceptions of what hampers its fulfilment in post-conflict times and tracing the influences of the transitional justice project on such experiences and perceptions. I do not treat transitional justice as an a priori benevolent force of

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[3] United Nations Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' (United Nations Security Council 2004) UN Doc. S/2004/616*.

[4] Jelena Subotic, 'The Transformation of International Transitional Justice Advocacy' (2012) 6 International Journal of Transitional Justice 106.

[5] Michelle D Bonner, '"Never Again": Transitional Justice and Persistent Police Violence in Argentina' (2014) 8 International Journal of Transitional Justice 235, p. 237.

[6] In a 2021 report, the International Center for Transitional Justice outlined four potential contributions of transitional justice processes to prevention, based on five country case studies. Roger Duthie, *Transitional Justice and Prevention: Summary Findings from Five Country Case Studies* (International Center for Transitional Justice 2021) p. 1.

global governance. Instead, the book opens space for thinking through what, if anything, transitional justice does for non-recurrence. Departing from previous studies,[7] I proceed not by delving into the claims of whether individual mechanisms such as trials and truth commissions are beneficial for a meaningful 'Never Again' but by exploring whether the way we govern 'dealing with the past' is. In doing so, I provide an in-depth interrogation of the structural elements and characteristics of transitional justice as a global project embedded in neoliberal legalism.

In dissecting the project of transitional justice, I rethink what the project is for, to propose that beyond ensuring the values of justice, truth, and reconciliation, the project first and foremost serves to govern uncertainties which arise in transitional periods of rupture between the seemingly old and the seemingly new, periods in which transitional justice thrives. As an overarching telos of transitional justice, ensuring non-recurrence requires providing assurances about this uncertain future. Doing so establishes transitional justice as a mechanism of security.[8] In addition to physical (in)securities, the book also focuses on the largely neglected nexus between transitional justice and *(in)securities of the self*, that is, ontological (in)security, as transitional justice interacts with multiple collective actors trying to make sense of the transition and embarking on different and often competing quests for knowledge about the past, certainty about the future, and a secure sense of self in the world.

Examining transitional justice developments over thirty years in post-war BiH, I arrive at my core claim that in pursuit of its own survival, permanence, and legitimacy, the transitional justice project helps make the populations who are supposed to benefit from it anxious about potential '*again*' or repetition of conflict. The book shows that after years of transitional justice interventions, many of the practices people in BiH identify as threatening meaningful assurances of non-recurrence can in fact be understood as ontological security-seeking practices, triggered, or worsened by the global project. These behaviours, in turn, create an

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[7] For example, Cyanne E Loyle and Benjamin J Appeal, 'Conflict Recurrence and Postconflict Justice: Addressing Motivations and Opportunities for Sustainable Peace' (2017) 61 International Studies Quarterly 690; Chris Mahoney and others, 'Conflict Prevention and Guarantees of Non-Recurrence. Background Paper for UN-World Bank Pathways for Peace Study' (1 May 2017). Available at SSRN: https://ssrn.com/abstract=3158012 accessed 13 May 2024.

[8] Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–78* (Palgrave Macmillan 2007) p. 20.

environment which signals continuous anxiety about the uncertain future of peace in the country. These, I suggest, are the results of certain applications of the kind of transitional justice project that has been globalised. I proceed by outlining the key questions, claims, and contributions of the book and providing a brief overview of the birth and development of transitional justice as a global project, a vehicle of peace, as well as security.

## 1.2  Key Questions

While preventing mass atrocities from being repeated remains the organising telos of the transitional justice project, the merits of the causal relationship between the two imperatives remain disputed. Many of the claims of positive influences of individual transitional justice mechanisms on the objective of non-recurrence are speculative rather than empirically grounded. That a mechanism has an effect on non-recurrence is a claim used to investigate whether transitional justice 'works' or not, and subsequently evaluate the effectiveness of the project. Yet, when evaluated according to introspective criteria accomplished through the fulfilment of the project's own promises, non-recurrence becomes detached from the people for whom the promise of 'Never Again' was made in the first place. Missing from the burgeoning transitional justice scholarship are holistic – as opposed to piecemeal – explorations of the subjective value awarded to the principle of non-recurrence by different stakeholders, and of non-linear and perhaps non-causal interactions between how these lived experiences of non-recurrence are constructed and all the different elements of the global project of transitional justice. This book sits in this gap.

The two core questions this book explores are (1) how does the global project of transitional justice shape the lived experiences of and efforts towards conflict non-recurrence in societies subject to transitional justice interventions and (2) which structural elements of the transitional justice project shape these experiences and efforts for better or for worse? In doing so, the book grapples with broader questions. What do meaningful guarantees of conflict non-recurrence entail for post-conflict societies? What are some of the factors shaping people's perceptions of the likelihood of renewed conflicts? Following these explorations are musings on some narrower questions about BiH as an instrumental case rooted in its decades-long experience of being a testing ground for distinct ideas about what transitional justice is and how it should look. What has the

transitional justice project in BiH included, and what has it excluded and why? This question is explored in Chapter 3. What does non-recurrence look like as an everyday experience in BiH, and how do different tenets of the transitional justice project shape these experiences? These questions are investigated in Chapters 4, 5, and 6. And finally, in Chapter 7: what role do 'ordinary people' have in creating and sustaining meaningful assurances that renewed conflict would be unlikely, with or without transitional justice?

I wish to make a brief comment here on the distinctions between mass violations and conflict. A BiH prosecutor once told me that the best we can hope to prevent is mass violations of human rights and humanitarian law and not renewed conflict, because war is, after all, legal. As this book will show, the same logic largely applies to the concept of 'guarantees of non-recurrence' (GNRs), a claimed yet under-conceptualised pillar of the transitional justice project and a legal norm found in public international law, IHRL, and international humanitarian law (IHL). The rationale underpinning GNRs in international law is to ensure that a specific violation of the said law is not repeated in the future. What specific measures GNRs necessitate changes from one legal regime to another and from one case to another. In public international law, GNRs may be attached to a single violation by the injuring state, for example, wrongful execution of a national of another state, and may require an apology or a specific legal amendment. Yet, in the other two legal regimes, the violations for which GNRs ought to be offered are often systemic and mass-scale, for example, state-sponsored enforced disappearances of civilians, or torture of prisoners of war. The point of this tool then is to help change the conditions which seemingly enabled or brought the violation in question through a range of measures of legal and institutional reform. Thus, GNRs cannot be about ensuring that an injuring actor never goes to war again but rather that, if it does, gross violations of IHL are avoided.

My book does not separate the two on the basis of (il)legality. The violations I am discussing here can exist outside the context of war, but war, in my experience and as per evidence from across the world, cannot exist in a 'pure' form without any of violations of IHL.[9] Hence, even

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[9] See, for instance, Lamp (2011) who argues that the traditional enforcement mechanisms of IHL are inherently challenged by the so-called new wars, or Owens (2003) proposing that 'small' massacres of civilian population are becoming normalised in post-9/11 wars. Nicolas Lamp, 'Conceptions of War and Paradigms of Compliance: The "New War"

where transitional justice interventions seek to prevent mass breaches of international law, as per the logic of the legal norm of GNRs, by no means a coherent practice at the level of international policy as Chapter 2 will show, they also, by extension, seek to prevent renewed conflict which would serve as a backdrop, escalation, or justification for these violations. Furthermore, the lived experiences of war and its aftermaths suggest that there is a conflation between prevention of conflict and prevention of mass violations of IHL or IHRL; that 'Never Again' invariably means no more war. When we shift the focus from international law to everyday life in post-conflict societies, as my book does with close examinations of BiH, we can see that people do not typically express anxieties around a specific form of violation, for example, torture or rape being repeated, although this of course could be pertinent to survivors of these specific violations. Instead, as multiple chapters of this book will illustrate, they express anxieties around a renewed conflict in which genocide and multiple other atrocities such as torture or rape could flourish. Inevitably, then, the scope of this book is larger than the norm of GNRs.

## 1.3   The Argument

In this book, the global project of transitional justice is not characterised as a benevolent form of governance, as claims of a positive relationship between it and prevention of further conflict continue to be questioned. Based on extensive field research on transitional justice in BiH, I position the project of dealing with the past as a structure which can have negative impacts on people's uncertainties about 'Never Again', leaving any meaningful assurances of non-recurrence on shaky ground. My principal argument is that the transitional justice project, with its core tenets on how to 'deal' with the past and its own survival needs, does not mitigate anxieties around renewed conflict in different political communities; on the contrary, it often worsens them. In post-conflict BiH, this book shows, the transitional justice project has made a bad situation worse, and, while the actual likelihood of renewed conflict is debated, unpredictable, and not a claim this book makes, the anxieties around the uncertain future of sustainable peace in this country persist.

Challenge to International Humanitarian Law' (2011) 16 Journal of Conflict and Security Law; Patricia Owens, 'Accidents Don't Just Happen: The Liberal Politics of High-Technology "Humanitarian" War' (2003) 32 Millennium: Journal of International Studies 595.

I arrive at this argument by examining the intersections between transitional justice and security and underpinning my thinking with structuration theory. I widen the scope of analysis by integrating not only physical but also ontological (in)security needs which the transitional justice project neglects but with which it inevitably interacts. The book paints a picture of post-conflict BiH in transition as a space with multiple and often competing security claims, both those of physical survival and of being. Out of this space emerges a proposition that there is no one security for BiH but instead multiple quests for survival, certainty, and continuity, among which the transitional justice project has its own demands in order to remain an effective form of global governance over the pasts deemed 'problematic'. At the same time, different political communities that interact with the components of transitional justice develop competing security claims in this shared but volatile post-conflict space as they are pressured to question their relationships with their past selves and identities in the international system through trials, commissions, and other transitional justice mechanisms.

Looking at the long-term trajectory of transitional justice governance in BiH, rather than solely at the immediate transitional period, this book demonstrates that, in seeking to sustain its own relevance and legitimacy, the global project provides extraneous pressures on ontological insecurities in these actors. In this book, I show that many of the practices people identify as threatening assurances of non-recurrence can in fact be understood as ontological security-seeking practices by collective political actors in BiH. These, in turn, keep the society in a state of continuous anxiety about the uncertain future of peace.

Asserting that the project originally designed to ensure that mass violations are not repeated serves as a source and aide of anxieties and grievances around potential renewed conflict represents a major contribution to scholarly understanding of transitional justice as *a structure of global governance*. Examining nearly three decades of transitional justice in BiH allows the book to make this argument in relation to three core characteristics of the global project. First, the global project relies on international institutions for its survival and legitimacy and as such engages in an exercise of linking local transitional justice processes to those institutions. In doing so, it exhibits a misunderstanding of security as lived experience and portrays a false premise that security, certainty, and identities can only effectively be governed through institutional structures. Second, as a family of norms, the transitional justice project operates based on normative hierarchies. This norm arrangement

prioritises certain prescribed or proscribed behaviours expected from the transitioning state over others and places the institutionalised forms of anti-impunity over other behaviours found in the norm cluster. Institutions of criminal justice arise as authoritative sources of truth and history in a process that is violent and exclusionary towards other complementary truth recovery processes. Lastly, as a global intervening force ought to represent a rupture between the old and the new, a progress from violent and 'bad' pasts to peaceful and 'good' futures, the transitional justice project is coated in civilisationism. Upon structural failures, the agents of the project shift responsibility onto the subjects of transitional justice who cannot seem to reach the standard of civilisation and in doing so stigmatise certain actors in international society, (re) constructing them as different, less desirable, and 'deviant'.[10]

These characteristics of transitional justice shape how the mechanisms and tools of the global project are put into practice and how they operate in specific contexts such as BiH. I demonstrate links between such tools and mechanisms of transitional justice and production of anxieties about potential renewed conflict, proposing how the global project has been complicit in political communities' ongoing ontological security-seeking exercises, namely (1) revisionist production of fractured and false truths about the war; (2) securitisation of ethnic-based identities through history teaching; and (3) glorification of war crimes and denial, trivialisation, and minimisation of atrocity crimes, all of which exacerbate collective anxieties around potential new conflict. In Chapter 4, I show how the normative hierarchy upon which the project operates and the positioning of the International Criminal Tribunal for the former Yugoslavia (ICTY) as a key source of the historical status quo has not produced an 'objective truth', as originally claimed, but instead has enhanced the building of multiple, competing, and often parallel truths about the war. This normatively hierarchical relationship between different mechanisms of transitional justice has also influenced other sectors of social life in BiH. In Chapter 5, I demonstrate how the global project has aided the proliferation of ethnonationalist histories as (1) the above-mentioned parallel truths are integrated into history education and (2) public education operates based on ethnic divides due to the original design for post-war BiH. In this chapter, the other two characteristics of the project also come

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[10] Rebecca Adler-Nissen, 'Stigma Management in International Relations: Transgressive Identities, Norms, and Order in International Society' (2014) 68 International Organisation 143.

into play. To fill in the gap in dissemination of common truth, the ICTY has undertaken a civilising mission to educate local populations. Yet, this has been done in rather detrimental ways that link complex social phenomena such as memory and identity back to the institution and do not resonate with the prevention needs of the BiH society. Similarly, in Chapter 6, all characteristics are at play. I discuss how quick, ineffective, and untransparent practices of legal and institutional reform by the international community left BiH with a legal structure which allows glorification of war criminals as well as their reintegration into the BiH socioeconomic and political lives. In an already familiar pattern, the detrimental consequences and by-products of such reforms were labelled as 'uncivilised' behaviours of ethnonationalist elites with the purpose of relieving the international community of any responsibility and reinstating the relevance of the very same international community who steps in to fix such 'uncivilised' behaviours.

Finally, in exploring how different agents give meaning to practices for 'Never Again' *with*, *despite,* and possibly *against* the global project of transitional justice in Chapter 7, I discuss whether the global project of transitional justice can become a space for bettering, rather than worsening, ontological security needs. I propose a reconsideration of non-recurrence in post-conflict societies as best studied through the encounters between the global and local, physical and ontological, ideational and material. Through these encounters, I uncover elements and characteristics not awarded high value within the transitional justice project such as *interpersonal*, *transethnic*, *reflective*, and *dialogical*. Ultimately, I reconceptualise non-recurrence beyond governance as coexistence, binding, and healing and as a form of *work* different sections of the post-conflict society ought to undertake beyond or possibly without the transitional justice project.

## 1.4   Methodology

This book arrives at its conclusions through a case study of post-war BiH. In this research design, BiH appears as an instrumental case,[11] a case by no means representative of all transitional justice experiences across contexts but emblematic of the transitional justice project. In many ways, BiH stands out when compared to other countries with developed

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[11] John W Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (3rd ed., SAGE 2013) p. 98.

transitional justice programmes and processes: the conflict is commonly characterised as 'international' as opposed to civil, it is only one of the two countries where the UN Security Council (UNSC) established an ad hoc international criminal tribunal, and it is a country whose constitution is not only tied to but an integral part of the peace agreement that put an end to the conflict. Why is, then, BiH, I claim, a vehicle for understanding the intersections between the transitional justice project and prevention of renewed conflict? Although BiH does not have a coherent transitional justice policy, it has a very developed transitional justice infrastructure consisting of processes, projects, and practices relating to all core pillars of transitional justice with long-lasting involvement of a range of international, regional, and domestic actors. In fact, BiH is one of the countries with the most resource investment in transitional justice by the international community. As Campbell succinctly puts it, BiH became a country that 'exemplifies contemporary transitional justice' with its multiple projects, many of which have already completed their mandates.[12] Moreover, BiH was one of the first states to witness transitional justice as a newly developed field of research and policy and was since used to test many policy ideas initially proposed by transitional justice research, including those making causal links between different mechanisms such as criminal trials and the objective of non-recurrence. Transitional justice projects and processes in BiH have been developing for thirty years, which allows me to comment on the longue durée of the transitional justice project.

The research design is qualitative, contemporary, and exploratory, seeking to produce context-dependent knowledge that tells the reader something about transitional justice as a whole. I draw on my extensive field research with practitioners working in the spheres of transitional justice in BiH. This includes observing and interviewing practitioners representing forty-three institutions, organisations, and mechanisms within all sectors relating to the issues and aspirations of transitional justice: courts, truth commissions, government agencies working on reparations, international organisations conducting institutional reform, civil society organisations, museums, and research centres.[13] These actors

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[12] Kirsten Campbell, 'Reassembling International Justice: The Making of "the Social" in International Criminal Law and Transitional Justice' (2014) 8 International Journal of Transitional Justice 53, p. 66.

[13] A list of organisations which participated in this research, as well as those that were only studied through desk research where interviews were not available, can be found in Table

represented organisations which were established solely for a transitional justice-related reason (e.g., the 2004 Srebrenica Commission) and those who do not exclusively work towards transitional justice matters but have engaged in transitional justice-related activities through different projects or aspects of their mandate (e.g., municipal courts with a special jurisdiction to adjudicate atrocity crimes cases). The interviews and observations took place in 2019 and early 2020, in the last weeks of Europe's freedom from COVID-19 (or so we thought).

This field research has been complemented by in-depth desk research on transitional justice in BiH from its inceptions to recent developments. Part of this research was to screen all identified institutions, organisations, and mechanisms working on different aspects of transitional justice for references to non-recurrence and 'Never Again', and another part was developing a genealogy of the transitional justice project in BiH, outlined in Chapter 3. I relied on academic articles and books, international (non-)governmental organisations' reports and policy papers, legal documents such as peace agreements and UN General Assembly and Security Council resolutions, available in English and Bosnian/Croatian/Serbian, and interviews with practitioners formerly involved in the early days of transitional justice. In addition to academic, desk, and field research, the book demonstrates active monitoring of current affairs regarding transitional justice in BiH up until 2023 as evidenced through my engagement with numerous news sources from local and region media outlets such as *BIRN*, *N1*, *Radio Slobodna Evropa*, *AlJazeera Balkans*, and others.

How did a project designed to investigate non-recurrence bring me to anxiety and ontological (in)security? Without any preconceived, authoritative definitions of 'non-recurrence', I applied a flexible method of thematic data analysis which allowed for questions to evolve, and it made space for unforeseeable events and developments. This is how, over time, 'anxiety' emerged as a prominent theme in interlocutors' framing of their own experiences and understandings of non-recurrence. 'If we don't do this, or change that in our society, then repetition is likely' or 'this will go on until the next war' are kinds of statements I heard often. Methodologically speaking, what were the markers of such anxiety? In this book, I was interested in identifying anxiety as a mood – a social phenomenon generating collective disposition – rather than an

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A.1 in Appendix. Depending on their preferences, participants are cited under their full names, institutional affiliation, or fully anonymously.

individually held emotion.[14] The general 'mood' of anxiety was not inferred from behaviour, that is, a practice that appears to be ontological security-seeking,[15] but rather was discursively manifested in the analysed texts as well as in the interviews through phrases, constructions, and stories which pointed to a feeling or perceptions of feelings of unease and uncertainty about the collective future of peace. The way people spoke about such uncertainties and unease pointed to an intersubjective construction of 'anxiety' as it was also about other actors' actions based on personal experiences or interacting with them or those who represented them (e.g., interaction with some young people leads to statements about 'the youth'). The next step was to investigate the context in which these moods were expressed: in relation to what situations, practices, actors, or a lack thereof do people talk about these moods? As the contexts were identified, traces of the transitional justice project were searched for among them. Not everyone talked about the same kind of mechanisms, tools, and practices; in fact, a few people spoke of none. Yet, where they did, these experiences were grouped and organised into themes, as presented in Chapters 4, 5, and 6.

## 1.5    Impact and Significance

This is the first book-length, holistic, and empirically grounded English language investigation of the intersection between the imperatives of 'Never Again' and transitional justice. It is significant for both scholarly knowledge and policymaking in four core ways.

First, the book contributes to the ongoing challenges of the presumed benevolence of the transitional justice project both conceptually and empirically. Although it can sometimes fail to realise some of its goals on account of a range of domestic and/or international factors, the transitional justice project is largely treated as a benevolent project that engages in positive actions. In other words, transitional justice is commonly treated as a separate entity (defined or undefined) that *achieves*,[16]

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[14] Bahar Rumelili, '[Our] Age of Anxiety: Existentialism and the Current State of International Relations' (2021) 24 Journal of International Relations and Development 1020.

[15] Nina C Krickel-Choi, 'The Concept of Anxiety in Ontological Security Studies' (2022) 24 International Studies Review 1.

[16] For example, Nicola Summers, 'Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict' (2012) 25 Harvard Human Rights Journal 219.

contributes,[17] *shapes*,[18] or *promotes*[19] goals, values, and a range of social phenomena. 'Dealing' with the past in a combination of these proposed ways is therefore not only inherently 'good', although it may be challenging, but also necessary.

Scholarly concerns about whether and how transitional justice 'works' as a whole or through its parts have been long present. It would be impossible to list here all the critiques of transitional justice, nor there is a need to. Transitional justice as a whole has been repeatedly called legalistic, limited, linear, incapable of addressing systemic violations or root causes of such violations, and ultimately incomplete.[20] The issue is that many such critiques still largely confirm the belief of transitional justice as being inherently, or at least, on balance, benevolent; that some transitional justice is better than none, although some have of course proposed that its goals may be irreconcilable or even impossible to achieve.[21] Even within the growing scholarship on transformative (transitional) justice, there are debates about whether the goals of transformative justice, such as emphasising local agency and resources and challenging the existing power structures, can be sought within transitional justice as an existing project or outside it.[22] Because transformative justice writings rest on well-established critiques of transitional justice (e.g., that it is elite-oriented[23] and that it does not address structural violence[24]), it is ultimately a radically transformed transitional justice

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[17] For example, Patricia Lundy and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up' (2008) 35 Journal of Law and Society 265.

[18] For example, Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press 2004).

[19] For example, Lisa J Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework' (2008) 2 International Journal of Transitional Justice 331.

[20] For example, Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34 Journal of Law and Society 411; Padraig McAuliffe, 'Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?' (2010) 2 Hague Journal on the Rule of Law 127; Matthew Evans, 'Structural Violence, Socioeconomic Rights, and Transformative Justice' (2016) 15 Journal of Human Rights 1.

[21] Bronwyn Anne Leebaw, 'The Irreconcilable Goals of Transitional Justice' (2008) 30 Human Rights Quarterly 95; Catherine Turner, *Violence, Law and the Impossibility of Transitional Justice* (Routledge 2016).

[22] Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 International Journal of Transitional Justice 339, p. 340.

[23] Erin Daly, 'Transformative Justice: Charting a Path to Reconciliation' (2002) 12 International Legal Perspectives 73.

[24] Daire McGill, 'Different Violence, Different Justice? Taking Structural Violence Seriously in Post-Conflict and Transitional Justice Processes' (2017) 6 State Crime Journal 90.

where 'both the problem it seeks to address, and related responses and interventions' are rethought and reframed.[25] The underlying logic is the same – a conviction that transitional justice can and should *contribute* and make positive impacts on its subjects[26] – whereby the project is reaffirmed.

This book, on the contrary, does not concern itself with 'what works best' in a given repertoire of tools or norms. Instead, it seeks to contribute to scholarly discussion about how the given repertoire works, and continues to work, and to what end. Nagy opened a research path for considering transitional justice as a global project imbued with power, leaving certain rights, harms, and peoples behind.[27] Similarly to Nagy, Miller conceptualised transitional justice as an 'enterprise' on the premise that there is certainty around the objectives of transitional justice yet simultaneously a sense of 'uneasiness' about its means, results, and efficacy.[28] Practitioners understand the limits of the 'enterprise' but continue to portray it as the only or at least necessary response to violence.[29] Rowen also theorised the seemingly paradoxical characteristics of transitional justice, proposing that the project is malleable.[30] Both Rowen and Miller's work allow for a view of the transitional justice project as purposefully contradictory, both universal and context-specific, both flexible and precise all the while being treated as an inevitable response to mass human rights violations.

This book contributes to these discussions by proposing new ways to think through the limits, powers, and products of transitional justice as a global project. I build on the work of Nagy, Miller, and Rowen to suggest that the fact that there has been no consensus over how to do transitional justice or what transitional justice is good for begs the questions of not only the scope of transitional justice and whether it is inclusive of and

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[25] Gready and Robins, 'From Transitional to Transformative Justice', p. 355.

[26] Maja Davidovic and Catherine Turner, 'What Counts as Transitional Justice Scholarship? Citational Recognition and Disciplinary Hierarchies in Theory and Practice' (2023) 67 International Studies Quarterly 1.

[27] Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29 Third World Quarterly 276.

[28] Zinaida Miller, 'Embedded Ambivalence: Ungoverning Global Justice' (2020) 11 Transnational Legal Theory 353.

[29] ibid, p. 355.

[30] Jamie Rebecca Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge University Press 2017); Jamie Rebecca Rowen, '"We Don't Believe in Transitional Justice": Peace and the Politics of Legal Ideas in Colombia' (2017) 42 Law & Social Inquiry 622.

effective in addressing structural violence and gender inequality,[31] or violence against Indigenous people,[32] but also *what transitional justice is for*. It is through my examination of what the project is for that I carve a new pathway for exploring how the project, with its specific set of characteristics and practices of dealing with the past, shapes collective senses of self, self's position in the world, and future trajectories. This helps me expose the often-hidden harmful effects of the project on the sphere of ontological, and not purely physical, securities. By grounding the book in structuration theory, I also elaborate on the temporality of transitional justice to propose that, while transitional justice as a project is short-lived in a specific context, as a structure, it needs permanence over time and despite contexts. In that sense, 'dealing' with the past as a form of global governance aspires to be long-lasting, exhibiting both rigidity and flexibility to do so. In broader terms, the book is positioned as a contribution to knowledge about the productive work of such a global project, but also the constructions of its benevolence and necessity, in contexts to which it is exported.

Second, I comprehensively and empirically cover a topic that prominent scholars have highlighted as being 'a missing part' of the transitional justice puzzle.[33] The book expands on existing reviews of GNRs in transitional justice[34] by proposing that non-recurrence in transitional justice is broader in scope than GNRs; exploring the lived experiences of prevention of renewed conflict in a post-conflict context, and reconceptualising the links between the global project of transitional justice and non-recurrence. The book shows how lived experiences of conflict prevention are enabled and constrained by the structure of the transitional justice project and, at the same time, have the capacity to shape the tenets of the project itself. Preventing renewed conflict in a

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[31] Nagy, 'Transitional Justice as Global Project', p. 287.

[32] Miller, 'Embedded Ambivalence'.

[33] Clara Sandoval-Villalba, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition' in Roger Duthie and Paul Seils (eds.), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017); Pablo De Greiff, 'The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice' (2020) 14 International Journal of Transitional Justice 251.

[34] Naomi Roht-Arriaza, 'Measures of Non-Repetition in Transitional Justice: The Missing Link?' in Paul Gready and Simon Robins (eds.), *From Transitional to Transformative Justice* (Cambridge University Press 2019); Alexander Mayer-Rieckh, 'Guarantees of Non-Recurrence: An Approximation' (2017) 39 Human Rights Quarterly 416.

post-war context, therefore, cannot happen in isolation from social life nor from the rules and resources that bind the structure of transitional justice across space and time. It is these insights that allow me to propose a conceptualisation of non-recurrence in post-conflict societies beyond governance, a task perhaps more important than trying to salvage the transitional justice project through improvements. Non-recurrence is a goal above all goals that can continue to exist without the transitional justice project, but the transitional justice project needs non-recurrence as its overarching telos.

Third, the book also speaks to existing scholarship on ontological (in)security in International Relations and links it to transitional justice. The nexus between the two has rarely been explored. I build on the works by Mälksoo,[35] Subotic,[36] and Rumelili[37] by desegregating 'the state' and showing that there may be multiple ongoing battles for ontological security within a single state, as multiple actors compete for justice, truth, and peace in post-conflict spaces. While the former Yugoslav states eventually complied with their international transitional justice obligations, different actors within and beyond the state developed mnemonical security-oriented approaches to dealing with the past and sought to fix certain narratives of the past in social memories. The book enriches scholarly knowledge on this topic by providing an in-depth, long-term examination of a single case study; tracing how anxieties and ontological (in)securities develop over time and what factors support these developments; and exploring how multiple different mechanisms of conflict resolution and dealing with the past shape ontological (in)securities after a conflict. The book also responds to the critiques suggesting that ontological security studies are not interested in change[38] by exploring how different agents give meaning to practices for 'Never Again' and act in anxious times *with*,

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[35] Maria Mälksoo, 'The Transitional Justice and Foreign Policy Nexus: The Inefficient Causation of State Ontological Security-Seeking' (2019) 21 International Studies Review 373.

[36] Jelena Subotic, *Yellow Star, Red Star* (Cornell University Press 2019).

[37] Barak Rumelili, *Conflict Resolution and Ontological Security: Peace Anxieties* (Routledge 2015).

[38] Trine Flockhart, 'The Problem of Change in Constructivist Theory: Ontological Security Seeking and Agent Motivation' (2016) 42 Review of International Studies 799; Karl Gustafsson and Nina C Krickel-Choi, 'Returning to the Roots of Ontological Security: Insights from the Existentialist Anxiety Literature' (2020) 26 European Journal of International Relations 875.

*despite*, and *against* the global project of transitional justice. The book is significant in its critique of the global project of transitional justice as an aide of ontological insecurities, and for its imagining of what a less anxious future of BiH could look like.

Finally, although not written with an intent to change policy outcomes, the book makes for an important read for policymakers in BiH as well as those working on 'dealing with the past' more broadly. On the outside, BiH might be considered an 'over-researched' context that, with nearly thirty years of peace, is no longer of interest to donor communities. At the same time, BiH is continuously perceived as 'a failed state' or 'frozen conflict' that continues to test the security assurances on the margins of the European Union. The book provides a fresh outlook on this well-studied case. For those worried about the future of BiH, this book offers a more elaborate response to the question of whether and why peace in contemporary Bosnia may be in danger by looking beyond domestic ethnonationalist practices. It does so by examining the extraneous factors that have aided different forms of such ethnonationalism and elaborating on global ideational forces shaping post-war trajectories of this state, without taking any responsibility away from domestic political elites. For European security analysts and policymakers, the book provides a space to imagine a more meaningful peace for BiH and demonstrates how different civil society actors and activists are providing small but notable changes to that end. Because the book uses examples from BiH to reflect on the broader matters of global governance and prevention, it draws lessons for ongoing and future contexts of transitional justice. The claims, reflections, and imaginings presented in this book can speak to people and struggles of dealing with the past in ongoing conflicts, societies recovering from authoritarianism, those rebuilding after civil conflicts, and even societies eager to address historical injustices, as they all at different points may become the subjects of transitional justice governance.

## 1.6 Transitional Justice, Security, and Non-recurrence: A Brief History

The travels and transformations of the principle of non-recurrence into and through transitional justice can be understood effectively only in relation to transitional justice as a project born out of neoliberal legalist thinking, different from but complementary to human rights, and a vehicle of peace as much as of security. Different genealogical accounts

of transitional justice-like processes start with different events,[39] but generally, the notable early developments of transitional justice as we know it today were shaped by political transitions from oppressive regimes across Latin America.[40] Both non-recurrence and security as concepts and sought-after values played a role in these early makings of transitional justice. In countries such as Argentina and Chile, 'Never Again' enjoyed a prominent position and was utilised by many activists as a slogan shaping their calls for action. It was also in these countries that some staple mechanisms of transitional justice, namely truth commissions and criminal trials, were developed and trusted with the potential to contribute to the fulfilment of the 'Never Again' promise in practice. To be more precise, the ideas of 'Never Again' being more than a moral obligation and instead becoming an action-filled obligation which states owed to individuals were first developed here. The emphasis, in these early transitional justice interventions, was first and foremost on state security[41] and, secondly and relatedly, on human security, as the 'long-term human fulfilment'.[42]

In Argentina, during its transition from dictatorship, the National Commission on Disappeared People published a report entitled *Nunca Más = Never Again* in 1986. The name of the report was inspired by the activism and slogans used by groups of victims' families such as the Mothers of the Plaza de Mayo who had sought the truth about the children forcibly disappeared by the Argentine dictatorial regime since the late 1970s, and, later on, by other human rights organisations and exiles groups.[43] These activists, who were often simultaneously victims of the regime, sought to highlight the connections between the dictatorship and the crimes that had been perpetrated, contextualising the atrocities within the cycle of military interventions in Argentina.[44] The moral

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[39] Teitel begins her genealogy in the immediate post-WWII period, with the Nuremberg Tribunal. See Ruti Teitel, 'Transitional Justice Genealogy' (2003) 16 Harvard Human Rights Journal 69. Elster, on the other hand, seeks the roots of the first 'negotiated transition' in ancient Greece. Elster, *Closing the Books*.

[40] Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 Human Rights Quarterly 321.

[41] Iavor Rangelov and Ruti Teitel, 'Transitional Justice' in Mary Kaldor and Iavor Rangelov (eds.), *The Handbook of Global Security Policy* (Wiley 2014) pp. 338–51.

[42] Lauren Marie Balasco, 'The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice' (2013) 12 Journal of Human Rights 198, p. 208.

[43] Emilio Crenzel, 'Genesis, Uses, and Significations of the Nunca Más Report in Argentina' (2015) 42 Latin American Perspectives 20.

[44] ibid, pp. 22–3.

imperative of 'Never Again' became associated with the state and its institutions, as calls were made by the activists to investigate 'state terrorism' and, eventually, cleanse the state of its violence in order to prevent recurrence.[45] In the final report, the president of the Commission declared that 'only with democracy' can society be certain that these atrocities will be repeated 'never again'.[46] The *Nunca Más* report gained further importance for the Argentine public once it was offered and accepted as court evidence in the trials of military juntas and eventually reached the status of a bestseller, with translations in several other languages.[47] Secure and non-violent futures were linked to the state and its democratic values, principles, and structures.

The truth commission model and the resulting report carried the 'Never Again' promise with them into the very fabric of transitional justice as they were subsequently exported to various countries in Latin America, such as Guatemala and Paraguay, developing the project of 'justice in transition'.[48] The ultimate goal of the emerging interventions of 'justice in transition' in Latin America, be it a truth commission or a criminal trial, was to never experience such grave violations again and therefore to protect the citizens against further state oppression. The institutions of criminal tribunals and truth and reconciliation commissions became the most notable markers of the increasingly universalised platform for 'dealing' with the past. This made dealing with the past, and consequently the goals of such an intervention, both more tangible and actionable. The values enshrined in these mechanisms are reflected in the normative development of 'transitional justice' as a concept, as the early stages of such development demonstrate a focus on security of the state as well as on human security. While the state is being reformed into a 'better', more law-abiding, and effective formation, the relationship between the state and its citizens is restored, evidenced in state recognition of the citizens' dignity, values of accountability and transparency, and a more general reconstitution of the state security

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[45] ibid, p. 23.

[46] Marcos Zunino, *Justice Framed: A Genealogy of Transitional Justice* (Cambridge University Press 2019) p. 74.

[47] Crenzel, 'Genesis, Uses, and Significations', p. 20.

[48] Daniel Rothenberg (ed.), *Memory of Silence: The Guatemalan Truth Commission Report* (Palgrave Macmillan 2012); Fernando Cruz Artunduaga and Vera Podbornaya (eds.), *Comisiones de la Memoria, Verdad y Reconciliación* (Centro de Investigación por la Paz IDEASUR 2012).

structure so that it is no longer a threat, and therefore a source of insecurity, for its own population.[49]

These links between transitional justice, security, and non-recurrence remained evident as transitional justice became globalised. The making of 'transitional justice' as a distinct and necessary accomplice to peaceful and secure transitions to democracy was facilitated through planned and purposeful interactions of different actors such as human rights activists, legal scholars, journalists, donors, and policymakers who provided an 'intellectual framework' for the project,[50] making an inseparable link between it and the promise of 'Never Again' at the global level. These actors gathered, among others, at several 'justice in transition'-themed conferences in the late 1980s.[51] Already at one of these first conferences, Jose Zalaquett, a Chilean lawyer and later a commissioner at the Chilean National Commission on Truth and Reconciliation (TRC), began to advocate for concrete measures such as the state security reform to be undertaken for the purposes of 'guaranteeing to victims that violations would not be repeated'.[52] This is the language that, at that time, had only been used by the activists in Latin America and the Human Rights Committee.[53] Until then, the language of guaranteeing non-recurrence was reserved for diplomatic interstate disputes, by and large practised as a right of states.[54] But in 'justice in transition' developments, non-recurrence began to be conceptualised as a right of victims and an obligation of states towards their subjects. While shaping the field's boundaries, the promoted measures also gave normative content to the principle of 'Never Again' that was quickly conceptualised as an overarching objective of 'justice in transition' in Latin America.

In 1990, around the time these conferences were taking place, Zalaquett published a key piece on confronting human rights violations.[55] This article was not only important for its influence on the

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[49] Balasco, 'The Transitions of Transitional Justice'.

[50] Arthur, 'How "Transitions" Reshaped Human Rights', p. 327.

[51] ibid.

[52] ibid, p. 358.

[53] 'Ensuring that violations are not repeated' was the phrase typically used in the Human Rights Committee's recommendations issued to the violating state.

[54] Maja Davidovic, 'The Law of "Never Again": Transitional Justice and the Transformation of the Norm of Non-Recurrence' (2021) 15 International Journal of Transitional Justice 386.

[55] Jose Zalaquett, 'Confronting Human Rights Violations Committed by Former Governments: Applicable Principles and Political Constraints' (1990) 13 Hamline Law Review 623.

setting of the intellectual framework for transitional justice but also for feeding content into the norm of non-recurrence in both transitional justice and IHRL, as human rights lawyers were developing 'GNRs' as a form of reparations for human rights violations throughout the 1990s and into the early 2000s. In this article, Zalaquett outlined nearly all measures today known as 'GNRs' in core human rights documents on GNRs such as the UN Basic Principles of the Right to Remedy and Reparations.[56] He then saw 'dealing with transitional political situations' as 'a new area of human rights practice'.[57] Up until that point, Zalaquett observed, human rights organisations had dealt with these complex questions in the same way they responded to human rights violations committed by governments currently in place. Due to the myriad of (at the time) unanswered questions such as what international legal responsibilities governments have with respect to past human rights violations, Zalaquett found such efforts 'inadequate'.[58] He aspired to design a policy that would deal with past human rights violations in a more effective way.

Such a policy would have two general objectives: 'to prevent the recurrence of such abuses; and … repair the damage they have caused'.[59] Here we can also see the birth of the idea that transitional justice is both backward- and forward-looking.[60] The proof of Zalaquett's pioneering work lies in his discussion of the concrete contents of these policies. In support of his arguments, Zalaquett used examples from domestic practices in Guatemala, the Philippines, Spain, and Panama. Admitting that 'there exists no single formula for how best to prevent human rights violations', Zalaquett outlined the following new measures for preventing recurrence: (1) reinforcement of the legal system's protection of human rights (e.g., amending constitutions and signing human rights treaties); (2) reforming/strengthening institutions to reinforce the protection of human rights (judicial reform, human rights education, etc.).[61]

In the year after the article was published, Zalaquett sat on the Chilean TRC. The Commission's lengthy final report included a set of

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[56] ibid.
[57] ibid, p. 625.
[58] ibid.
[59] ibid, p. 628.
[60] Ruti Teitel, *Transitional Justice* (Oxford University Press 2000).
[61] Zalaquett, 'Confronting Human Rights Violations', p. 635.

recommendations regarding the prevention of human rights violations in this country, in line with its mandate.[62] In the introductory remarks written for the English language version of the report, Zalaquett repeated the two ultimate objectives of a 'justice in transition' policy from his 1990 article, preventing repetition of atrocities being one of them. In Zalaquett's words, the Commission's mission was to decide how such an objective could be achieved. The prevention recommendations stressed the 'significant flaws and shortcomings' of the domestic legal system that disabled it from effectively protecting human rights.[63] To that end, the Commission recommended a series of measures of institutional and legal reforms: aligning Chile's legal framework into line with IHRL, reforming the judicial branch (including legal training), ensuring that armed forces, security forces, and the police exercise their functions in complete accordance with the obligation to respect human rights, creating an institution to protect human rights, and making changes in the legal order in constitutional, criminal, and procedural matters to better protect human rights. These elaborate measures were an extension to the 1990 article by Zalaquett, although ideologically identical.

Zalaquett's interpretation of these various measures of *institutional* and *legal* reform as measures best preventing renewed human rights violations, and the subsequent practices of 'justice in transition', helped give content to the otherwise content ambiguous norm of GNRs in IHRL, forever tying the concept of non-recurrence, legally speaking, to the reforms of the state and its structures.[64] This is, in the briefest sense, how the principle of non-recurrence in IHRL became identified with and equated to a non-exhaustive list of measures of legal and institutional reform. The 'Never Again' promise became concrete, actionable, and achievable (as much as any promise can be) through better, reformed, human rights-friendly structures of the state. What transitional justice can do for security on the ground is reform the core structures of the state and improve the relationship between those structures and the people who survived mass violence and oppression from the former state structures, allowing the society to function and prosper as a democracy.

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[62] Center for Civil and Human Rights, *Report of the Chilean National Commission on Truth and Reconciliation* (University of Notre Dame Press 1993).

[63] ibid, p. 1075.

[64] Davidovic, 'The Law of "Never Again"'.

These promoted measures of non-recurrence in Latin America are unsurprising, for they are well-placed within the global end-of-the-Cold-War context. Arthur argues that the transfer of local-level advocacy against impunity, such as, for instance, in Chile and Argentina, to the international level was marked by a focus on the political change, thereby prioritising legal and institutional reforms over, for example, social justice issues. Such a deliberate preference shaped 'the initial conceptual boundaries for the field'.[65] Indeed, the Chilean TRC itself saw measures of legal and institutional reform as necessary but insufficient to ensure non-recurrence of violations and advocated for a consolidation of a culture truly respectful of human rights through education (formal, non-formal, and informal) and symbolic measures.[66] In particular, the TRC found it 'absolutely necessary that a space for broad public debate on human rights is open' by, for instance, organising public forums and carrying out cultural activities.[67] Yet these recommendations were not picked up and decontextualised as measures of non-recurrence at the level of IHRL or transitional justice policy, at least not until very recently. Instead, the links between institutional and legal reform and non-recurrence were preferred. These are characteristic of the overarching post-Cold War focus of the Western international community on security and the rule of law. In Eastern Europe at that time, reforming and controlling the security sector by new regimes became integral to the desired democratic and economic transformations of countries in transition. In broader international politics, 'good institutions' and 'good governance' emerged as the most sought-after values in aid-receiving, developing states, defining how successes of state- and peacebuilding, and therefore sustainable peace and ultimately non-recurrence, are measured.[68]

Soon after, however, transitional justice began to be conceptualised as a mechanism of international peace and security, making transitional justice processes important not solely for state–society relations in former autocracies but also for the seemingly global pledges to sustainable peace and prevention of mass atrocities of the international community, as the guarantor of peace and security. The ad hoc international

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[65] Arthur, 'How "Transitions" Reshaped Human Rights', p. 326.
[66] Davidovic, 'The Law of "Never Again"'.
[67] Center for Civil and Human Rights, *Report of the Chilean National Commission*, p. 1111.
[68] Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar 2017) pp. 26–8.

tribunals for Rwanda and the former Yugoslavia established in the 1990s made the link between transitional justice and international security very clear as their very foundations required evoking UNSC resolutions and positioning these tribunals as responses to conflicts essentially perceived as threats to international peace and security.[69] Crucially, since 2004, transitional justice has been included on the UN's agenda, often presented hand-in-hand with the rule of law objectives of the organisation.[70] Here, transitional justice is established as a crucial element in the UN's post-conflict security framework and, as Teitel asserts, 'the relevant questions of transitional justice are now considered part of the broader international commitment to human security'.[71]

At the UN, the two imperatives of non-recurrence and transitional justice have been connected from the very beginning of its positioning of transitional justice as a project of relevance for maintaining international peace and security. In the first major transitional justice report, in 2004, Secretary-General Kofi Annan wrote that it was the horrendous events of the 1990s that showed that there can be no immediate or long-term peace without appropriate redress for grievances and fair administration of justice.[72] In this report, it was believed that 'the root causes of conflict have often been left unaddressed' and that using legitimate and just approaches to address the causes of conflict can help societies avoid returning to conflict.[73] Ultimately, the UN wanted to draw lessons from former Yugoslavia, Rwanda, and other then-recent cases, claiming that *prevention* was one of the United Nations' main objectives in its transitional justice involvements.

Around the same time, high importance was given to transitional justice and the rule of law by the High Commissioner for Human Rights, Louise Arbour. In 2005, the Commission on Human Rights requested Arbour's office to conduct a study on transitional justice and human rights activities that had been done by agencies of the UN, hoping to learn from best practices and assist countries in their transitional

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[69] United Nations Security Council Resolution 827 (25 May 1993) UN Doc. S/RES/827; United Nations Security Council Resolution 955 (8 November 1994) UN Doc. S/RES/955.

[70] In the 2004 report, Kofi Annan stated that transitional justice had in fact been on the agenda of the General Assembly since 1993 as a concept entitled 'strengthening the rule of law'. See United Nations Secretary-General, 'The Rule of Law and Transitional Justice'.

[71] Ruti Teitel, 'Editorial Note-Transitional Justice Globalized' (2008) 2 International Journal of Transitional Justice 1, p. 3.

[72] United Nations Secretary-General, 'The Rule of Law and Transitional Justice'.

[73] ibid, para 4.

justice trajectories.[74] The Commission placed emphasis on prevention of further violations to which the totality of transitional justice processes and mechanisms contribute, stating that:

> exposing the truth regarding violations of human rights and international humanitarian law . . .; holding the perpetrators . . . accountable; obtaining justice and an effective remedy . . .; as well as preserving historical records of such violations and restoring the dignity of victims through public acknowledgement and commemoration of their suffering are integral to . . . the prevention of future violations.[75]

Moreover, in 2009, an analytical study on human rights and transitional justice was submitted to the Human Rights Council within the annual report of the Office of the High Commissioner for Human Rights.[76] Preventing recurrence of human rights violations, in comparison with previous reports by other UN organs, was more generally attached to institutional reform, on the hypothesis that fair and efficient public institutions allow governments to ensure non-recurrence.[77] In 2010, the Secretary-General published a guidance note on transitional justice in which the duty of prevention was discussed.[78] Importantly, this guidance note highlighted that transitional justice processes should 'ensure the right of victims to reparations, the right of victims and societies to know the truth about violations, and GNRs of violations, in accordance with international law'.[79]

While subsequent developments in both research and practice fixated on both trials and truth commissions, scholars and policymakers were less interested in understanding non-recurrence either qualitatively or quantitatively. In other words, the 'Never Again' promise was present simply as the backdrop of the most prominent mechanisms of transitional justice. This remained so until the UN revamped the 'Never Again' promise as 'GNRs', adding this otherwise developing legal norm more forcefully into the package of transitional justice tools. The UN's agenda

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[74] United Nations Commission on Human Rights, 'Human Rights and Transitional Justice. Human Rights Resolution 2005/70' (2005) UN Doc. E/CN.4/2005/L.10/Add.17.

[75] United Nations Commission on Human Rights, 'Human Rights Resolution 2005/81: Impunity' (21 April 2005) UN Doc. E/CN.4/RES/2005/81.

[76] United Nations Human Rights Council, 'Analytical Study on Human Rights and Transitional Justice' (2009) UN Doc. A/HRC/12/18.

[77] ibid.

[78] United Nations Secretary-General, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (United Nations 2010).

[79] ibid, p. 4.

on transitional justice culminated with the establishment of the mandate of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-repetition in 2011 by the Human Rights Council.[80] The Special Rapporteur is widely regarded as the 'transitional justice' rapporteur and truth, justice, reparations, and guarantees of non-repetition as the four pillars of the field.[81]

As a result, the ideas of non-recurrence are currently integrated into the transitional justice in several different forms. As explained earlier, consisting of a non-exhaustive list of measures of legal and institutional reform in international law, GNRs became a specific tool for ensuring non-recurrence, which confirmed that this promise could be fulfilled through law and its institutions. Simultaneously however, as this book will demonstrate, scholars and practitioners found that other tools in the transitional justice repertoire also have the potential to contribute to meaningful non-recurrence, while still maintaining the idea of ensuring non-recurrence of past violence as an actionable goal. Others continued to propose that transitional justice in toto aids non-recurrence.[82] It follows that the 'Never Again' promise is instrumentalised in contexts of mass violence around the world through all individual parts of the transitional justice project, whether working in isolation or harmony. In other words, while what about transitional justice exactly contributes to meaningful assurances of 'Never Again' is debated, there is a general acceptance among scholars and practitioners alike that something does. Therefore, the application of a combination of these measures of transitional justice, which give substance to the basic human rights norms, is believed to help make affected populations more secure; with that, it contributes, or so is believed, to a long-lasting 'Never Again'.

With its relevance for security, stability, reconstruction, as well as justice, transitional justice has become an urgent matter, one of the shiniest tools the international community led by the UN seems to have for fulfilling its prevention promises. It has been packaged in a multi-pillar model of solutions and subsequently exported across the world. Since the initial conferences on 'justice in transition' in the late 1980s, the

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[80] UN Human Rights Council, 'Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence' (13 October 2011) UN Doc. A/HRC/RES/18/7.

[81] For a recent such conceptualisation at the United Nations, see Rebecca Brubaker, *The UN Security Council and Transitional Justice: A Preliminary Look* (United Nations University Centre for Policy Research 2021).

[82] Duthie, *Transitional Justice and Prevention*, p. 1.

field has expanded vertically to include different kinds of actors other than the state, all of whom are seen as relevant and capable of practising transitional justice.[83] As a result of the professionalisation of the field, numerous specialist NGOs, projects, and even university courses on transitional justice followed, and transitional justice provisions have found a way into multiple peace agreements.[84] In addition, transitional justice has also stretched horizontally from originally being an area of research and practice in transitions from authoritarianism to democracy, to being applicable to a variety of different contexts around the world.[85] In its short lifespan, transitional justice has seemingly become 'the only legitimate response to conflict'.[86] From transitions from authoritarianism in Latin America to transitions from socialism in Eastern Europe and the Balkans; from civil conflicts in Sierra Leone, Uganda, and Mali to post-Arab Spring contexts in Tunisia and Libya; from neglected Cold War-era atrocities in Cambodia and Mexico to historical injustices towards Indigenous peoples in Canada and Australia; from ongoing wars in Ukraine and Syria to slavery legacies in the US – the global project of transitional justice is everywhere.[87]

## 1.7   Outline and Chapter Summaries

This book proceeds in seven chapters, each interweaving academic debates, and the formation of scholarly knowledge with illustrations, stories, and observations. Chapter 2 is a theoretical chapter; it serves to frame the book and provide it with its theoretical underpinnings, drawing on structuration theory and ontological security studies. This chapter invites the reader to become intrigued and think about the questions of this book in relation to the broader political world. I explore in more depth the claims of positive influence of different tools of the global project on non-recurrence, proposing that both scholars and

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[83] Thomas Obel Hansen, 'The Vertical and Horizontal Expansion of Transitional Justice' in Susanne Buckley-Zistel and others (eds.), *Transitional Justice Theories* (Routledge 2014) pp. 105–124.

[84] Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford University Press 2008).

[85] Hansen, 'The Vertical and Horizontal Expansion'.

[86] Turner, *Violence, Law and the Impossibility of Transitional Justice*, p. 22.

[87] An illustrative example of this global reach is the International Center of Transitional Justice which has thus far worked in more than fifty countries. International Center for Transitional Justice, *Where We Work*, www.ictj.org/where-we-work accessed 8 June 2023.

practitioners remain unsure of what 'works' while retaining their faith that something surely does; that some transitional justice is better than none. I delineate some common threads from these multiple promises of non-recurrence to reflect on the characteristics of transitional justice as a structure. The chapter proceeds to theoretically complicate the existing position of non-recurrence in transitional justice scholarship by asking questions about temporality, security, and the purpose of the transitional justice project. The chapter provides a new outlook on the ontological security/transitional justice nexus and discusses where non-recurrence fits within it.

Chapter 3 is a critical genealogy. This chapter rests on a history of the global project's trajectories in BiH to reevaluate contemporary conceptions of 'Never Again'. Its aim is to paint the picture of the material and ideational aspects of the transitional justice project in BiH, from the establishment of the ICTY in 1993, to the myriads of measures of institutional and legal reform advocated for or straightforwardly implemented by different actors of the international community present in transitional BiH. The chapter opens with brief background information about the dissolution of Yugoslavia and the war in BiH 1992–5. It illustrates the conflict resolution process and explains what kind of BiH was imagined in the 1995 Dayton Peace Agreement. In providing a skeleton of transitional justice in this country, it shows that certain areas of transitional justice, such as criminal justice and institutional reform, have been significantly more developed and invested in than others, putting these developments in the context of the promises of neoliberal legalism. Finally, this chapter poses questions about the end of the transitional justice project in BiH and muses on what remains of transitional justice in this country.

Chapters 4, 5, and 6 should be read as a triptych. They return the reader to the present day and narrate a story about what 'Never Again' means for the people of BiH and why, in response to the key questions set in the chapter. Drawing on interviews, observations, and life stories from BiH, each chapter in isolation tells an important part of this story, formulating a claim of transitional justice's complicity in the construction of conflict recurrence anxieties. Yet together, they complicate the images and illuminate the lived experiences of both 'Never Again' and transitional justice. Chapter 4 proposes that the lack of truth recovery, that is, a state-sponsored, state-wide consensus or even dialogue about the characteristics, dynamics, and consequences of the war, creates anxieties about potential conflict repetition. It further demonstrates how the

global project of transitional justice is complicit in creating and sustaining these anxieties. In particular, the chapter shows how the normative hierarchies of transitional justice and the positioning of the ICTY as a key source of the historical status quo helped enhance the building of multiple, competing, and often parallel biographical narratives about the war, many of which engage in historical revisionism.

In Chapter 5, I suggest that education more broadly, and history education in particular, can make or break meaningful assurances of conflict non-recurrence. In this chapter, I show that ethnically segregated history teaching in BiH plays a key role in the maintenance of a post-conflict status quo which has, for many people, frozen the anxiety around the uncertain future of peace in the country. The chapter further posits that the global project of transitional justice, while not responsible for the burgeoning ethnonationalism, has actively made bad situations worse with its short-sighted security priorities and general misunderstanding of security as lived experience. In particular, the chapter discusses how and why the ICTY undertook a role of an educator of the BiH youth and public and how the advocates of the transitional justice project have continued to ignore the complexity of the prevention needs of the BiH society.

Chapter 6 concludes the three-partite discussion about what hampers meaningful assurances of 'Never Again' in BiH and what transitional justice has to do with that. I identify the widespread glorification of war criminals and denial of atrocity crimes as key sources of anxiety about potential renewed conflict in BiH. The chapter explains these behaviours as responses to the perceived threats to different political communities' ontological securities. It analytically links these practices to the global project and discusses how past practices of legal and institutional reform such as vetting led to a legal structure that did not regulate convicted war criminals' access to power. The resulting widespread practices of glorification and the culture of denialism are framed by the international community as a 'civilisational issue' which serves to prolong the relevance and presence of the external actors in BiH and stigmatise actors in international society.

Like the preceding three chapters, Chapter 7 is an empirical chapter in the sense that it is grounded in field research in BiH and is about experiences and observations in and of BiH. It is different from the triptych in its outlook. While the preceding three chapters are critical, Chapter 7 can be described as hopeful. It asks the question of 'what now', having identified numerous sources of anxieties around a potential

renewed conflict in BiH, as helped or fully created by the global project of transitional justice. Here I am interested in changes *for* 'Never Again'. As such I explore how activists and practitioners in BiH resist and challenge the practices seen as harmful for non-recurrence, pushing different political communities towards a place of enhanced ontological security *with*, *despite*, and perhaps even *against* transitional justice. In this chapter, there are numerous illustrations of what people can do to challenge and change the post-conflict status quo across different aspects of action at the intersection of truth recovery, memorialisation, and education. I conceptualise and imagine non-recurrence beyond governance as not only resistance but also coexistence, binding, and healing.

Finally, Chapter 8 aims to draw wider conclusions about prevention of conflict repetition in and after transitional justice as a field of research, policy, and practice. I summarise where non-recurrence stands theoretically and practically in relation to the book's findings and stories of 'Never Again' as lived experience. Furthermore, I invite the reader to imagine the futures of prevention of conflict repetition and transitional justice, together as well as apart. The chapter ends by signalling how pertinent the 'Never Again' promise continues to be in the lives of millions of people and invites further research on the topic that will enrich the discipline with new contexts and perspectives.