

Collective Memories, Constricted Identities: Bosnia Hezegovina, Dayton and Post-war Legal Accountability

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Abstract: The paper considers what the construction of Bosnia Herzegovina as a state with fixed, parallel identities means for its rebuilding in the wake of genocide and war. It suggests that in the establishment through the Dayton Peace Agreement Framework of constricted constitutional identities for Bosnia Herzegovina, fixed as a form of power sharing arrangement, accountability has become secondary. What is promoted rather is a political and social order that enables a limited 'living together', both nationally within Bosnia Herzegovina and regionally, between Bosnia Herzegovina and Serbia. The study explores how the process of selective collective remembering and forgetting impacts the course of transitional justice and social repair processes.

Keywords: Identity, Accountability, Transitional justice, Collective memory, Bosnia Herzegovina, Constitutional change, Genocide, Social-repair

I. INTRODUCTION: NEW BEGINNING AND THE END THEREOF

The 1991 census conducted by the Republic of Bosnia and Herzegovina's (RBH) Department of Statistics dissected demographics per ethnic origin based on

people's self-identification. Ethnic affiliation was identified solely by the individual's self-definition: 'no objective criteria, such as knowledge of a certain language or belonging to a specific religion were required.' (BH Census, 1991: 10) The larger groups were comprised of Muslims (43.3%), Serbs (31.1876%), and Croats (17.36%), and smaller groups included Yugoslavs (5.529%), Bosnians (0.2451%), Montenegrins (0.2296%), Roma (0.2025%), Albanians (0.1125%), Ukrainians (0.0898%) and Slovenians (0.0518 %). The other sixty-four categories consisted of 0.08% or less of the total RBH population. The Jewish population numbered 0.009%. (BH Census, 1991:11) There were all together seventy-four categories in RBH and the common citizenship was Yugoslavian.

The 1992 RBH referendum on separation from Yugoslavia, with a vote of 64% of the population, decided that RBH would become a sovereign and independent State, separate to Yugoslavia. The new RBH constitution was based on international and European human rights principles that all citizens, regardless of their ethnic, racial or religious identification, had equal

rights, based on their national, RBH citizenship, not on their ethnicity.¹ The Bosnian Serb leadership who resisted RBH separation and independence from Yugoslavia instead proclaimed their own, State-like entity Republika Srpska (RS), which was on 8 October 1992, by the decision of the RBH constitutional court, pronounced unconstitutional. (Ibrahimagic, 2012:159)

After the 1992 referendum, RBH seemed to be on the path of becoming a promising modern, multicultural and secular European state whose independence from Yugoslavia was recognized diplomatically, with Croatia, Bulgaria, Slovenia, Turkey, Austria and Germany amongst the first to acknowledge the newly independent RBH state.

Fast forward to post-war Yugoslavia, and the new Dayton Peace Agreement Framework (DPAF). RBH's ethnic plurality as recorded in 1991 became reconstructed, restricted, reduced and finally *re-imagined*. From the seventy-four ethnic categories captured in the 1991 census, the new post-war-post-Dayton state would not only emerge with the new name Bosnia and Herzegovina (BH), but also with only three ethnic categories, now known as the 'constituent peoples': *Bosniacs* (Sunni Muslims), *Bosnian Serbs* (Christian Orthodox) and *Bosnian Croats* (Christian Catholics). Those who did not fit into these categories would become '*the others*'. This new construct, written by the international community into the new constitution, was introduced in the name of peace making and peace-building. Yet it raises the question as to how a peace can be built when it is based on identities *imagined* and fixed through conflict. Further, the extent to which this political construct of 'reconciliation' thwarts accountability for the genocide perpetrated.

This article examines the implications of the post-war construction of BH as a state with fixed identities for its transition and State rebuilding process. It suggests that through this establishment of a framework to enable political reconciliation, a basic 'peace', where limited constitutional identities have been fixed as a form of power-sharing arrangement, accountability has become secondary. What is promoted, rather, is a form of political and social order that reinforces division and establishes a limited 'living together', both nationally within BH and also regionally, between BH and Serbia.

This separation of national identities has become fixed both in BH and across the region. As a consequence, the process of accountability is also restricted, to individual ethnic rather than state accountability. Serbia's continuous denial of both the occurrence of genocide, and its responsibility for it, further makes the achievement of accountability remote.

Section II of the article examines the establishment of the Dayton framework that mandated the three 'constituent' identities and how this re-imagining of the Bosnian state has legitimized the principle of ethno-territorialism and subsumed accountability and basic human rights.

Section III explores the manner in which accountability for the war has been understood primarily as ethnic and individual, rather than a form of state or institutional accountability.

Section IV looks at the problem of the politics of denial, which have further impeded post-war accountability. The politics of denial make BH vanish in its own, perpetual transition.

II. DISINTEGRATION: STATES IN THE MAKING, PEOPLE IN THE MAKING

Soon after the 1992 referendum that proclaimed independence from Yugoslavia, RBH found itself under heavy artillery fire. In April 1992, RBH was at war and Sarajevo was under siege surrounded by the Yugoslav National Army (JNA) and JNA sponsored RS paramilitary forces. Due to their geopolitical proximity to Western Europe, their economic advantages and relative ethnic homogeneity, both Slovenia and Croatia broke off from the Yugoslav Federation relatively easily. This is only when compared with the violent war in RBH. However, unlike Slovenia, Croatia suffered great loss during three months of bloodshed in Zagreb, Vukovar and Dubrovnik. The battle of Vukovar resulted in a massacre and the city fell to Serbian control on 18 November 1991. Most of the city was destroyed, with the majority of the population forced to flee. The city of Dubrovnik was also under fire for the duration of three months. Kosovo, due to its historical significance in Serbian ethno-mythology, would first suffer discrimination in the eighties when Kosovo Albanians were removed from government institutions, and later sustained massive violence and tragic loss of life in 1998 when they became the systematic targets of planned executions on immense scale. (OSCE, 2009)

Due to its largely inter-mixed population and locality (bounded geographically by Serbia on one side and Croatia on the other) BH's breakup from Yugoslavia had devastating results; more than three years of unthinkable carnage that took genocidal proportions. The war in Bosnia lasted for almost four years, from April 1992 to the end of the siege of Sarajevo in February 1996. In the name of a 'Greater Serbia' it resulted in

over 300,000 deaths, mainly Bosnian Muslims, enforced removal of people, torture, forced labour and systematic rape in concentration camps, mass executions, siege of entire cities, starvation and manufactured mass-terror with the purpose to divide people across ethno-territorial lines, turning them against each-other. In its first verdict, against Duško Tadić on 7 May 1997, the ICTY was to find that BH had been the target of a planned and systematic genocide. (ICTY, 1997) The strategy completely destroyed the milieu of a multi-ethnic BH.

Despite this, one fourth of top BH Army Generals who fought against Serbia and their paramilitary were not ethnic "Bosniacs." For example, high-ranking RBH military officers such as Jovan Divjak, Stjepan Šiber, Željko Knez, Blaž Kraljević and Ilija Jurišić were all Bosnian nationals and ethnically non-Bosniacs, but all refused to turn against BH and take side with the Serbian led Yugoslav National Army *Jugoslovenska Narodna Armija* (JNA). They remained loyal to BH.²

In September 1995, NATO operation 'Deliberate Force' led by the U.S. would finally put an end to the horrors in Bosnia by firing at Serbian military targets, repeated in November 1995, and later in 1999. The ceasefire resulted in an inter-State peace agreement negotiated by Richard Holbrook and finalized at Wright-Patterson Air Force base near Dayton in the fall of 1995. (Amanpour, 2010) The signatories included the President of Serbia, Slobodan Milošević who represented the interests of Serbs in BH, the President of Croatia Franjo Tuđman who represented the interests of Croats in BH, and the President of BH Alija Izetbegović, together with the Foreign Minister Muhamed Sacirbey, representing Bosniacs and all citizens of Bosnia-Herzegovina.³

The General Framework Agreement for Peace (DPAF)— an American led political agreement, halted the war, but it also brought the death of the emerging modern, human rights compliant, diverse and secular RBH.⁴ Designed as ‘a comprehensive settlement to bring an end to the tragic conflict in the region’, and ‘to promote an enduring peace and stability’, its primary goal was that of securing political and social order. Dayton created a new state—BH, and established the legal basis for the administrative, territorial and political disintegration of RBH.

The DPAF’s Annex 4 also established the new BH constitution, but without any democratic domestic participation. With the new constitution written in English as the original language, the pre-war seventy-four BH national categories (listed in the 1991 RBH census) have *de jure* been reduced to three *reimagined identities* that today form the ‘constituent peoples’ of BH: *Bosniacs, Croats, and Serbs*. The BH constitution does not recognize identities outside of these three categories, labelling them as ‘the others’.⁵ It further legitimized Republika Srpska, thus overwriting the 1992 decision of the RBH Constitutional Court that found it un-constitutional. This ethno-territorial centric approach to polity gives credence to the original separatist ambitions of Milošević and Radovan Karadžić, the Bosnian Serb leader and the first President of RS, responsible for commanding the siege of Sarajevo, the genocide at Srebrenica, and other massacres within Bosnia. (Remet, 1996) With this agreement, as the European Court of Human Rights was to later determine, the new BH constitution legitimized and linked ‘an ethnic group to the specific territory, formally establishing a new state founded on the principles of “ethno-territorialism.”’ (ECtHR, 2009)

The new DPAF arrangement has made the business of governing in BH financially costly, administratively difficult, timely and politically protracted, besieged by particular political, ethnic interests. DPAF further fails to reflect the human rights vision of the cosmopolitan, pre-war BH constitutional arrangement. The ethno-nationalist politics that began the war are now, through the Dayton peace agreement and the subsequent constitution, legitimized and deeply embedded in the socio-political realities of BH everyday life.

The European Union has also been increasingly concerned about the constitutional privileging of three ethnic groups, as under the *European Convention of Human Rights* this is a violation of “[r] espect for democratic principles and the right to equal treatment without discrimination [...]”. (European Commission Report, 2011-2012)

The new shape of post-Dayton Bosnia was further exposed in the recent appeal to the *European Court of Human Rights* (ECtHR) that saw a Bosnian of Jewish origin and a Bosnian of Roma origin bring separate cases (that were later joined) against the State of Bosnia-Herzegovina, alleging discrimination. Both Mr Dervo Sejdic and Mr Jakub Finci had been deemed ineligible to stand for election for all central state organs such as the Parliamentary Assembly and its two chambers; the House of Peoples and the House of Representatives, on the basis that they failed to affiliate with one of the three ‘constituent peoples’: Bosniac, Serb and Croat. They both alleged racial discrimination, with Mr Sejdic arguing that ‘his ineligibility to stand for election to the House of Peoples and the Presidency on the ground of his Roma origin effectively reduced him’ and other members of national minorities in Bosnia and

Herzegovina 'to the status of second-class citizens.' (ECtHR, 2009)

Another discriminatory case is that of Dr Ilias Pilav, who despite belonging to a 'constituent' group (Bosnian) cannot run for President in Republika Srpska (RS). In RS, his group constitutes an ethnic minority. Dr. Pilav has alleged discrimination on ethnic grounds before the BH Constitutional Court in 2006 citing that '[u]nder the constitution agreed at Dayton, a Serb must represent Bosnia's Serbs, a Croat the Croats, a Muslim the Muslims.'⁶ Dr. Pilav charges BH for discrimination before the ECtHR, where he awaits a final decision. These cases highlight the absurdity of the new post war constitutional framework reinforced by Dayton.

II. CONSTRICTED IDENTITIES, INDIVIDUAL ACCOUNTABILITIES

What may be understood as a means of political and social order – the establishment of three 'constituent peoples' that ended the war and brokered a political and social arrangement that has led to a form of peace - has also had consequences for how the war is remembered and what accountability may be possible. This 'freezing' of identities has its consequences: one is the focus on individual ethnic accountability rather than a broader state accountability; another is the inability to create a framework for a common memory. Social and political governance, in many ways, are usurping accountability, and state transition for Bosnia as a democratic and human rights state.

One of the defining features of post-war accountability for the war in Yugoslavia has been this focus on individual accountability. The failure to establish state and institutional accountability has been notable in both international and national processes. Despite the

important naming of genocide for the massacres in Srebrenica, the *International Court of Justice* (ICJ) failed to find the state of Serbia responsible for the genocide.⁷ At the international level, the ICTY has focused on individual ethnic actors in the war. At the domestic level, the War Crimes Chamber in BH and the state Court of BH have both focused on individuals' criminal accountability. Recently, there have been some, albeit limited, efforts to establish individuals' civil liability transnationally.⁸

What this individual justice focus means is a lack of recognition of the type of crime perpetrated, as state directed and part of state policy – 'in the name of the state' - both the current state (Serbia) and the 'state to be' (RS). (see Balint 2012) The problem has been identified by Rapporteur James Crawford who in summarizing the International Law Commission's deliberations on state crime in the late 1990s, noted the 'reality that State structures may be involved in wholesale criminal conduct – in genocide, in attempts to extinguish States and to expel or enslave their peoples'. (Crawford, 1998: 7) This was the reality of the war and genocide in, and over, BH that Serbia orchestrated through the JNA and RS by providing weapons, military support, propaganda machinery and directions for designing a new geo-political order. (ICTY, 20 Oct 2011)

The individual focus can be found at both the international and the domestic level. The ICTY, in the Hague, was established by the United Nations to 'put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them', and in so doing to 'contribute to the restoration and maintenance of peace and 'to contribute to ensuring that such violations are halted and effectively redressed'. It did not halt the violations: the Srebrenica genocide

was perpetrated a year after its establishment. The ICTY has, however, been effective in bringing to justice many of the individuals who were responsible. So far it has indicted 161 individuals, and sentenced 69 (with 18 acquitted, 36 indictments withdrawn, and 25 ongoing). Most notably, it has held trials of former President of Serbia Slobodan Milošević (who died part way through the trial), former President of RS Radovan Karadžić, and former Bosnian Serb leader Ratko Mladić currently ongoing.⁹

Yet, these have all been individual convictions, and mostly individual legal stories of accountability told, removed from the broader story of the war in the former Yugoslavia. Their criminal responsibility, dislocated from a broader state institutional accountability framework – for war crimes, crimes against humanity, and genocide – has had little meaning or resonance in the region. This is despite some attempts to get to the institutional nature of the crimes perpetrated—Milošević was indicted as a former head of state, and his charges (for Kosovo, Bosnia-Herzegovina and Croatia) were deliberately joined.

The ICTY was expected to establish an historic account that would end disagreements and determine the chain of responsibility for the past crimes committed in Croatia, Bosnia-Herzegovina and Kosovo. A Truth and Reconciliation Commission for BH was never established, although there were many attempts to do so. The ICTY, however, presently lacks legitimacy in Serbia and RS and for Serbs it continues to represent only a ‘political body’ with a bias that manifests itself in the disproportional prosecution of Serbs in total number of cases per ethnic origin and does not represent their complicity in committing these crimes. Out of 10,000 persons interviewed in 2002, only four per-

cent of BH Serbs believed in the ICTY’s administration of justice, whereas in the BH Federation that percentage was significant; fifty-one percent.¹⁰ With the recent acquittal of Kosovo’s Ramush Haradinaj, Croatia’s Ante Gotovina and Serbia’s General Perišić, the ICTY has been criticized for unfair distribution and the politicization of justice.¹¹

While an individual judgment may provide an important account of a particular conflict, the form of the criminal trial means that any accountability will rest only with the individual—there is no possibility of the allocation of a wider accountability. This individual focus has also meant that the critical role of Serbia in the violence and in supporting the RS has not been articulated at the ICTY and elsewhere. The failure to tell a broader story of the conflict, and the institutional accountabilities within it, limits its ability to provide a space for a future shared regional memory.

Domestically, this ethnic and individual focus has been problematic and self-perpetuating. Each new nation prosecutes individuals from the opposing side. The Court of BH was established in 2002 by the decision of the BH High Representative and it has administrative, appellate and criminal jurisdiction. Unlike the ICTY an *ad hoc* temporary tribunal, the Court of BH is a permanent judicial body. It has four international and fifty local judges and is funded by international and domestic funds. Under the *bis 11* of the ICTY strategy, the tribunal will be closing in July 2014 and it has to transfer low to mid level ranking and partially investigated cases, to BH authorities.

The substantive criticism against the Court of BH comes from Republika Srpska. It maintains that because the Court of BH was established by the decision of the High Representative, the Court of BH is not con-

stitutional. RS asserts that post-Dayton constitution grants such judicial authorities to entities (Republika Srpska and Federation of Bosnia and Herzegovina), whereas the only court with authorities outside of their scope is the BH Constitutional court. This push for courts at the local level, and for individual prosecutions, further reinforces accountability as ‘ethnic’ not institutional.

These judgements are also increasingly falling short of creating a public record. The court takes extensive measures into protecting rights of convicted individuals, whereas the measures to protect the identity of victims and protected witnesses are not so elaborate. (Nezavisne Novine, 2013) Victims associations in BH and Balkan Investigative Reporting Network (BIRN) have recently illustrated how the decision of the Court of BH to withdraw publicly available names and surnames of the individuals convicted for war crimes or terrorism affects public access to information. As the Court of BH applies elaborate measures to protect the convicted persons’ identity (replacing full names with initials, first letter of the municipality of residence and the municipality of birth, instead of the full names and initials of the guilty party’s parents names, using initials and making only first 10 minutes of court hearings’ audio recordings available to media and public), such judicial decisions of the Court of BH may have little social significance. (Slobodna Evropa, 2013)

IV. THE STATE IN PERPETUAL CONDITION OF TRANSITION

The systematic and ingrained denial of genocide, both at the state level and mirrored by many in Serbia and RS, further impedes any process of accountability amongst and within the states of the former Yugoslavia.

When there is no acknowledgment by those involved, and those responsible, the process of accountability becomes a difficult one. This is particularly so in the case of the former Yugoslavia and the genocide in Bosnia, where the war has cemented the differences, and denials, with the continuation of separate nation states. With no recognition by Serbia of their actions, there is no prospect of state accountability. While it has been well documented that the bloodshed in BH resulted in about 300,000 dead and about one million displaced and thousands missing, victims of this war still go unacknowledged.

A recent OSCE study on collective memory and acknowledgement indicates that 71% of interviewed Serbs in Serbia possess some form of knowledge about the genocide in Srebrenica, but only half of them believe that it really happened. (OSCE, 2006) Denial of historic facts, failure to assume responsibility or remorse manifests itself in the daily political rhetoric in Republika Srpska and also in Serbia where indicted and convicted war criminals such as Biljana Plavšić, former President of Republika Srpska, are often perceived as heroes—‘exceptional individuals who have demonstrated extraordinary achievements in socio-political, economic and cultural development of and in their contribution to defend’ Serbhood and Republika Srpska. Republika Srpska makes exceptional pensions available for those persons who provided special contribution to the Serbian national cause.¹²

The denial rhetoric began in 1992 as Serbian state news and public statements continually discredited foreign media reports, proclaiming that they were either fake, or fabricated images of ‘Serbia’s civilian casualties’ as Muslims. In the daily *Politika* newspaper it was claimed that the Serbian public should dismiss

foreign media news reports as they were created by the West only to criticize and 'put blame on Serbs' and that the war in BH was only a 'plot against Serbian people.'

Nataša Kandić, the Director of the Humanitarian Law Centre (HLC), in Belgrade, Serbia explains that there is hardly any remorse expressed by the government of Serbia for the past crimes committed in BH. As she notes: 'Genocide is a forbidden word in the Serbian language. The Serbian government's position regarding genocide in BH has so far been disassociation'. (Kandic, 2011) When in 2005, a video of the killing of six Muslim men in 2005 aired on Serbian television, for 'the first time, the Serbian public saw incontrovertible evidence of the state's involvement in massacring 7,000 Muslims there', instead of the state assuming responsibility and addressing it, Serbia had five men arrested and declared members of a criminal group. (Kandic, 2011) The events were fully disassociated from the state institutions.

The ICJ judgment fuelled the denials prevalent in Serbia, as it failed to prove Serbia's direct involvement in committing genocide in BH. (Cassese, 2007) The notion of Serbian victimhood remains a central aspect of national identity. Historically, the Serbian nation-state building process has been heavily driven by the doctrine centered on the 'portrayal of wartime Serbia as primarily anti-Axis, as innocent of complicity in the Holocaust, and as throughout history a victimized nation.' (Cohen, 1996) This doctrine would shape Serbian post-war affairs. In the 1980s, the reinvention of the Serbian role in World War II would become a crucial factor in its efforts to win foreign sympathy and support for a revived nationalist agenda. (Cohen, 1996) In so doing, RS and Serbia attempt to establish a 'his-

torical equilibrium', whereby a number of terrible things have been committed over the centuries, equally on all sides, rather than particular atrocities which can be named, such as the genocide in Srebrenica.

When there is no acknowledgment by those involved, and those responsible, the process of accountability becomes a difficult one. With no recognition by Serbia of their actions, there is no prospect of state accountability. As Arendt wrote on observing Adolf Eichmann's trial, it might be that "the eternally unrepentant criminal" is unable to "face reality because his crime has become part and parcel of it." (Arendt, 2006: 52) Similarities could be observed in Milosevic's trial in which the reality of an independent Serbia has been built on the genocide in Bosnia-Herzegovina.

V. CONCLUSION

In transitional societies, justice processes can serve the role of reaffirming the norms intended to help establish the new social and political order. Law can be a form of 'foundational moment', allowing for the establishment of a new normative order, marking a moment between past and future. (Jelin, 1994/ Balint, 2012) Trials become an arena where collective memories and 'conflicting accounts of recent history' and judgments are represented, where people ultimately 'share the view that some resolution of this disagreement must be reached among themselves for the country to set itself back on track.' (Osiel, 2000)

We have seen this in different historic accounts and transitional justice settings, where political-legal processes have served the purpose of establishing authoritative statements that serve as a 'collective memory'.

These do not necessarily override individual or communal memories, but rather assist the process of creating an authoritative set of facts that is uncontested publicly.

Thus far facts over the war in BH are still publically contested on a daily basis. Denial and lack of accountability impedes national recovery and reconstruction in BH. Genocide scholar and psychologist Israel Charny has shown how denial can further victimization that ‘attacks the historical spirit and morale of the survivor victim people, and place[s] further burdens on their recovery and reorganization as a viable and proved national/cultural entity.’(Charny, 1991: 22)

Despite international legal recognition at the ICJ and the ICTY, Bosniacs must continually struggle for recognition in their region and battle continuous denial by RS and Serbia. This lack of a common understanding further cements separate identities and separate, parallel histories—internally and across the former Yugoslavia. The process reinforces the *re-invented* ethno-territorial identities, irreconcilable with the pre-war multi-ethnic milieu of the Republic of Bosnia and Herzegovina.

ENDNOTES

- [1] The RBH Constitution of 1993, in Article 87 stipulates that ‘Citizens are guaranteed freedom to belong to the nation; express freely their cultural belonging and use language and letter.’ Citizens are not responsible to declare to which nation s/he belongs, nor to belong to one of the nations. National inequality and any measures of national, racial or religious hatred or intolerance are deemed un-constitutional and anyone who promotes or undertakes will be held accountable for promoting or using such measures. [trans., A.B]
- [2] There has been a political hunt against those Serbs who did not side with the JNA during the war in BH. For example, Jurišić has

Politically, in the freezing of identities through the Dayton agreement we can observe a ‘going backwards’ to a time of state-fuelled ethnic conflict rather than a framework for a social and political order that would mirror pre-war BH and provide a framework for a human rights compliant BH. The dominant focus on a social order that reasserts ethnic identities has created an impasse for Bosnia in transition. A focus on ethnicities has also meant a focus on individual ethnic accountability for the war. None of the political legal processes have provided a framework for a regional account, and some, including the Dayton Agreement, in reinforcing division, have actively impeded this goal. The BH government acknowledged in the European Court of Human Rights case of *Finci and Sejdić v. BH* that ‘the ultimate goal [of the current constitutional structure in Bosnia and Herzegovina] was the establishment of peace and dialogue between the three main ethnic groups – the “constituent peoples”.’ (ECtHR, 2009) In BH today there may be (negative) peace, but peace does not equate to justice nor is a basis for rebuilding a robust, human rights compliant state.

- been arrested and is currently tried in Belgrade for alleged breaches of Geneva Convention against JNA, an incident that took place in Tuzla, at the beginning of the war in BH. It is feared that Mr. Jurišić, who is a BH national will not receive a fair trial for he did not take the JNA side in war in BH. Another example is that of General Jovan Divjak, natively from Serbia, who has been detained in Vienna, Austria pursuant to a Serbian international warrant. Serbia accused General Divjak of violation of the Geneva Convention as he commanded the BH army in the war resisting Serbian led forces. Divjak returned to BH, after Austria denied a Serbian request for extradition. See also District Court in Belgrade, Prosecutor v. Illija Jurisic 2007.
- [3] The DPAF negotiation team included the U.S. Secretary of State-Warren Christopher and Richard Holbrook, the EU Special Rep-

representative-Carl Bildt and the First Deputy Foreign Minister of Russia-Igor Ivanov. The military team included the U.S. General-Wesley Clark and the U.K Col-Arunderll David Leakey and Paul Williams-the legal counsel to the Bosnian Government, the Public International Law and Policy. The Dayton Peace Agreement, "The General Framework Agreement," ed. Office of the High Representative. Sarajevo, Bosnia and Herzegovina: OHR, 1995.

- [4] Arguably, Bosnian State leadership was pressured into accepting the agreement that went against their own national interest and ultimately resulted in redesigning BH across new ethno-territorial lines. Server, 2013.
- [5] The preamble of the new Constitution states: 'Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine...'
- [6] More specifically, pursuant to Article 8.1 paragraph 2 of the BH Election Law: "the member of the Presidency that shall be directly elected from the territory of RS – one Serb shall be elected by voters registered to vote in RS. A candidate who gets the highest number of votes shall be elected."
- [7] Hartman, 2007 explains the political challenges that Bosnia and Herzegovina have faced when attempting to prove Serbia's direct responsibility before the ICJ, as Serbia concealed important documents from the ICTY that would help prove their responsibility.
- [8] Such examples have been the U.S. Court of Appeals for the Second Circuit, "Kadic V. Karadzic." 2005., and Tribunal de Grande Instance de Paris, "Kovac et al. v. Karadzic et al., 2011. Despite the favorable court decision, victims have never received their money. International civil law faces significant challenges in regards to execution of such decisions. Without domestic judicial cooperation, such decisions might never be enforced.
- [9] Despite being the court of justice mandated to address individual criminal responsibility for the crimes committed between 1991-1995 in the states of the former Yugoslavia, Milosevic had used the ICTY as a platform for his own political games. Instead of responding to the charges, Milosevic used every opportunity to articulate his counter-charges. During his hearings, he often presented Serbia as a victim of a Western plot to destroy and discredit the state and the ICTY—as created by the political decision of the UN Security Council, an illegitimate court mandated to destroy both Serbia as a state and him as its president. Sheffer, 2004.
- [10] International Center for Transitional Justice. "Bosnia and Herzegovina: Selected Developments in Transitional Justice," in Case Study Series 2004. Recently leaked letter written by Danish judge Frederick Harhoff alleges the ICTY's political bias and disappointment as 'murderers go free.' Available at: <http://www.bt.dk/udland/english-version-murderers-are-being-allowed-to-go-free>. Also, Agence France-Presse, "The UN prosecutor to appeal after Yugoslav acquittals attacked." June 24, 2013 15:16 Available: <http://www.globalpost.com/dispatch/news/afp/130624/un-prosecutor-appeal-after-yugoslav-acquittals-attacked>
- [11] The RS Law on the rights of war veterans, war invalids and families of fallen soldiers in the defensive, patriotic war O.G: 1-2079/11 (translated into English by A.B); Zakon o Pravima Boraca, Vojnih Invalida i Porodica Odbrambeno Otadžbinskog Rata Republike Srpske Broj:01-2079/11 Available: <http://advokatibijeljina.com/zakon-o-pravima-boraca/#sthash.ODvoRin1.dpuf> The law stipulates rights of those who fought on the side of JNA and the Serb army in BH. The others are labeled as the enemies and as such cannot exercise rights to entitlements under this law. See also Buka, 'Karadzic Izuzetan Penzioner' 31.05.2011. Available: <http://www.6yka.com/novost/9888/karadzic-izuzetan-penzioner->

REFERENCES

- [1] --ed. The Constitutional Court of Bosnia and Herzegovina, 2006. AP-2678/06., "Decision on Admissibility and Merits; Appeal of Stranka Za Bosnu i Hercegovinu (Party for Bosnia and Herzegovina) and Mr. Ilijas Pilav "
- [2] -- "Bosnia: Republika Srpska Vows to Hold Referendum on War Crimes Cooperation; How Will the International Community Respond", ISA Intel: Middle East, Europe, Africa: Red flag due diligence, Tactical and Strategic operations. Available: <http://www.isaintel.com/2011/04/15/bosnia-republika-srpska-vows-to-hold-referendum-on-war-crimes-cooperation-how-will-the-international-community-respond/>
- [3] Agence France-Presse, "The UN prosecutor to appeal after Yugoslav acquittals attacked." June 24, 2013 15:06
- [4] Amanpour, Christiane. "Holbrook; Why I Mourn." *The New Republic*, December 20, 2010.
- [5] Arendt, Hannah *Eichmann in Jerusalem: A Report on the Banality of Evil* (UK: Penguin Books, 2006).

- [6] Balint, Jennifer. *Genocide, State Crime, and the Law : In the Name of the State*. London: Routledge, 2012.
- [7] *BH Census: Popis Stanovništva, Domacinstava, Stanova i Poljoprivrednih Gazdinstava 1991*. Sarajevo, Bosna i Hercegovina: Zavod za Statistiku Bosne i Hercegovine, 1993
- [8] BH Election Law, Available: <http://www.refworld.org/pdfid/4d2d91252.pdf>
- [9] Cassese, Antonio. "The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia." *The European Journal of International Law* 18, no. 4 (2007): 649–668.
- [10] Buka, 'Karadzic Izuzetan Penzioner' 31.05.2011. Available: <http://www.6yka.com/novost/9888/karadzic-izuzetan-penzioner->
- [11] Charny Israel W., "The psychology of the denial of known genocides", in I. W. Charny (ed), *Genocide: A Critical Bibliographic Review. Vol 2., Facts on File*, 1991
- [12] Crawford, James, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*. Cambridge University Press 2012.
- [13] Dayton Peace Agreement, "The General Framework Agreement," ed. Office of the High Representative (Sarajevo, Bosnia and Herzegovina: OHR, 1995.
- [14] District Court in Belgrade, "Tuzla Column (Prosecutor. v. Ilija Jurišić)," ed. Office of the War Crimes Prosecution. Belgrade, Serbia 2007
- [15] European Court of Human Rights; Cour Européenne des Droits de l'Homme, "Case of Sejdic and Finci V. Bosnia and Herzegovina." 27996/06 and 34836/06., Strasbourg, 2009.
- [16] European Commission Progress Report 2011-2012, "Commission Staff Working Paper: Bosnia and Herzegovina 2011 Progress Report. Accompanying the Document Communication from the Commission to the European Parliament to the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2011-2012.
- [17] Hartmann, Florence. *Mir I Kazna: Tajni Ratovi Medjunarodne Politike i Pravosudja*, 2007.
- [18] Hartmann, Florence. "Vital Genocide Documents Concealed." Bosnian Institute, 2008. Available: http://www.bosnia.org.uk/news/news_body.cfm?newsid=2341
- [19] Ibrahimagic, Omer. *Bosanski Identitet i Suverenitet*. Sarajevo: Univerzitet u Sarajevu, Institut za istrazivanje zlocina protiv covjecnosti i medjunarodnog prava, 2012.
- [20] International Court of Justice: Reports of Judgments, Advisory Opinions, and Orders. "Case Concerning Application of the Convention and Punishment of Crime of Genocide Bosnia and Herzegovina V. Serbia and Montenegro." International Court of Justice, 2007.
- [21] International Criminal Tribunal for Former Yugoslavia, ICTY, "Tadic Case: The Verdict." CC/PIO/190-E. The Hague: ICTY, Press Release-Communiqué de presse, 1997. Available: <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.
- [22] International Center for Transitional Justice."Bosnia and Herzegovina: Selected Developments in Transitional Justice." October 2004. Available: <http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Bosnia-Developments-2004-English.pdf>
- [23] International Criminal Tribunal for Former Yugoslavia for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, "Public Decision on Vujadin Popovic's Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115. Prosecutor V. Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Milan Gvero, Vinko Pandurevic." United Nations, 2011
- [24] Kandic, Natasa The Shame of Serbia. *New York Times*. Belgrade, Serbia 5 June, 2011. Available: http://www.nytimes.com/2011/06/06/opinion/06Kandic.html?_r=0
- [25] Mamdani, Mahmood. "Citizen and Subject:Contemporary Africa and the Legacy of Late Colonialism." 1996
- [26] Nairn., Tom. *Faces of Nationalism, Janus Revisited*. Vol. Verso. London, New York, 1997.
- [27] Nezavisne Novine 2013. Available: <http://www.nezavisne.com/novosti/bih/Ukidaju-svaku-drugu-presudu-180884.html>
- [28] OSCE Kosovo Verification. *Kosovo/Kosova as Seen as Told*. Aleje Ujazdowskie 19, 00-557 Warsaw, Poland: Organization for Security and Co-operation in Europe: Office for Democratic Institutions and Human Rights, 1999.
- [29] OSCE, Public Opinion in Serbia. *Views on domestic war crimes judicial authorities and the Hague Tribunal*. Belgrade: OEBS, Belgrade Center for Human Rights and Strategic Marketing Research. 2006
- [30] OSCE Report, "Political attacks are major obstacle to effective war crimes processing in Bosnia and Herzegovina." 2011. Available: <http://www.osce.org/bih/77787>
- [31] Osiel, Mark. *Mass Atrocity, Collective Memory and the Law*. New Jersey: Transaction Publisher, 2000.

- [32] Radio Slobodna Evropa, 'Stop Cenzuri o Ratnim Zlocinima' 2013. Available: <http://www.slobodnaevropa.org/content/stop-cenzuri-o-ratnim-zlocinima-plp/25038328.html>
- [33] RBH Constitution 1993. Available: <http://www.ustav-bih.com/>
- [34] Remet, P. Sabrina. "Nationalism and the 'Idiocy' of the Countryside: The Case of Serbia." *Ethnic and Racial Studies* 19, no. 1 (1996): 70-87.
- [35] SáCouto, Susana, "Reflections on the Judgment of the International Court of Justice in Bosnia's Genocide Case against Serbia and Montenegro" <http://www.wcl.american.edu/hrbrief/15/1sacouto.pdf>.
- [36] Serwer, Daniel, Alija Izetbegovic was pressured into accepting Dayton [trans., A.B] Aliju Izetbegovića prisilili na prihvatanje Dejtonskog sporazuma TC. 22/06/2013. Available: <http://www.vijesti.ba/vijesti/bih/152875-Aliju-Izetbegovica-prisilili-prihvatanje-Dejtonskog-sporazuma.html>.
- [37] Serwer, Daniel, 'Dayton Reexamined' Available: <http://www.axess.se/magasin/default.aspx?article=1826>
- [38] Sheffer, David. "The Hague War Crimes Tribunal: Enough of Milosevic's Antics." *New York Times*, July 13 2004.
- [39] Simons, Marlise "War Crimes Court Frees Former Leader of Kosovo." *New York Times*, November 29, 2012.
- [40] "Srebrenica Massacre: Serbia Still Concealing Evidence", Available:<http://bosniangenocide.wordpress.com/2011/05/25/srebrenica-massacre-serbia-still-concealing-evidence/>.
- [41] T.C. "Daniel Serwer: Hrvati u BH su dobili dobar kolac u Dejtonu." *Anadolija* 2013.
- [42] The U.S. Court of Appeals for the Second Circuit, "Kadic V. Karadzic." In *70 F.3d 232 (2d Cir. 1995)*, edited by, 1995. Tribunal de Grande Instance de Paris, "Kovac et al. v. Karadžić et al., Judgment of March 14, 2011." No. 05/10617, Paris, France, 2011.
- [43] Two Decades on, a New Fight to Save Bosnia. Available: <http://www.rnw.nl/international-justice/article/two-decades-a-new-fight-save-bosnia>.