

TRANSITIONAL JUSTICE AND RECONCILIATION IN BOSNIA-HERZEGOVINA: WHOSE MEMORIES, WHOSE JUSTICE?

Tranziciona pravda i pomirenje u Bosni i Hercegovini: čije uspomene, čija pravda?

ABSTRACT *This paper shows that transitional justice initiatives such as the trials at the International Criminal Tribunal for the Former Yugoslavia and the State Court of Bosnia and Herzegovina, the Commission for Srebrenica and the establishment of accurate statistics on deaths during the conflict have had only a limited impact on inter-group reconciliation in Bosnia and Herzegovina. Popular attitudes towards these initiatives are captured in surveys conducted in 2005 and 2010. The results are not surprising given that the absence, due to the level of external regulation and control, of a politics of post-Dayton state-building means that domestic politics takes place in an arena of dealing with the past. The international community legitimised the three prevalent conflict narratives as a way of achieving a peace settlement in Dayton. These communal narratives were used in the peace-building phase by the local elites to defend concessions gained during negotiations and to oppose changes imposed by external supervisors of the Dayton Peace Accords. This has transformed the debate over the recent conflict from a transitional process of coming to terms with the past to a permanent state of affairs. This process precludes reconciliation in terms of mutual acknowledgment of suffering and a nuanced understanding of the causes and dynamics of the violent conflict.*

KEY WORDS *transitional justice; politics; reconciliation; Bosnia and Herzegovina; ICTY, OHR*

APSTRAKT *U ovom radu se pokazuje da inicijative u domenu tranzicione pravde, kao što su suđenja pred Međunarodnim krivičnim sudom za bivšu Jugoslaviju i Državnim sudom Bosne i Hercegovine, Komisija za Srebrenicu i stvaranje tačne statističke baze podataka o poginulima tokom sukoba imaju samo ograničeno dejstvo na pomirenje među nacionalnim zajednicama u Bosni i Hercegovini. Stavovi javnosti prema tim inicijativama pokazuju se u anketama sprovedenim 2005. i 2010. godine. Rezultati ne iznenađuju s obzirom na to da, zahvaljujući visokom nivou spoljne regulacije i kontrole, izostaje politika postdejtonske izgradnje države, što znači da se domaća politika odvija u areni suočavanja s prošlošću. Međunarodna zajednica je legitimisala tri preovlađujuća narativa o sukobu, kao način da se postigne mirovni sporazum u Dejtonu. Te narative, vezane za nacionalne zajednice, koristile su lokalne elite tokom faze izgradnje mira, kako bi odbranile usputke koje su postigle tokom*

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pregovora i usprotivili se izmenama koje su nametale spoljne instance nadgledanja Dejtonskog mirovnog sporazuma. Na taj način debata o nedavnom konfliktu pretvorena je iz tranzicionog procesa suočavanja s prošlošću u trajno stanje stvari. Taj proces onemogućava pomirenje u smislu uzajamnog priznanja patnje i nijansirano razumevanja uzroka i dinamike nasilnog sukoba.

KLJUČNE REČI *tranziciona pravda; politika; pomirenje; Bosna i Hercegovina; ICTY; OHR*

Introduction²

Negotiating comprehensive peace agreements became popular after the end of the Cold War (Vinjamuri and Boesenecker, 2007:5). In the period 1989 to 2011, 178 peace agreements were signed in support of various diplomatic initiatives (Wallenstein, 2012: 81). Policymakers and scholars have argued that although the early, less comprehensive peace agreements were able to end the violence, they seldom dealt with the societal divisions in post-war societies (Borer, 2006:5). As a consequence, in addition to the range of state-building measures, various transitional justice mechanisms have been incorporated into peace agreements in order to facilitate sustainable post-accord peace-building (Kostić, 2007: 31–34; Kostić, 2008:205; Vinjamuri and Boesenecker, 2007: 5). It has been argued that state-building coupled with measures to deal with past atrocities and the issue of selective views of the past can lead to national reconciliation and lasting stability (EU, 2004; Huyse, 2005; Lederach, 1997, Serwer, 2012).

In broad terms, a number of studies have focused on the need to acknowledge past events as a condition for parties to be able to reconcile and build a common future. Huyse, for example, discusses the goal of reconciliation in terms of reparation for past injustices, and the building or rebuilding of non-violent relationships between individuals and between communities (Huyse, 2005:19). According to such views, restoring a broken moral order requires that justice is seen to be done (Williams and Scharf, 2002: 16–22; Huyse, 2005: 97–98).³ In a similar vein, Priscilla Hayner writes that “reconciliation implies building or rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday” (Hayner, 2001: 161). Hayner also suggests a number of indicators for establishing the level of reconciliation in a society. These include how the past is integrated and spoken about between former enemies, whether contradictory versions of the past have been reconciled and whether relationships are based on the present or the past.

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³According to its proponents, the possible benefits of retributive justice include avoiding private revenge, the prevention of a return to power by the perpetrators, fulfilling an obligation to victims, individualising guilt, and strengthening legitimacy and the democratic process.

The prevailing logic suggests that while a combination of good governance and constitutional and legal equality can encourage inter-group cooperation in the post-war period (EU, 2004; Rigby, 2001:180), transitional justice measures such as tribunals and truth commissions generate accountability for war crimes, individualise accountability and facilitate a comprehensive understanding of the past (Rigby, 2001: 180; Williams and Scharf, 2001:16–22; Huysse, 2005). Together, these measures are believed to facilitate processes of inter-group and interpersonal reconciliation, which are considered the pillars of sustainable peacebuilding (Williams and Scharf, 2001; EU, 2004; Jeong, 2005: 12).

However, numerous criticisms of transitional justice efforts have emerged in recent scholarly debate. Proponents of incorporating transitional justice mechanisms into a broader externally promoted liberal peace-building agenda argue that negotiations and power sharing among warring parties work against the idea of delivering truth and justice to the victims (Williams and Scharf, 2001). They suggest that external parties should be clearer from the outset about who is the victim and who is perpetrator, and impose just solutions to the conflict (see Williams and Scharf, 2001: 12–14).

The other side of the debate criticises the inclusion of transitional justice mechanisms in a wider strategy of externally run liberal peace-building projects. As Sriram (2009: 98) points out, transitional justice solutions imposed by Western peace-builders may result in a primary focus on legal accountability. This may be problematic as an approach since it focuses primarily on individual rights and responsibilities and might not be seen as just in societies that emphasise group and community identity (Sriram, 2009: 100). In addition, it has been argued that the external imposition of the exercise of universal jurisdiction, such as was the case with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and remains so with the International Criminal Court (ICC), can disrupt delicate domestic peace and reconciliation processes (Sriram, 2009: 100; Hayden, 2011: 313). It has also been suggested that while not facilitating domestic reconciliation, such practices financially benefit international human rights lawyers and domestic human rights agencies (Hayden, 2011: 313, 325; Bilić, 2011: 305, 309) as well as local political elites (Subotić, 2009: 45–46).

This critique of externally imposed transitional justice and its impact on reconciliation is important, but it does not fully explore the link between external peace-building and transitional justice, or how these affect processes of reconciliation in societies emerging from war. I argue in this paper that the problem is complex and is linked to a broader change in our understanding and the practice of conflict resolution since the end of the Cold War.

Initially, conflict resolution was based on the idea of assisting the primary parties by means of mediation to arrive at their own solutions to peacefully resolving disputes (Galtung, 2012). However, since the end of the Cold War there has been an

increasing tendency for powerful third-party interventions and the hegemonic imposition on conflict-ridden societies of a liberal peace-building formula based on institution building, elections and market-oriented economic reforms (Ericsson and Kostić, 2013). The primary parties to the conflict are usually included as participants in the process, but often have little influence over its content or outcome (Chandler, 2006, 2011; Kostić, 2011). This external-local hybridity regarding the ownership is particularly relevant for a contemporary understanding of transitional justice and its impact on reconciliation. I argue that the inclusion of the primary parties legitimises their specific views on the causes and dynamics of conflict, that is, it legitimises the opposing beliefs about the source of the incompatibility. At the same time, external parties often have their own perspective on the conflict and proposals for its resolution—including a particular transitional justice mechanism (see Dragović-Soso and Gordy, 2010: 203; Krampe, 2013). This type of interaction places transitional justice practice in the realm of politics, in which differing narratives and framings of the past compete for dominance, because establishing the truth about a conflict legitimises what is seen as just and moral in the post-war political context (see Williams and Scharf, 2001: 12).

In other words, instead of agreement on past events and a mutual acknowledgment of suffering, the dynamics of such hybrid processes result in a policy of policing the past and in preserving the conflicting beliefs about that past held by the primary parties. In such a societal context, the work and results of various transitional justice initiatives are viewed primarily from the perspective of existing collective narratives and political framings that legitimise and link selective group perspectives to the post-war situation. This theoretical argument is explored further using unique survey data from 2005 (n=2500) and 2010 (n=1500) on the popular perceptions of a number of transitional justice initiatives in Bosnia and Herzegovina.

The next section briefly explores the linkages between negotiating peace agreements and the salience of selective group narratives, using the case of Bosnia and Herzegovina since the Dayton Peace Accords (DPA). I examine the issue of the legitimacy of conflicting collective memories in the context of peace-building, and discuss the impact this has on the reproduction and salience of mutually exclusive collective memory and the perceptions of justice that stem from it. In the sections that follow, I present group perceptions of the conflict in Bosnia and Herzegovina, and examine the goals and impact of the ICTY, the State Court of Bosnia and Herzegovina, the Commission of Srebrenica, and the Research and Documentation centre on inter-group reconciliation. The final section provides conclusions.

The Role of Group Narratives about War in Peace-building

It has been suggested that the socio-psychological infrastructure that evolves during an intractable conflict plays a determinative role in its development and

continuation, and later in its resolution and reconciliation (Bar-Tal, 2007:1432). There are three key elements of socio-psychological infrastructure: collective memories, an ethos of conflict and collective emotional orientation (Bar-Tal, 2007: 1432). Collective memory makes sense of the past as a function of the present state of the community's existence, especially in the context of its confrontation with rival groups(s). Thus, collective memory usually has some basis in genuine past events, but is biased, selective and distorted in ways that meet the group's present needs. Such memories tend to omit certain facts, insert doubtful ones and offer a purposive interpretation of past events (Bar-Tal, 2007: 1437). Yet, collective memory is treated by many community members as a truthful account of the past and a valid history of their group. In addition, communities evolve a narrative about the present—an ethos consisting of central societal beliefs dealing with the group's orientation both at present and in the future (Bar-Tal, 2000: 139–142). Together, these provide a coherent and meaningful picture of the causes of conflict, its evolution and its link to the present (Devine-Wright, 2003).

In the case of Bosnia and Herzegovina, contending Bosniak, Bosnian Serb and Bosnian Croat ethno-national narratives and beliefs about the political incompatibility emerged in a wider context of the dissolution of the former Yugoslavia. The war and its dynamics played a crucial role in the evolution of existing ethno-national framings of the root causes of the conflict, and resulted in three mutually exclusive ethno-national narratives about the role of their own community and the role of others in the Bosnian war. The US-led Western peace-making initiative and the signing of the Dayton Peace Accords in November 1995 brought an end to inter-ethnic violence (see Kostić, 2009). The way in which the violence ended, however, has had a huge impact on the further recognition of collective narratives about the war.

The externally negotiated peace was a compromise which meant that there was no victorious side and no defeated side (Williams and Schafer, 2001:160–161). In addition, by having the political representatives of the Bosniak, Bosnian Serb and Bosnian Croat communities participated in peace talks, the US-led international mediators, at least in part, acknowledged and legitimised the prevailing collective memories of wartime events in order to get to a peace settlement.⁴

However, in terms of the interpretation and implementation of the Dayton Peace Accords, the US-led international community assumed total control of the process from the beginning. By controlling the political process, the Constitutional Court and the implementation mechanism through bodies such as the Office of the High Representative(OHR) and the Peace Implementation Council (PIC), US and

⁴However, there was little agreement on the issue internationally. For the key international power, the US, the war was a case of genocidal violence against the Bosniak population. However, other major powers such as France, the UK, Russia and Germany to a lesser or greater extent divided responsibility between the three sides (for more see Williams and Scharf, 2001: 64-87).

EU policymakers believed that they could steer the evolution of the Dayton Peace Accords (Kostić, 2011). Throughout the process, the US-led international community sought to remove 'backward-looking' provisions dealing with group rights and to promote 'forward-looking' provisions dealing with the rights of individuals (for more see Nystuen, 2005: 239–51; O'Brien, 2005: 108–109). Although formally involved, the Bosnia and Herzegovina political elites representing local constituencies were until recently de facto excluded from any meaningful influence over politics or the economy in Bosnia and Herzegovina (Chandler, 2005; Hayden, 2005).⁵

Presented with a situation of peace-building without politics, while facing continued external demands for the evolution of the Dayton Peace Accords, more or less democratically elected domestic elites developed a range of responses. The most prominent feature of this external-domestic dynamic was the engagements in a politics of the past (see Kostić, 2007: 361). In order to justify their own visions of the past and relate these to the present, political elites engaged in commemorations of tragic events, and continued to propagate their own side's views about the causes the war, the hostility of the "other" and their own victimhood, while staying beyond the reach of the OHR.⁶ Reframing past events also allowed them to claim that the original content of the Dayton Peace Accords legitimized their particular position. In this ongoing process, relinquishing one's own collective wartime narrative and accepting that of your opponent is a political defeat for the community rather than a step towards reconciliation.

The predominant attitudes to and perceptions of the war and wartime events, as well as the political bickering about specific wartime events raised numerous questions for external supervisors of the Dayton Peace Accords. Could a common state be built without reconciling diametrically opposed collective narratives regarding the causes of war and the role different groups were perceived to have played? Could peace be built without delivering justice to victims of violence, and while the perpetrators of gross violations of human rights remained at large? Finally, could former enemies trust and respect each other without a minimum of mutual understanding of the past?

In the light of the complex challenges posed by attitudes and the lingering sense of injustice in the aftermath of Bosnian war, a number of external transitional justice mechanisms were promoted to facilitate inter-group reconciliation and deal with the selective collective memories of the three communities. The most important were the International Tribunal for the Former Yugoslavia in The Hague, the War Crimes Chamber of the State Court of Bosnia and Herzegovina, the Research and

⁵ For the views of the Bosnia and Herzegovina elites on their ownership and participation in post-Dayton politics see Kostić (2007: 183–192).

⁶ For examples of the attitudes of Bosnia and Herzegovina politicians to the past see Kostić (2007: 243–280).

Documentation Centre in Sarajevo and the Commission on Srebrenica. The following section discusses some the key findings on the popular attitudes concerning these initiatives.

Communal Memories of War in Bosnia and Herzegovina

Before presenting and discussing the findings on the contributions of various transitional justice initiatives to truth and justice, it is important to establish the state of collective memory about the war in Bosnia and Herzegovina. In order to do so, I use findings from surveys I conducted in cooperation with IPSOS in 2005 and 2010. Respondents were asked their views on the role of their own group and the character of the war, and to name the defensive military force in the conflict.

Asked in 2005 if they agreed with the statement “my people have fought only defensive wars”, an overwhelming majority of Bosniaks, 85.3 per cent, Serbs, 76.2 per cent, and Croats, 75.9 per cent, strongly agreed. Although the number of those strongly agreeing with the statement fell in 2010, especially among Bosnian Serb respondents where 54.7 per cent totally agreed, the view that members of their own community fought a defensively oriented war still dominated across all three communities.

TABLE 1. GROUPS AND PARTICIPATION IN DEFENSIVE WARS (PER CENT)

MY PEOPLE HAVE FOUGHT ONLY DEFENSIVE WARS (2005)	NATIONAL BELONGING			TOTAL
	BOSNIAK	CROAT	SERB	
Totally agree	85.3	75.9	76.2	79.4
Somewhat agree	11.7	16.6	16.8	14.9
Somewhat disagree	1.8	2.9	4.1	2.9
Totally disagree	.2	.5	.4	.4
Don't know	1.0	4.1	2.6	2.5
MY PEOPLE HAVE FOUGHT ONLY DEFENSIVE WARS (2010)	NATIONAL BELONGING			TOTAL
	BOSNIAK	CROAT	SERB	
Totally agree	81	70	54.7	68.6
Somewhat agree	16.6	24.5	33.5	24.8
Somewhat disagree	0.5	2.7	5.8	3
Totally disagree	0.3	0.8	0.2	0
Don't know	1.0	2	5.8	2.9

The differences based on ethnic belonging are also fairly strong when the respondents are asked to define the character of the war in Bosnia and Herzegovina.

It is apparent from the findings that there has been almost no change in the predominant ethno-national definitions of the war in Bosnia and Herzegovina. In 2010, 87.4 per cent of Serbs characterised the conflict as a civil war, while 96.6 per cent Bosniaks and 69.6 per cent Croats considered it to be an act of aggression on

Bosnia and Herzegovina. The complexity of the overall view of the past is particularly vivid when the interviewees were asked to name the military force(s) which, according to them, could be characterised as playing the role of *defender* in the recent war.

TABLE 2. DEFINITION OF WAR IN BOSNIA AND HERZEGOVINA (PER CENT)

IN YOUR VIEW, WHICH OF THESE IS THE BEST DEFINITION OF THE LAST WAR IN BOSNIA AND HERZEGOVINA? (2005)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Civil war	3.7	16.7	83.6	34.2
Aggression	95.1	73.2	9.0	59.8
Don't know	1.2	10.1	7.4	6.0
IN YOUR VIEW, WHICH OF THESE IS THE BEST DEFINITION OF THE LAST WAR IN BOSNIA AND HERZEGOVINA? (2010)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
Civil war	2.7	28.3	87.3	39.4
Aggression	96.6	69.6	9	58.4
Don't know	0.6	2.1	3.7	2.2

TABLE 3. WAR IN BOSNIA AND HERZEGOVINA AND DEFINITION OF DEFENDERS (PER CENT)

PLEASE TELL US, ACCORDING TO YOU, WHICH OF THESE MILITARY FORCES CAN BE BEST CHARACTERISED AS DEFENDERS IN THE LAST WAR? (2005)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
HVO	5.9	92.7	1.8	31.0
Armija BiH	91.4	1.2	1.2	34.0
Vojska RS	.1	.1	89.6	29.8
Vojska AP Zapadne Bosne	.6	.0	.0	.2
JNA	.0	.3	4.5	1.6
Don't know	2.0	5.7	2.9	3.4
PLEASE TELL US, ACCORDING TO YOU, WHICH OF THESE MILITARY FORCES CAN BE BEST CHARACTERISED AS DEFENDERS IN THE LAST WAR? (2010)	NATIONAL BELONGING			
	BOSNIAK	CROAT	SERB	TOTAL
HVO	5.9	92.1	1.6	33.2
Armija BiH	91.2	6.6	2	33.2
Vojska RS	.9	.6	88	29.8
Vojska AP Zapadne Bosne	1.5	.0	.6	.7
JNA	.3	.4	6.8	2.5
Don't know	.2	.2	1	.5

When asked this question in 2005, a majority of the Croat respondents, 92.7 per cent, saw the Croat Defence Council (HVO) as defenders. Most Bosniaks, 91.4

per cent, named the Army of Bosnia and Herzegovina (Armija BiH) as the defending force, while 89.6 per cent of the Serbs stated that the Army RS (Vojska RS) was the defender. Only 5.9 per cent of Bosniaks regard the HVO as defenders, while 4.5 per cent of Serbs primarily saw the Yugoslav Peoples Army (JNA) in this context.

In the 2010 survey there was almost no change in the prevailing ethno-national perceptions that dominate popular opinion among the three groups in Bosnia and Herzegovina.

Overall, the empirical findings clearly indicate that the members of the three ethno-national communities in Bosnia and Herzegovina maintain diverging perspectives on and memories of wartime events and actors. The vast majority of all the respondent groups share the view that their people had been fighting a defensive war. However, while a majority of Bosniaks and Croats tend to characterise the recent war as aggression, most Serbs see it as a civil war. Finally, when asked to name a defending military force, most Croats chose the Croat Defence Council, a majority of the Bosniaks the Army of Bosnia and Herzegovina and most Serbs the Army RS. The data presented above show vividly that, at present, there is hardly any common understanding of the past between the ethno-national communities in Bosnia and Herzegovina, and that the great majority of the members of each group continue to subscribe to mutually exclusive ethno-national narratives.

Different mechanisms for promoting reconciliation in Bosnia and Herzegovina

Retributive justice

Delivering justice to victims is seen as a precondition for reconciliation. Justice has many faces, however, and retributive justice is one of them. The notion of retributive justice rests on the idea that war crimes and crimes against humanity require accountability and prosecution, since such actions threaten both the domestic and the international order. The idea behind retributive justice is that it reduces the risk of revenge, prevents a return to power by the perpetrators of war crimes and crimes against humanity, and leads to the individualisation of accountability, thereby removing the stigma of collective guilt from whole communities. Furthermore, by publicly acknowledging who was right and who was wrong, restorative justice can help to heal wounds and restore the self-confidence of most victims. Finally, trials may provide additional information to fill the gaps in knowledge about the past. This rationale has been obvious in the creation of the ad hoc International Criminal Tribunal for the former Yugoslavia and of the War Crimes Chamber of the State Court of Bosnia and Herzegovina.

The International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia was established by United Nations Security Council Resolution 827 of 25 May 1993. Its purpose was to prosecute the persons responsible for the serious violations of international humanitarian law committed on the territory of the former Yugoslavia after 1 January 1991. The inclusion of the ICTY in the Dayton Peace Accords was envisaged as part of the external effort to promote justice and reconciliation in Bosnia and Herzegovina. Bosniak, Croat and Serb leaders committed themselves to cooperate with the ICTY in its efforts to deliver a more comprehensive narrative on wartime events and bring about a sense of justice for the victims. Initially, the ICTY prosecuted local perpetrators of war crimes in order to establish evidence to link senior military and political commanders to such events. However, its limited time and resources, and the large number of people to be indicted, led to a change in strategy. Senior military commanders and political leaders were indicted and prosecuted from all three communities in Bosnia and Herzegovina as well as the rest of the former Yugoslavia.

Altogether, 161 persons were indicted by the ICTY. Proceedings have been completed in 126 cases, while 35 persons still await their final hearing. There have been 73 guilty verdicts, 5 people have been acquitted, 13 cases have been transferred to the local courts and 35 cases have been stopped, either because the indictment was withdrawn or because the accused died. In one of its most high-profile findings, the ICTY ruled that the massacre in Srebrenica perpetrated by the Bosnian Serb forces was a case of local genocide against Bosniaks in Srebrenica.

However, the popular attitudes towards the ICTY trials noted in the 2010 survey show only a limited short-term impact on reconciliation, or delivering a narrative about the past and a sense of justice to victims. While 74.3 per cent of the Bosniaks, and 61.2 per cent of the Croats somewhat or totally agree that the work of the ICTY is precondition for just peace and coexistence, only 15.2 per cent of the Serb respondents somewhat or totally agree with this view. In addition, while 56.7 per cent of the Bosniaks somewhat or totally agree that the trials at the ICTY are fair, 56.6 per cent of Croats and 89.6 per cent of Serbs in BiH somewhat or totally disagree with this view. Furthermore, the attitude changes regarding the work of ICTY and its fairness between 2005 and 2010 are minimal.

These findings are not surprising, given the presence of three conflicting group narratives about the war and its causes. In addition, it is impossible to control the existence of selective hearing among ordinary people, that is, the tendency for individuals to express an interest in the trials dealing with crimes against members of their own group, while ignoring the trials in which individuals belonging to their groups are prosecuted for war crimes. Such tendencies may lead to a confirmation of existing narratives.

TABLE 4. PERCEPTIONS OF THE ICTY IN 2005 (PER CENT)

TO WHAT EXTENT DO YOU AGREE WITH THE FOLLOWING STATEMENTS?		NATIONAL BELONGING			
		BOSNIAK	CROAT	SERB	TOTAL
The war crimes tribunal in The Hague is a precondition for a just peace and normal relations	Totally agree	51.6	18.7	4.7	26.0
	Somewhat agree	28.7	38.4	11.1	25.8
	Somewhat disagree	5.1	11.0	15.4	10.3
	Totally disagree	11.0	27.7	63.3	33.5
	Don't know	3.7	4.2	5.5	4.4
The trials at the Tribunal are fair	Totally agree	32.7	11.3	4.3	16.7
	Somewhat agree	35.2	31.9	9.2	25.6
	Somewhat disagree	9.3	15.2	11.2	11.7
	Totally disagree	19.8	36.7	68.0	41.0
	Don't know	3.0	4.9	7.3	5.0

TABLE 5. PERCEPTIONS OF THE ICTY IN 2010 (PER CENT)

TO WHAT EXTENT DO YOU AGREE WITH THE FOLLOWING STATEMENTS?		NATIONAL BELONGING			
		BOSNIAK	CROAT	SERB	TOTAL
The war crimes tribunal in The Hague is a precondition for a just peace and normal relations	Totally agree	45.5	22.9	3.2	23.8
	Somewhat agree	28.8	38.3	12.0	26.3
	Somewhat disagree	10.3	19.5	24.6	18.1
	Totally disagree	11.7	16.5	58.7	29
	Don't know	3.6	2.8	1.5	2.7
The trials at the Tribunal are fair	Totally agree	24.8	10.9	4.0	13.2
	Somewhat agree	31.9	29.2	5.2	22.1
	Somewhat disagree	15.1	22.9	22.0	20.0
	Totally disagree	24.0	33.7	67.6	41.7
	Don't know	4.2	3.3	1.2	2.9

With this in mind, the fact that Bosnian Serb political leaders and politicians have been tried and sentenced in the greatest number, followed by Bosnian Croats, probably explains why both Serbs and Croats in Bosnia and Herzegovina are sceptical about the processes and fairness of the ICTY (see Kostić 2007: 269–272).⁷ Nonetheless, given that the trials will not be completed until the end of 2014, and the process of reconciliation takes time, an understanding of the ICTY's contribution to justice and reconciliation in Bosnia and Herzegovina will only become clear in the future.

⁷ The positive perception of the ICTY has been greatly undermined by numerous controversies in relation to the trials or lack of thereof. As noted, prosecution of heads of states from the regions gave mixed results. Milošević died during the trial, while in the case of Alija Izetbegović and Franjo Tuđman ICTY issued general statements after their deaths that both would have been indicted if they have lived longer. Furthermore, the prosecution against Kosovo Albanian guerilla leader Ramush Haradinaj failed partly due to intimidation of key witnesses (Dragović-Soso and Gordy 2011: 190).

The War Crimes Chamber of the State Court of Bosnia-Herzegovina

Since the ICTY has been unable to process all the war crimes suspects from Bosnia and Herzegovina during its time-limited period of operation, the Parliament of Bosnia and Herzegovina, acting on a law promulgated by the OHR in 2000, established the State Court of Bosnia and Herzegovina, and its War Crimes Chamber, in July 2002. The State Court of Bosnia and Herzegovina is a hybrid tribunal, since it is under national jurisdiction but employs both international and domestic judges (48 domestic and five international). In addition, it applies a mixture of international and domestic law in processing accusations of war crimes and human rights abuses. It was believed that the establishment of the State Court of Bosnia and Herzegovina would deliver justice regarding events that were not covered by the ICTY, cut the cost of the process and bring the proceedings closer to the affected population, thereby increasing ownership of the process. Since 2002, the Chamber has passed 93 sentences for war crimes and human rights abuses. Currently, 67 people have been indicted, linked to 32 unresolved cases of war crimes (OSCE 2011). Trials are expected to last for decades since the list of suspects contains some 10 000 names.

Although the War Crimes Chamber has been in place for almost a decade, it is difficult to draw definite conclusion about its impact on justice and reconciliation in Bosnia and Herzegovina. The survey data from 2010 show that many in Bosnia and Herzegovina seldom follow the work of the War Crimes Chamber. Only 60 per cent of Bosnian Croat and 75 per cent of Bosnian Serb respondents followed the work of the Chamber either once or a few times a year. Even among Bosniaks, 52 per cent tended to follow the trials only once or a few times a year.

TABLE 6. PERCEPTIONS OF THE BOSNIA AND HERZEGOVINA WAR CRIMES TRIBUNAL IN 2010 (PER CENT)

TO WHAT EXTENT DO YOU AGREE WITH THE FOLLOWING STATEMENTS?		NATIONAL BELONGING			
		BOSNIAK	CROAT	SERB	TOTAL
The work of war crimeschamber of the BiH Court is a precondition for a just peace and normal relations	Totally agree	44.1	27.5	5.2	25.6
	Somewhat agree	34.2	31.6	16.6	27.4
	Somewhat disagree	7.8	18.8	28.3	18.4
	Totally disagree	5.4	15.9	40	20.4
	Don't know	8.5	6.2	9.9	8.2
The trials in the War Crimes Chamber of the BiH Court are fair	Totally agree	29.7	7	2.2	12.9
	Somewhat agree	43.2	27.6	9.4	26.7
	Somewhat disagree	9.9	26.5	25.9	20.8
	Totally disagree	8.3	32.3	52.7	31.2
	Don't know	8.9	6.6	9.8	8.4

While 78.3 per cent of the Bosniak and 59.1 per cent of the Croat respondents either somewhat or totally agreed that the work of the War Crimes Chamber was a precondition for a just peace and coexistence, only 21.8 per cent of the Serb respondents either somewhat or totally agreed with this view. In addition, while 72.9 per cent of the Bosniaks viewed the trials at the War Crimes Chamber as fair, 78.6 per cent of the Serb and 52 per cent of the Croat respondents disagreed with this view.

These data on attitudes to the War Crimes Chamber demonstrate the difficulties in delivering justice and accountability for war crimes in highly divided societies. First, the War Crimes Chamber lacks the capacity to deal with a large number of crimes, and until now only a small percentage of perpetrators have been prosecuted, which may have contributed to the perception of its arbitrariness. Second, considering the prevalence of three selective collective narratives about the war, and their impact on the social climate in Bosnia and Herzegovina, it is difficult to produce measured and fair punishment for individual war criminals without this being interpreted in terms of the responsibility and guilt of whole communities. There is also a substantial degree of political pressure from all sides, in an attempt to influence the investigations, trials and verdicts of the War Crimes Chamber.⁸ Finally, the Bosnian case also testifies to the general limitations of tribunals in swiftly altering established selective group narratives about war and promoting true or more nuanced perspectives on wartime events.

The truth about the war in Bosnia and Herzegovina

Truth is not a replacement for judicial trials. However, establishing the truth about past events is a very important element in the process of national and political reconciliation. The most common mechanism for truth seeking is national truth commissions. An alternative is truth finding commissions about specific war-time events. In addition, non-governmental projects are promoted in some instances to document abuses and human rights violations. Swedish International Development and Cooperation Agency (Sida) and the United State Institute of Peace (USIP), together with a local NGO, Truth and Reconciliation, argued for the establishment of a truth commission for Bosnia and Herzegovina. According to the survey data from 2010, 85 per cent of the Bosniaks, 83 per cent of the Croats, and 65 per cent of Serb respondents agree that it would be good for peace to form a truth commission. The initiative never materialised. The external supervisors of the peace process in BiH feared that such an initiative would draw away financial resources from the ICTY and would also compromise on-going processes at the tribunal (Dragović-Soso and Gordy, 2011; Dragović-Soso, 2012). This was coupled with absence of the domestic political will to support such an initiative, but also due to a lack of interest

⁸ Interview with a prosecutor working at the War Crimes Chamber in Sarajevo, 13 October 2011.

from the victims' associations (Dragović-Soso and Gordy, 2011). At the same time, there has been little political will to acknowledge the crimes committed by members of one's own community or to apologise for such crimes.

The Srebrenica Commission

In order to establish the truth about the events in Srebrenica in the summer of 1995, and to increase awareness among the population of Republika Srpska of these events, in 2003 the OHR forced the Assembly of Republika Srpska to establish the Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995 (Dragović-Soso and Gordy, 2011: 204). Its final report was published in 2004. The Srebrenica Commission collected a significant amount of new information. It established that on 10–19 July 1995, 7800 Bosniak men and boys were executed by the forces of the Republika Srpska Army. The Commission also described how the perpetrators moved the bodies to secondary graves in order to cover up their crimes. Guided by information from sources in Republika Srpska, the Commission was able to discover 32 gravesites. Finally, it established the structure of the military forces participating in the massacres, and created an identity database of those who perished in the massacres (The Commission for Srebrenica, 2004). The work of the Commission resulted in an official apology by the Government of Republika Srpska to the Bosniaks of Srebrenica on 10 November 2004 (Associated Press, 2004). In its apology, the Government of Republika Srpska acknowledged that a massive crime had taken place during the Republika Srpska Army offensive on Srebrenica in 1995, and expressed its readiness to face up to the tragic events of the war in Bosnia and Herzegovina. At the same time, the RS President Dragan Čavić insisted that there was no basis to speak of genocide in Srebrenica (Dragović-Soso and Gordy 2011: 205).

A majority of the population in both Republika Srpska and Bosnia and Herzegovina are now familiar with the events in Srebrenica. According to the survey data from 2010, some 97 per cent of the Bosniaks, Serbs and Croats interviewed had heard about the events there. While 97.8 per cent of Bosniak and 96 Croat respondents considered these to be war crimes, this view was shared by only 55.7 per cent of the Serb interviewees. Among Serb respondents, 16.2 per cent did not know how to characterise the events, and 24.2 per cent viewed them as an unfortunate consequence of military operations. Regarding the apology by the Government of Republika Srpska, 36.8 per cent of the Bosniak respondents believed that it came under pressure from the international community, while 33 per cent believed it relevant to telling the truth about war crimes but not for reconciliation. By contrast, 35.3 per cent of Bosnian Croat interviewees considered the apology an important step towards inter-ethnic reconciliation, while 30.6 per cent believed that it came as a result of pressure from the international community. Among Bosnian Serb respondents, 27.3 per cent viewed it as an important step for inter-ethnic

reconciliation, 20.3 per cent viewed it as important for truth about the events but nor for reconciliation, 20.6 per cent saw it as a result of international pressure, 21.4 per cent had not heard about it and 10.3 per cent did not have an opinion. It is important to note that despite the apology and the acknowledgement of the Srebrenica killings, leading Bosnian Serb politicians continue to object to its legal categorisation by the ICTY as a local genocide, and see this as an attempt to stigmatise the Serb population of Bosnia and Herzegovina and delegitimise Republika Srpska (Marić, 2010; Flego, 2012).

The Research and Documentation Centre in Sarajevo and truth-seeking about the casualties of war

Since April 2004, the internationally sponsored Research and Documentation Centre (RDC) in Sarajevo has been leading an additional and significant truth-finding initiative about the war in Bosnia and Herzegovina. The guiding ideas behind the centre are to establish and publish facts about the war, promote the truth in order to prevent selective manipulation of events, assist the judiciary in prosecuting suspected war criminals and strengthen civil society. Until 2009, the RDC also participated in the regional network of “civil society” organisations working to create a regional commission (RECOM) that aimed to establish the facts about the victims of all war crimes and other serious human rights violations committed on the territory of the former Yugoslavia during the wars of Yugoslav succession (Bilić, 2011: 305).

The RDC has collected some one million documents, 60,000 photographs and 3500 hours of video material. It has made its findings available online, and organised numerous public lectures all over Bosnia and Herzegovina. Its work has led to a revision of previously quoted figures for the dead or missing as a result of the war. According to an RDC report, *The Bosnian Book of the Dead*, 97,207 died or are missing as a result of the war: Bosniaks lost 33,070 civilians and 30,966 soldiers; Croat losses were 2163 civilians and 5625 soldiers; and, according to the RDC, 4075 Serb civilians and 20,830 Serb soldiers died as a result of the war. Given the substantial number of missing persons, RDC experts anticipate that the final total figure may increase by another 10,000. The findings of the RDC have been independently confirmed by work by the Demographic Unit of the ICTY, which produced a similar figure of 104,732 dead during the war in Bosnia and Herzegovina. However, even these findings have been challenged and interpreted differently in different parts of Bosnia and Herzegovina. A recent survey from 2011 shows that 20 per cent of respondents agreed that the death toll was 100 000 or less, 32 per cent believed that the final figure will never be established, while some 48 per cent believed in the previously cited figure of 200,000 or more dead as a result of the war. Interestingly, in the Bosniak dominated Sarajevo 60 per cent of the respondents believed that 200,000 or more had died as a result of the war, while in

the Serb dominated Banja Luka 70 per cent agreed with the figure of 100 000 or fewer dead (Dnevni Avaz, 2011).

Conclusions

The war in Bosnia-Herzegovina was one of the bloodiest episodes since 1945. It had an immense impact on individuals, inter-group relations and society at large. However, the Bosnian case shows that when dealing with the consequences of mass violence, it is important to consider how the politics of external state-building affects reconciliation and what can be achieved by transitional justice initiatives. As is show in this paper, the outcomes of the various transitional justice initiatives tested in Bosnia and Herzegovina have been interpreted primarily from the fragmented perspectives of the three salient collective narratives. Thus, until now, the various measures have had only limited effects on promoting a common understanding of the past and a sense that justice has been done. Given that more than 18 years has passed since the beginning of DPA implementation, the question arises whether the intrusive external strategies of comprehensive political, economic, legal and institutional regulation that have been tested in Bosnia and Herzegovina have been able to achieve anything more than a no war, no peace situation.

The prevalence of external neoliberal practices of regulation in political and economic life in Bosnia and Herzegovina has resulted in peace-building without politics. In a situation in which domestic politics about the organization of society and its future are not feasible, discussion about the past becomes the inherent arena for politics. By maintaining opposing narratives about past events, the members of the main three BiH communities have developed a way of legitimizing their own positions in response to claims by other communities and to the external regulation of domestic state-building processes. This in essence transforms the debate over the recent conflict from a transitional process of coming to terms with the past to a permanent state of affairs. The process, as seen in Bosnia and Herzegovina, precludes reconciliation in terms of mutual acknowledgment of suffering and a nuanced understanding of the causes and dynamics of the violent conflict.

Finally, the Bosnian case shows that the meaning of reconciliation is not universal and often has specific cultural and political aspects. Therefore, before promoting various reconciliatory initiatives, it would be useful to establish what is to be reconciled and who are the actors in the process. The case of Bosnia and Herzegovina demonstrates that reconciliation has much to do with past communal claims and grievances, and their relation to current politics. This means that promoting reconciliation goes hand in hand with finding durable political solutions to existing incompatibilities. In consequence, this means that supporting a durable, locally produced and owned political settlement would remove a major obstacle to reconciliation among the populations and elites of Bosnia and Herzegovina.

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