



Bosnia-Herzegovina

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definition of genocide does not include the (intended) destruction of political groups. This erroneous characterization weakens the value of the criminal trial as a legitimate response to the past, which may contribute to enhancing the domestic judicial system.

As the main purpose of criminal trials is not truth telling, but the determination of individual criminal responsibility, the unfinished work of the Commission for the Investigation of Enforced Disappearances, coupled with the recent adoption of essentially private file access, undermines the chances of achieving broad-based public recognition of the truth. So far the disclosure of the military secret files has not satisfied the reemerged public interest in confronting more elements of Bolivia's repressive past. The overall situation detracts from a transitional justice model built on solid foundations, as it appears to respond only to the particular political context instead of constituting a systematic and conscious response for dealing with the past.

Kai Ambos and Elizabeth Santalla

Cross-references: Access to Secret Files; Court Trials for Redress; Impeachment Proceedings (Juicio de Responsabilidades) against Former Dictator Luis García Meza.

Further Readings

- Cuya, Esteban. 1996. *Las Comisiones de la Verdad en América Latina* [Truth Commissions in Latin America]. Available at: <http://www.derechos.org/koaga/iii/1/cuya.html> (accessed August 31, 2009).
- De Mesa Gisbert, Carlos. 2007. Bajo el Signo de las Fuerzas Armadas [Under the Armed Forces Command]. In *Historia de Bolivia* [History of Bolivia]. Eds. José de Mesa Figueroa, Teresa Gisbert, and Carlos de Mesa Gisbert. La Paz: Gisbert.
- Hayner, Priscilla. 1994. Fifteen Truth Commissions, 1974 to 1994: A Comparative Study. *Human Rights Quarterly*, 16(4): 597–655.
- Hazan, Pierre. 2006. Measuring the Impact of Punishment and Forgiveness: a Framework for Evaluating Transitional Justice. *International Review of the Red Cross*, 88(861): 19–48.
- Santalla Vargas, Elizabeth. 2009. Informe sobre Bolivia [Report on Bolivia]. In *Justicia de Transición. Con Informes de América Latina, Alemania, Italia y España* [Transitional Justice. With Country Reports from Latin America, Germany, Italy, and Spain]. Eds. Kai Ambos, Ezequiel Malarino, and Gisela Elsner. Montevideo/Bogotá: Konrad Adenauer Stiftung/Temis. 153–170.

Bosnia-Herzegovina

The pursuit of justice for war crimes in Bosnia-Herzegovina began during the 1991–1995 conflict, with the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) by the United Nations Security Council. Despite being headquartered in The Hague and staffed by international personnel, the ICTY remained the principal justice institution for Bosnia in the years after the 1995 Dayton Agreement ended the conflict. However, the introduction of the ICTY's Completion Strategy in 2003 led to the creation of the hybrid War Crimes Chamber (WCC) in Sarajevo and greater capacity-building programs for the local courts. As a result, trials are increasingly taking place before domestic courts. To date, there have been only limited nonjudicial forms of transitional justice and Bosnian civil society remains comparatively weak. Nonetheless, some victims associations and civil society groups have engaged in ad hoc grassroots transitional justice endeavors including memorialization, truth telling and psychosocial healing. These measures have, however, been piecemeal and rarely reached across ethnic boundaries. As time elapses, trials are becoming increasingly difficult and thousands of

perpetrators have yet to be tried. This has caused debate to open up on the need for more holistic approaches to transitional justice. In 2008, local actors participated in a consultation process sponsored by the United Nations Development Program (UNDP), which, for the first time since the war, gathered together civil society organizations and representatives of all levels of authority coming from all ethnic communities. This process resulted in a report containing recommendations on creating a comprehensive national Transitional Justice Strategy that was submitted to the Bosnian Council of Ministers in January 2009. If implemented, this strategy has the potential to respond to the needs of many victims beyond those whose cases have been heard by the courts, to expand understandings of transitional justice to encompass more restorative approaches, and to create a forum for greater interethnic cooperation.

The Repressive Past

After World War II, Bosnia-Herzegovina became one of the six constituent republics of the Federal Socialist Republic of Yugoslavia, which was a one-party communist state. Unlike the other Yugoslav republics, Bosnia-Herzegovina had no majority ethnic group; instead, its Muslim, Croat and Serb communities were distributed throughout its territory. As Yugoslavia began to fragment in the late 1980s, tensions heightened between Bosnia's ethnic groups, leading to violence and political crises. Eventually, war broke out in April 1992 when Bosnia-Herzegovina declared independence from the Federal Republic of Yugoslavia, a move which Bosnian Serbs opposed.

During the following three months, Bosnian Serb irregular forces, supported by the Yugoslav People's Army (JNA), waged a bloody campaign against Muslim and Croat communities. Between 1992 and 1995, the Bosnian Serbs pursued a "policy" of "ethnic cleansing" against the Bosnian Croat and Muslim minorities remaining in Bosnian Serb-held areas. Similarly, Bosnian Croat and Muslim forces committed atrocities against Bosnian Serbs. Furthermore, in 1993, Bosnian Croats and Muslims fought a bloody conflict over control of their remaining territories. In this way, each community committed atrocities against the other communities, and often against members of its own community who opposed the war. In addition, the Bosnian Croats and Serbs received military support from their ethnic brethren in Croatia and Yugoslavia (now Serbia). From 1992, the UN sent peacekeepers into the conflict zone, and their inability to stem the violence has been viewed by some as imbuing them with a degree of culpability.

Where the combatant factions sought to "cleanse" their territories of members of "minority" ethnic groups, the "policy" was pursued through massacres, torture, rape, expulsions, arbitrary mass internment, deportation, and extensive property destruction, culminating in the genocide at Srebrenica in 1995 in which Bosnian Serb forces massacred thousands of Bosnian Muslim men and boys. It is estimated that during the conflict up to 200,000 civilians died, more than 20,000 women were raped, there were 715 detention camps, and more than 2 million people were displaced.

Following the Dayton Agreement, the fledgling Bosnian state faced not just a transition from war to peace, but also from communism to liberal, market democracy. However, the war had destroyed most of the political institutions and forced the educated middle classes into exile, which arguably inhibited the development of alternatives to extreme national politics during the transition. Furthermore, much of the country's infrastructure and more than 30 percent of its residential buildings had been destroyed.

Transitional Justice

Since the war, Bosnia, with the support of the international community, has pursued multiple forms of transitional justice to varying degrees, including holding accountable those responsible for war crimes; implementing vetting programs to reform the state's institutions; assisting and compensating injured civilians, former combatants, and families of those who died; undoing the ethnic cleansing by helping those who had been displaced return home; and searching for the missing.

Trials

Trials for crimes committed during the conflict have occurred within four different systems: (1) the ICTY, (2) the WCC, (3) local courts, and (4) courts in other states, including courts elsewhere in the Balkan region, particularly the War Crimes Chamber at the District Court in Belgrade.

Local courts in Bosnia-Herzegovina heard war crimes cases from the outset of the conflict, although these trials lacked due process guarantees and were often ethnically biased. The scale of the atrocities and need for impartial justice was highlighted by a UN Commission of Experts that had been mandated to gather evidence of war crimes in the Former Yugoslavia. The UN Security Council responded to its recommendations by establishing the ICTY, without the consent of the countries of the Former Yugoslavia, in 1993. Its Statute was enacted in a UN Security Council resolution under Chapter VII of the UN Charter, which made cooperation with the tribunal binding on all UN member states. However, it appears that Security Council members were skeptical about what the court could achieve, and it has been suggested by some commentators that they only agreed to establish the tribunal to avoid being forced into greater military intervention.

According to its Statute, the primary goal of the ICTY is to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia. Since its creation, the tribunal has indicted 161 persons and sentenced 60 individuals, and cases related to Bosnia-Herzegovina have dominated its workload. In addition, the February 1996 Rome Agreement between the parties to the Dayton peace accords included the "Rules of the Road" which stipulated that national courts in Bosnia were required to obtain authorization from the ICTY before proceeding with any cases. The rules were intended to remove any suspicion that the cases being pursued were politically motivated rather than based on evidence.

The ICTY was never intended to be a permanent institution, and in 2001, the ICTY Office of the Prosecutor presented the idea of establishing a special war crimes court in Sarajevo. After some reluctance from the Bosnian government, this proposal gained the support of the Office of the High Representative (OHR) (the international body created to oversee the implementation of the civilian aspects of the Dayton Accords) and the UN Security Council, which was eager for the ICTY to complete its work.

The resulting WCC was inaugurated in March 2005. It has jurisdiction over genocide, torture, multiple murders, and rapes, and is empowered to investigate cases referred to it from the ICTY and cases resulting from the prosecution's own investigations. The WCC is part of the Bosnian judicial system, but has substantial international support through the provisions of funds and the involvement of foreign judges and prosecutors. The international personnel were originally due to be phased out in early 2010. However, as

a result of international pressure, domestic political difficulties delaying the recruitment of additional national personnel, and stemming from the fact that the first-instance cases in which the international judges were involved were still ongoing, in December 2009, the High Representative extended the mandate of the international personnel until December 31, 2012.

As part of the Bosnian judicial system, the WCC is intended to work with local courts, and whereas the WCC handles the most serious war crimes cases, it is empowered to refer the less 'sensitive' cases to local courts. It is anticipated that the bulk of the remaining cases in Bosnia will be dealt with by the lower courts. However, at present, these courts face numerous difficulties, including a lack of resources, vulnerability to political pressure, and thousands of outstanding war crimes cases. To address some of these problems, Bosnia's Criminal Procedure Code was reformed in 2003 to harmonize legal procedures across Bosnia-Herzegovina and to introduce innovations to speed up trials, such as the use of plea bargains. These innovations have proved contentious, and many victims oppose the greater leniency offered by plea bargains, which so far have only been used domestically in a few cases before the WCC. In addition, in December 2008, the Ministry of Justice adopted the National War Crimes Strategy, which creates a timetable for completing the prosecutions of outstanding war crimes cases, develops criteria to prioritize cases, and establishes a centralized approach to collecting and processing data on ongoing cases across Bosnia. This strategy will complement the Transitional Justice Strategy, which will address the nonjudicial aspects of dealing with the past, including vetting, truth recovery, compensation, and memorials. A draft of this strategy, compiled by a panel of domestic experts and the UNDP, will be submitted to the Bosnian parliament.

Vetting

The need to prevent individuals who are responsible for war crimes from exercising public office was recognized in the Dayton Agreement, which stipulated that persons convicted of war crimes or who are fugitives from war crimes indictments are barred from public office. Furthermore, the Agreement empowered the OHR to remove civil servants from public office for reasons ranging from their wartime record to obstructing the implementation of the peace process. These OHR powers are known as the Bonn Powers and were used by successive High Representatives to remove or ban 185 public officials from office, including senior officials and politicians, although some of these individuals have now been "rehabilitated" by the OHR, which means that the OHR has decided to allow them to reenter public life.

The Dayton Agreement also required the prosecution or dismissal of police officers and public servants responsible for serious violations of minority rights. The vetting of security officials was conducted between 1999 and 2002 by the International Police Task Force (IPTF), established by the UN Security Council in 1995. The IPTF reviewed 24,000 police officers and decertified or barred from their jobs 793 local and state-level police over past and present activities. Unlike the Bonn powers, the UN Security Council, rather than the OHR, was responsible for "rehabilitations" of police officers. This process has been criticized as lacking transparency and clear criteria. These difficulties led to criticisms of the procedures, and some vetted police officers filed complaints with the Bosnian Human Rights Commission. Consequently, in February 2007, the Human

Rights Ministry established a commission to review the dismissals and report to the newly formed government. This marked the first attempt by Bosnia's politicians to assume ownership over a controversial aspect of transitional justice. The police vetting process has also been criticized because since it was completed, some serving police officers have been indicted and convicted of war crimes. Although the IPTF process did attempt to verify all certifications given with the ICTY, it was working under time constraints and political pressure, which often meant that it was unable to conduct verification in great detail. In addition to police officers, high-ranking military officials were vetted by NATO in 2004, a process that triggered similar criticisms of a lack of transparency.

Finally, there was vetting within the judiciary between 2002 and 2004. This was conducted by an internationally appointed Independent Judicial Commission. Its mandate included overseeing the review and reappointment of all judges and prosecutors based on their professional and ethical competence. The procedure adopted required applicants (both serving and eligible judicial or prosecutorial candidates) to prove their competence to perform judicial functions as well as to provide information on their actions during the war. According to the UNDP, the public has been displeased with this reappointment process as prior political or ethnic-based judicial actions were not taken as a basis for disqualification (UNDP 2009, p. 56).

Reparation and Restitution

Bosnia-Herzegovina has yet to adopt a comprehensive national reparations program that could incorporate individual and collective material and nonmaterial forms of reparations for human rights violations. However, there have been a number of discrete initiatives.

First, Bosnia's two entity-level governments, the Bosnian Federation and Republika Srpska, have each adopted legislation to compensate civilian victims of war and their "own" disabled war "veterans" who participated in the various police and military forces that defended the entity. These laws provide monthly payments to those who suffered injury or sexual violence, as well as to the families of those who were killed or are missing, although the amounts vary between the entities. In addition, some municipalities provide additional rights to civilian war victims or disabled war veterans.

Where monthly payments are given, they are provided on the basis of the suffering endured either directly or indirectly by surviving family members. However, the threshold for war veterans to be considered disabled, and hence entitled to financial compensation, is much lower than for civilian victims. Furthermore, the payments given to war veterans considerably exceed those for civilian victims. This unequal treatment has been criticized by the World Bank and the UN Office of the High Commissioner for Human Rights who argued that payments to victims and veterans should be harmonized. This has yet to occur.

Second, individual and collective compensation claims have been brought before the Human Rights Chamber of the Constitutional Court of Bosnia and Herzegovina and its successor institution, the Human Rights Commission within the Constitutional Court, and have led to compensation being awarded. For example, in one case relating to Srebrenica, the Chamber ordered the government of Republika Srpska to investigate the atrocities, make a single payment of 2 million Bosnian Convertible Marks (KM) (1 million Euros) and four additional payments of KM 500,000 over four years to the Foundation of Srebrenica-Potočari.

Third, a significant form of reparation in Bosnia-Herzegovina is restitution, which was provided for in Annex VII of the Dayton Agreement relating to the right of return for refugees and displaced persons. This provision, which was seen as vital to undoing the ethnic cleansing of the war and undermining support for extreme nationalist politicians, provides for the reconstruction of property, including financial compensation for damaged or destroyed property; the removal of legal obstacles to return; the eviction of individuals who are illegally occupying properties; and the creation of socioeconomic conditions to foster sustainable living standards for those wishing to return to their prewar homes. To fulfill its obligations under Annex VII, the Bosnian government developed an implementation strategy in 2002, which was amended in 2008. According to the UN High Commission of Refugees, by March 31, 2009, 1,026,825 refugees and displaced persons had returned, but only 467,427 of these were “minority returns,” where individuals returned to their prewar homes in areas where their ethnic community was now in a minority. These figures do not indicate what proportion of minority returns have maintained permanent residency in their prewar homes, and indeed, it appears that such returnees continue to face many obstacles reintegrating.

Finally, memorials have been erected across Bosnia-Herzegovina, although many of these have been built along ethnic lines – for example, Bosniaks building memorials to honor only Bosniak dead. There has been no coordinated policy of memorialization. Furthermore, as yet, there is no official national memorial to those killed during the war.

Truth Recovery

Although the Dayton Agreement mandated that all parties cooperate with the ICTY, side-letters to the Agreement from Bosnian President Alija Izetbegović and Serbian President Slobodan Milošević also committed the parties to establishing a concurrent international commission of inquiry. These letters, which had identical wording on the proposed commission, stipulated that it would be composed of participants from the governments involved as well as distinguished international experts to be named by agreement among the republics of former Yugoslavia, and that it would be mandated to conduct fact finding and other necessary studies into the causes, conduct, and consequences of the conflict, and to issue a report.

Although three separate commissions of inquiry were created by Bosnia’s three ethnic communities, there was no movement on creating a national commission of inquiry until the United States Institute for Peace (USIP) organized a round table in July 1997 at which justice and war crimes officials from the Federation of Bosnia and Herzegovina and Republika Srpska requested USIP to develop the concept of creating a truth commission. Subsequently, at a meeting in November 1997 with Bosnian politicians and religious leaders as well as community leaders, intellectuals, and journalists, USIP representatives presented draft legislation to create a truth commission as a complementary body to the ICTY that would document abuses. However, the ICTY was initially resistant as it worried that such a commission could weaken the court by creating a parallel structure with overlapping interests.

The idea stalled until 2000, when more than 100 participants, mainly from local civil society organizations, gathered at round tables on truth and reconciliation in Sarajevo and Banja Luka. These meetings led to the birth of a new organization called the Citizens’ Association for Truth and Reconciliation (CATR), which developed a draft Law

on the Truth and Reconciliation Commission in 2003. This time the proposals had the ICTY's support and the draft law was submitted to the Parliamentary Assembly of Bosnia-Herzegovina, but it failed to attract political backing and was not considered by the parliamentarians. Subsequently, in 2005, the USIP urged the three chairmen of the Parliamentary Assembly of Bosnia-Herzegovina to initiate talks among eight parliamentary political parties with the aim of developing a draft law similar to CATR proposal. This initiative resulted in the formation of a Working Group that drew up amendments to the CATR proposal to clarify certain matters. This group produced draft legislation to establish a truth commission in May 2006, but a worsening political situation with disagreements on the constitutional makeup of the Bosnia-Herzegovina meant that no attempts were made to translate the May 2006 draft into legislation.

Although an overarching national truth recovery process has yet to be established, three investigative commissions have been established to address crimes committed in particular locations. First, in December 2003, the government of Republika Srpska, under pressure from the then High Representative Paddy Ashdown and in response to a decision by the Human Rights Chamber, created the Commission for Investigation of the Events in and around Srebrenica between July 10 and 19, 1995. The Commission was tasked with locating missing persons and investigating who was responsible for the massacre (see entry on Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995).

Second, in 2006, the Council of Ministers, in response to demands by Serb parties in the Parliamentary Assembly that the suffering of Bosnian Serbs in Sarajevo be investigated, created a Commission for Investigating the Truth Regarding Sufferings of the Serbs, Croats, Bosniaks, Jews and Others in Sarajevo in the period between 1992 and 1995. This commission was mandated to investigate crimes against *all* civilians living within Sarajevo during the war. The commission quickly became controversial because of the lack of consultation in the selection process of members of the commission. This issue was never resolved, and as a result, the commission has yet to begin work.

Third, the Truth and Reconciliation Commission of the Municipal Assembly of Bijeljina was created in mid-2008 in response to a September 2004 report by the International Mediator in Bosnia and Herzegovina, an institution that was created by the international community to mediate disputes between the entity-level governments. The Commission submitted its report to the Municipal Assembly for consideration, but the report was not adopted. As with the Sarajevo Commission, the work of this commission was politicized by the selection process of the commissioners, together with a lack of transparency in its operations.

In addition to the investigative commissions, truth recovery has been conducted by the Missing Persons Institute, which was created by the Bosnian federal government in 2005 (replacing entity-level commissions) to investigate the fate of the thousands of disappeared. Furthermore, there have been some civil society truth recovery initiatives, ranging from documentation efforts on war crimes and missing persons primarily conducted by Research and Documentation Center in Sarajevo, to artistic, cinematic, and literary projects, to intercommunal dialogue and public forums.

In addition, the civil society Coalition for a Regional Commission for Truth-seeking and Truth-telling About War Crimes (REKOM) has proposed a regional truth and reconciliation commission to investigate the causes and crimes related to the conflicts

across the Former Yugoslavia. This proposal has received support from 200 organizations and individuals in the region. Similarly, the Igman Initiative, composed of more than 140 organizations and individuals from Bosnia, Croatia, and Serbia, has argued for regional truth recovery and transitional justice processes. However, other than the ICTY, no regional mechanism has been yet established.

Conclusion

In the thirteen years since the Dayton Agreement, it appears that although there have been prosecutions at the ICTY, the WCC, and local courts, other aspects of transitional justice have not been substantially addressed. Today, Bosnia's political system remains fragile; its judicial infrastructure still lacks the capacity to deal with the thousands of outstanding cases; no agreement has been reached on developing national approaches to truth recovery; thousands of people are still missing; there is no comprehensive approach to reparations; and the public remains unsatisfied with the reform of institutions. The persistence of these problems highlights the need for transitional states to develop comprehensive approaches to transitional justice, rather than simply focusing solely on one approach such as trials, which, even if widely and efficiently pursued, have inherent limitations.

Louise Mallinder

Cross-references: Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995; Court Trials for Redress; International Criminal Tribunal for the Former Yugoslavia; War Crimes Chamber of the Court of Bosnia-Herzegovina.

Further Readings

- Bennett, Christopher. 1997. *Yugoslavia's Bloody Collapse: Causes, Course and Consequences*. London: Hurst & Company.
- Hazan, Pierre. 2004. *Justice in a Time of War: The True Story behind the International Criminal Tribunal for the Former Yugoslavia*. College Station: Texas A & M University Press.
- Holbrooke, Richard. 1998. *To End a War*. New York: Random House.
- Rangelov, Iavor and Marika Theros. 2008. Transitional Justice in Bosnia and Herzegovina: Coherence and Complementarity of EU Institutions and Civil Society. In *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*. Eds. Kai Ambos, Judith Large, and Marieke Wierda. Berlin: Springer.
- UNDP. 2009. *Transitional Justices Guidebook for Bosnia and Herzegovina: Executive Summary*. UNDP.

Brazil

A decade passed after the last general left power before Brazil began to deal, albeit precariously, with the legacy of massive human rights violations perpetrated during the military dictatorship (1964–1985). Law 9140 dealing with the victims who lost their lives during that period came into force in 1995. Six years later, a commission was formed to analyze requests for reparation made by victims of political persecution. At the time of this writing, not a single perpetrator had been punished for the crimes committed, no profound reform of the security system had been undertaken, and the right to truth was observed only partially.