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STRENGTHENING TRANSITIONAL JUSTICE IN BOSNIA: REGIONAL POSSIBILITIES AND PARALLEL NARRATIVES

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KEY POINTS

- Bosnia-Herzegovina (hereafter, Bosnia) lacks a widely supported strategy for transitional justice. While a state-level strategy has been initiated, it needs to be strengthened by including thicker regional cooperation among parties to the conflict, emphasizing further non-judicial aspects of transitional justice, such as truth-telling initiatives, joint commemoration ceremonies and history education.
- As current national borders do not encompass all the relevant stakeholders, a regional strategy is necessary. The involvement of the European Union (EU), as well as other agencies such as the Organization for Security and Co-operation in Europe (OSCE) and UN organizations, is crucial to move the process forward and to support nascent regional initiatives, particularly the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the former Yugoslavia from 1991–2001 (RECOM).
- The different ethnic groups' competing versions of the past conflict — what we refer to here as "parallel narratives" — pose a formidable challenge to the development of transitional justice initiatives and need to be addressed.
- Political elites need to not only acknowledge past crimes, but must also carry out truth-telling initiatives through the education system. Community forums' and civic organizations' initiatives to furthering inter-communal dialogue will fall short if there is no substantive change in the education system.

INTRODUCTION

In the media, news commentators continue to refer to Srebrenica as a lesson that should never be repeated again. Indeed, such "never again" statements have re-emerged in light of current events unfolding in Syria, as the international

community debates what type of intervention should be used to stop further violence. The media have gone so far as to call the Syrian regime's possible use of chemical weapons against its population a "Srebrenica moment" — that is, a moment when moral outrage of civilian deaths leads to a push for military intervention (Lerman and Lakshmanan 2013). While little action has materialized in the case of Syria, the Srebrenican "never again" lesson is also far from being either agreed upon or learned from in Bosnia itself.

In July 1995, Bosnian Serb Army commander Ratko Mladic (currently on trial in The Hague) ordered the attack on the enclave of Srebrenica, the UN "safe area." It is assumed that, as a result of this attack, around 8,000 Bosniak (Bosnian Muslim) men were massacred. On July 11, 2013, 409 newly identified victims of the massacre were reburied. The annual commemoration in Srebrenica — one among many other such commemorations in Bosnia — shows not only how deep the wounds are within the Bosniak community, but also how deep the gap is in public opinion between the Bosniak and Bosnian Serbs' respective perceptions of the event. Indeed, the opinions are so wide as to be cast as parallel narratives. Eighteen years after the war, Srebrenica remains a symbol of division in Bosnia. It is commemorated only on the Bosniak side, while official Bosnian Serb recognition of the massacre as a genocide, and symbolic participation in its commemoration, continue to be conspicuously absent.

Still, Serbia has made some progress in acknowledging the massacre and its impacts in the region. In what seemed a significant shift in relations between Serbia and Bosnia earlier this year, Serbian President Tomislav Nikolic apologized for Serbia's role in the massacre, stating, "I kneel and ask for forgiveness for Serbia for the crime committed in Srebrenica" (Radio Free Liberty

Europe [RFLE] 2013). He fell short, however, of agreeing that what happened in Srebrenica was genocide, adding that, "genocide needs to be proven" (ibid.).

Similarly, in a recent interview for the Bosnian daily *Dnevni Avaz*, Serbia's First Deputy Prime Minister Aleksandar Vucic stated that Srebrenica was a horrendous crime. In his words, "I do not want to hide behind anyone who committed this crime in the name of the people I belong to. Horrifying, gruesome crime which is so horrible that one could be ashamed that someone who took part in it belongs to one's people" (quoted in B92 2013). Vucic clearly argues against sweeping generalizations of ethnic groups, distinguishing the acts of violence as those of individuals, rather than peoples. He asks, "Are Serbs like that because of what happened in Srebrenica or Bosniaks like that because of what happened at other places, on the Mt. Ozren where Serbs were beheaded"? (ibid.) The point that Vucic makes is that perpetrators should be tried for their actions, and not allowed to hide behind ethnic politics.

However, the fact that Nikolic's and Vucic's statements come short of acknowledging the Srebrenica genocide should be positioned in relation to the International Criminal Tribunal for the former Yugoslavia (ICTY) genocide conviction against Bosnian Serb commander Radislav Krstic. In its 2001 verdict, the ICTY found that "by seeking to eliminate a part of the [Bosniaks], the Bosnian Serb forces committed genocide. They targeted for extinction forty thousand [Bosniaks] living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general" (*Prosecutor vs. Krstic* 2004). The Bosnian media hailed this ruling as historic. The ruling also created optimism that a similar finding would soon follow in the case of Bosnia vs. Serbia at the International Court of Justice (ICJ). The hope was that, by winning the genocide case against Serbia, the Bosnian war should be finally redressed as a war of aggression and genocide against Bosniaks, which would then necessitate the abolition of Republika Srpska[1] and Serbian reparations to Bosnia. In February 2007, however, the ICJ issued a ruling that cleared Serbia of direct responsibility for the genocide and any complicity in the 1992–1995 war. The ruling also reiterated the ICTY decision that the only confirmed case of genocide was the one committed by the Bosnian Serb forces in Srebrenica (Goldstone and Hamilton 2008).

The nature of the massacre, as well as the overall nature of the Bosnian war, remains hotly debated — not only in Bosnia or Serbia, but also at the level of the international community (Delpla, Bougarel and Fournel 2012). The conciliatory, and yet somewhat contradictory, statements of the Serbian officials, as well as the different rulings at the level of the ICTY and ICJ, are illustrative of the issues facing transitional justice in the region and elsewhere. They are also emblematic of the broader state of affairs with regard to dealing with the past. While some progress has been made in terms of individual prosecutions and official apologies, the past continues to be debated in the region, which has only served to perpetuate inter-ethnic tensions.

FROM THE HAGUE TO BRUSSELS?

To date, much of the focus on addressing war crimes and dealing with the past in the region has centred on trials and rulings at the ICTY in The Hague and on a smaller scale in local courts. While the attention of the

1 Republika Srpska, or the Serb Republic, is one of two entities, the other being the Bosniak-Croat Federation of Bosnia and Herzegovina. Together, these entities comprise post-war Bosnia and Herzegovina. Republika Srpska includes 49 percent of the territory, while the Federation includes the remaining 51 percent. The Dayton Peace Accords signed in 1995 formalized this wartime structure of the Bosnian state to the dismay of many who argued against ethnicized entities.

international community has been focussed on the high-profile cases in The Hague, local populations have been left with few tools to deal with the past in locally meaningful ways. Additionally, Bosnia's divisive political system continues to provide a fertile ground for different local narratives about the conflict that directly challenge the reconciliatory potentials of ICTY in bringing Bosnian communities together.

Over the next year, the ICTY will complete its mandate, wind up its work and transfer essential functions to the Mechanism for International Criminal Tribunals. In May 2013, the ICTY marked its twentieth anniversary, stating that "in its 20 years of existence, [it] has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced" (ICTY 2013). In other statements on the occasion, however, the ICTY sombrely recognized that the decisions made in The Hague are not supported on the ground in Bosnia (or elsewhere in the region). Moreover, when war crimes trials are transferred to local courts, there is the question of whether they will be able to confront the challenges of ever-stronger divided narratives about the nature of the conflict, continued divisions, and the denial or glorification of war crimes that occur outside of the courtrooms and judicial institutions. Accordingly, a broader regional strategy for addressing the past needs to focus on precisely what the ICTY — given its judicial nature — could not.

Divisive narratives about the past have also hampered the developments of a transitional justice strategy. Given the heavy international involvement and lack of agreement by political elites, it has taken Bosnia a long time to start a locally owned process for transitional justice. It was only in 2010 that the Bosnia Council of Ministers established an Expert Working Group (EWG) to create the state-level Transitional Justice Strategy and its Action Plan (Simic 2013). The EWG worked closely with the United Nations Development Programme in Bosnia to develop a draft strategy presented in the summer and fall of 2012. However, some members from civil society organizations in the Serb Republic renounced the draft strategy. The president of the Republika Srpska War Veterans Association, Pantelija Curguz, expressed his concern that "the document is heavily biased towards one viewpoint, and has only one aim — which is to legalize the commonly held perception that all the victims were on one side and all the aggressors on the other" (Dzidic 2012a). Such perceptions remain a key obstacle to wider societal support for this strategy. Simply, without wider support from both entities, divisive group narratives will continue to stall the process.

The OSCE has also recognized the need to address reconciliation in the Western Balkans. In 2014 and 2015, Switzerland and Serbia will hold consecutive chairmanships of the OSCE, and it is expected that during this period, the question of regional reconciliation will be put on the agenda. At a recent meeting of the Belgrade Security Forum in September 2013, Heidi Grau, ambassador and head of the OSCE Chairmanship Task Force of the Swiss Federal Department of Foreign Affairs highlighted the importance of regional cooperation and reconciliation for the Western Balkans — a gesture that attracted the attention of many regional and international policy makers directly involved in the issues of regional cooperation. Such a focus by the OSCE is welcomed, particularly, as Grau underscored, the approach would be more bottom up and youth oriented.

As a unifying factor in the Western Balkans, the European Union still has the most to contribute. The

EU has already furthered the inclusion of justice considerations in its engagement with the Western Balkan states through its "Hague conditionality" in the Stabilisation and Association Process (Rangelov 2011). Additionally, the EU's deep involvement in all aspects of Bosnia's governance, evidenced by the oversight role of the EU and formerly fused with the UN Office of the High Representative, means that the EU can engage with the political context more persuasively than other international actors. But in order to be effective, the EU has to concentrate on two key aspects: ameliorating regional cooperation and supporting non-judicial aspects of the transitional justice process.

REGIONAL COOPERATION

As the state-level strategy is being pursued for Bosnia, it remains crucial that the regional experience is not forgotten. For example, the Serbian president's remarks and the overall sentiments from Serbia on Srebrenica continue to have an impact on the possible change in relationships between Bosniak and Serb communities. Similarly, commemorations of Operacija Oluja (Operation Storm) in Croatia continue to be divergently remembered by the parties to the conflict, limiting any progress in improving inter-ethnic relations between Croats and Serbs beyond Croatia's borders. Oluja is identified by Croats as a victory against Serbian occupiers, but is remembered by Serbs as an ethnic cleansing of the local Serb population. These discourses

Map of former Yugoslavia. Source: The Cartographic Section of the United Nations

and events remain important for Bosnia, even though they are occurring beyond its borders. The importance of Serbia and Croatia as "kin" states for the amelioration of inter-ethnic relations in Bosnia should not be overlooked.

The regional dimension of transitional justice is also important because the borders, as they exist today, do not necessarily include all the communities affected by the Bosnian war (Rangelov 2011). Population movements occurred as a result of the war, with some 300,000 people still in exile (UN High Commissioner for Refugees [UNHCR] 2013). The lack of refugee returns has also resulted in pockets of homogenized populations and areas clearly dominated by one ethnic group over another. Bosnia has some 113,000 internally displaced persons, of whom 8,600 are still living in substandard conditions in collective centres (ibid.). These numbers are supported by the wider picture of returns, which suggests that only a small percentage have returned to their original homes, while many others remain in the kin states or immigrate abroad.[2] Another concern for transitional justice is that some 12,200 individuals are still missing (Muižnieks 2013). The transitional justice draft strategy envisions regional cooperation through the signing of bilateral and multilateral agreements to ensure that missing persons cases are resolved (Simic 2013). But, as important as this gesture is, a wider regional approach needs to go beyond resolving the missing persons cases.

The draft strategy continuously refers to civil society organizations and the important role that they play in promoting the goals of reconciliation. Indeed, civil society organizations are key in dealing with the regional aspects as they can more swiftly form networks, which can then appeal to political elites and local populations in their respective countries. One particular initiative, RECOM, is composed of some 1,800 non-governmental organizations, associations and individuals (RECOM 2013). RECOM's work is important because it has been endorsed by the presidents of both Serbia and Croatia, as well as the Council of Europe, which makes this initiative one of only a few that have managed to cross ethnic and national divides (Rangelov 2011). One of the most notable outcomes or RECOM's work so far is the registration of all the victims of the war, in order to prevent the numbers manipulation and historical revisionism that have been occurring. Such steps are important in opening up the dialogue about the past and to furthering the non-judicial aspects of transitional justice.

NON-JUDICIAL ASPECTS

While regional efforts and cooperation at all levels remain important, group narratives also shape the nature of inter-ethnic relations in post-conflict societies. Though the draft strategy brought forth non-judicial concerns, such as truth telling and memorialization, it needs to go beyond official and institutionalized mechanisms to include considerations of less visible civilian practices such as unofficial commemorations, graffiti and other symbolic practices, which continue

2 All of these figures, however, can only be fully corroborated with data from the Bosnian census, which is being carried out from October 1–15, 2013. Thus far, the question of Bosnian census has been one of the most divisive political questions in the country, leading to its postponement on several occasions. Bosniak politicians have been rejecting census for years out of fear that it might lead to legitimizing the consequences of ethnic cleansing of its population during the 1992–1995 war. However, in the context of each side manipulating the numbers, the census might provide a clearer picture of the demographic consequences of the Bosnian war. Still, it is deeply controversial because it might affect the ethnic balance in the country by impacting the ethnic quotas, which the Dayton Peace Accords ensured for public sector jobs on the basis of the last pre-war census. Thus, even though the census is being envisioned as a tool to provide a demographic picture of Bosnian citizens, there is a strong propaganda campaign among Bosnian politicians and in the media to turn it into an ethnic count of the Bosnian population further cementing the existing divisions in the country.

to undermine mechanisms of transitional justice. On either side of the conflict, parallel narratives have developed alongside, and sometimes against the "official" truths established at the ICTY and the ICJ. On either side of the conflict, these narratives are both meaningful to, and supported by, local populations, and at times completely disregard the findings and decisions made by international courts. For example, individuals who have committed war crimes against others in the region become celebrated as "heroes" by their own ethnic groups upon their return from The Hague. Similarly, nationalistic songs, slogans and graffiti espouse messages of the ethnic group's glory or victimhood, and the aggression and threat of the other, undermining any progress made by the transitional justice mechanisms.

A key debate within Bosnia surrounds the legitimacy of the Republika Srpska, which the Bosniaks (as victims of genocide) see as unjust, while the Bosnian Serbs see the entity as necessary for their protection from other Bosnian communities (Guzina and Marijan 2013). Here, too, an opposing parallel narrative is constructed: Bosniaks see the conflict as an act of aggression by the Serbs, while the Bosnian Serbs see the conflict as a civil war. As a further complication to transitional justice, Bosnian Croats argue that they also need a political entity, similar to the Republika Srpska, for their own protection, as in their view, they fought a war for the freedom of their homeland.

These different perceptions about the past and future of the Bosnian state also shape the responses of political elites to the rulings of the ICTY and other transitional justice initiatives. Local political elites are more than willing to support international initiatives when these actions support the elites' own agendas, leading to the phenomenon of "hijacked justice" (Subotic 2009). Thus, an unintended consequence of the internationally led transitional justice initiatives has been the local appropriation of major ICTY and ICJ official decisions to support elites' respective group narratives, while at the same time dismissing those which challenge these accounts.

The EU and international agencies must be made aware that these debates remain a part of Bosnians' daily lives and not simply the work of political elites. These divisive accounts also shape the types of histories that youth learn in schools. Bosnia's education system is notoriously divided, with children learning "ethnic subjects" such as history through the lenses of their own ethnic community. Hence, children in Sarajevo, Banja Luka and Mostar, for example, learn radically different and incompatible accounts about the causes of the war in Bosnia between 1992 and 1995. Youth in Bosnia also face an extremely high unemployment rate, which the World Bank estimates to be at 60 percent (World Bank 2012). This economic reality contributes to the ethnic groups' support for their versions of history, as few prospects for the future seem possible. In other words, the existence of three solitudes' competing parallel narratives with divisive historical accounts cannot be examined separately from the dire economic realities of the Bosnian state. Even though the roles of education and engagement with the public are emphasized in the following recommendations, it must be fully recognized that one of the reasons for the continuing hold of the nationalist narratives is the Bosnian economic reality. Without changes in the long-term economic prospects for the Bosnian youth, many of the proposed initiatives might only be successful in the short term.

RECOMMENDATIONS

The experts working on the transitional justice strategy must directly address the reasons it was not widely supported in the Serb Republic by engaging with the public and holding public forums in the entity. From these evaluations, next steps to develop a stronger strategy and ways to include the concerns of civil society in the Serb Republic should be outlined. This will entail tackling the different perceptions and narratives about Bosnia's history and attempting to shape an agreed-upon shared narrative. As the draft strategy evolves, it can only move forward by directly addressing the reasons that it was not widely supported in the Serb Republic.

Bosnia and its two kin states, Croatia and Serbia, must engage in a regional dialogue, supported by the European Union. Events in Croatia and Serbia have a direct impact on inter-ethnic relations in Bosnia. There needs to be greater sensitivity to commemorations, and statements by political elites need to emphasize that violence and hate speech will not be tolerated. The two states "should also create national days of memory for victims of atrocities their own troops have committed, and set up museums or other types of memorial sites to remember victims and survivors" (Subotic 2013, 279).

The European Union should extend its support for RECOM. RECOM is the only regional initiative that fully recognizes the need for both regional cooperation and for addressing the corrosive effects of the conflicting parallel narratives. The European Union and other international bodies in Bosnia have underestimated the symbolic power of these narratives, thus support for regional initiatives such as RECOM should be enhanced. In turn, civil society organizations involved in RECOM should focus on building wider support for their organizations and activities in their own communities.

Funds for reparations and for the construction of memorials should be designated with specific time commitments by the state agencies. However, this remains a tricky issue. At the moment, there is much debate about whether there are sufficient funds to carry out the draft strategy proposals. According to Aleksandra Pandurevic, chairwoman of the Human Rights Commission of the Bosnia State Parliament, the reparations would push Bosnia into an "economic meltdown," while the EWG maintains that there are sufficient funds, but suggests that the issue of the past needs to be prioritized (Dzidic 2012b). The central question, however, is how to pursue this initiative without being delayed by the different interpretations of Bosnia's past. Thus, current reparations and memorialization schemes need to be reviewed by both local experts and international organizations in the country in order to address any perceived imbalances. A realistic time frame for paying out reparations should be outlined.

Divisive histories need to be addressed through projects focussing on history in the education system, supported by the ministries of the two entities. Projects dealing with the divisive narratives need to be further developed by including individuals from different entities and states in the region. Specific attention should be paid to the youth to inspire more cross-entity and cross-border engagement. A first step should be to address the so-called national subjects and the ways they are taught in schools, paying specific attention to the teaching of history and the images that the current textbooks disseminate of the other communities (Subotic 2013). In the short term, a course on citizenship that inspires civic ideals should be introduced while

the long-term goal should be more comprehensive educational reforms at the regional level.

Opportunities such as exchange programs and scholarships should be made available to Bosnian youth who wish to study at EU institutions. Some EU countries already have such programs in place, but these should be expanded. These programs provide youth with an opportunity to understand different societies, gain new experiences and observe the possibilities for moving their own society forward. A youth initiative for human rights in Sarajevo has refocussed attention on these types of programs, as they have found them to be most helpful for improving inter-ethnic relations.

CONCLUSION

The lack of a broader regional cooperation and transitional justice strategy encompassing regional considerations and non-judicial aspects has contributed to the stalled political and social processes in Bosnia. However, the absence of a comprehensive strategy has important consequences beyond Bosnia's borders. The implications for regional stability should not be understated. Western Balkan countries are eventually expected to become full members of the European Union, as Croatia has already done. An EU-backed regional transitional justice strategy benefits both the states in the region and also has broader considerations for EU stability.

Ultimately, little progress will be achieved if the Bosnian population does not support the initiatives that are proposed. Currently, there are many constructive efforts by civil society organizations, demonstrating that there is a will to move past ethnicized politics; however, this window of opportunity is closing, as younger generations, who live essentially segregated lives in ethnically homogenous areas, continue to learn different histories. If the divisive narratives continue to shape local perceptions, the situation in Bosnia at all levels — whether political, economic or social — is unlikely to improve and may, in fact, deteriorate.

Bosnia's experience with transitional justice holds one very important lesson for the European Union. In addition to official trials and tribunals for prosecuting war crimes, the "softer" non-judicial issues of memorialization and historical narratives must be paid attention. As the EU expands its role as a global conflict manager, the lessons of regional cooperation and the politics of memorialization from the Western Balkans might serve it well beyond these borders.

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