

Primljeno/Submitted: 10.4.2024.

Prihvaćeno/Accepted: 13.6.2024.

Prethodno priopćenje

Preliminary communication

JEL Classification: K38

BOSNIA AND HERZEGOVINA: THE PERILS AND PITFALLS OF MEMORIALIZATION IN DIVIDED POST-CONFLICT SOCIETIES

BOSNA I HERCEGOVINA: OPASNOSTI I ZAMKE MEMORIJALIZACIJE U PODIJELJENIM POSTKONFLIKTNIM DRUŠTVIMA

Goran Šimić*

ABSTRACT

Transitional justice has viewed memorialization primarily through its capacity to support societies in their efforts cope with a difficult past. Memorials can be sites of public mourning, outlets for grief and terrain where memories of the past can be confronted. Yet, memorialization is a contested and divisive social and political process in societies that are recovering from identity-based intrastate conflicts. The immense symbolism of memorials is deployed to construct exclusive identities, underline ethnic differences, mark territory and to provoke in a manner that can impede inter-group reconciliation. This paper examines the perils of memorialization in Bosnia and Herzegovina and analyzes the causes and manifestations of competitive memorialization among the country's three largest ethnic communities. It argues that legally binding regulation on the construction of memorials can be a feasible strategy to encounter the problems they pose on divided post-conflict societies.

Keywords: Bosnia and Herzegovina, Memorial, Memorialization, Transitional Justice, Criminal law

SAŽETAK

Tranzicijska pravda promatrala je memorijalizaciju prvenstveno kroz njezinu sposobnost da podrži društva u njihovim naporima da se nose s teškom prošlošću. Memorijali mogu biti mjesta javne žalosti, izlazi za tugu i teren gdje se mogu suočiti sjećanja na prošlost. Ipak, memorijalizacija je sporan i podijeljen društveni i politički proces u društvima koja se oporavljaju od unutardržavnih sukoba temeljenih na identitetu. Ogromna simbolika memorijala koristi se za konstruiranje ekskluzivnih identiteta, naglašavanje etničkih razlika, označavanje teritorija i provociranje na način koji može ometati međugrupnu pomirbu. Ovaj rad ispituje opasnosti memorijalizacije u Bosni i Hercegovini te analizira uzroke i manifestacije

* Associate Professor of Criminal Law, University "VITEZ" Bosnia and Herzegovina, email: goran.simic@unvi.edu.ba

konkurentne memorijalizacije među tri najveće etničke zajednice u zemlji. Tvrdnja je da zakonska regulacija izgradnje memorijala može biti izvediva strategija za suočavanje s problemima koje oni postavljaju u podijeljenim postkonfliktnim društvima.

Ključne riječi: Bosna i Hercegovina, Memorijal, Memorijalizacija, Tranzicijska pravda, Kazneno pravo

INTRODUCTION

In recent years memorialization has become increasingly important in the study and practice of transitional justice. According to the United Nations and the International Center for Transitional Justice (ICTJ), public memorials and memorial museums have a significant role in preserving public memory and fostering moral consciousness about past abuses. Memorialization matters because periods of political repression or armed conflict are without an exception followed by a political struggle over the meaning of the past and the meaning of memory itself, creating a need for a terrain where history can be confronted and addressed (Jelin, 2007). Consequently, memorialization holds a two-fold function on the transitional justice agenda. On the one hand, memorials are seen as a form of symbolic reparation, which serves the victims of violence by giving public recognition to their torment: “A place in the nation to those long denied it.” (Robins, 2011). It is believed that public recognition of victimhood and guilt is not important only for the victims of violence themselves, but that it can also support national cohesion and preclude further conflict. On the other hand, memorialization also has a role in informing and educating people about past human rights violations. Besides being places of mourning, memorials and memorial centers can be sites of learning that contribute to peace education, promotion of human rights, and the promotion of critical democratic debate about the past, present, and the future (Bickford, 2014).

Recent academic literature, however, suggests that the relationship between memorialization and transitional justice is far from straightforward. How memorialization initiatives impact individuals, communities and societies remains inadequately understood because of a shortage in empirical research. As one scholar points out, it is uncertain whether memorialization has high, medium, or low relevance, arguing that memorials can be helpful under certain conditions, but that over-optimism towards their capacity to support transitional justice is unwarranted (Brown, 2013). Memorialization is also an inherently political process, which involves competing visions, goals, and strategies. It involves multiple interest groups and memory entrepreneurs and therefore often represents sectional interests rather than a broad and inclusive agenda (Baines, 2009). Consequently, some scholars have found that memorialization can in fact be divisive and counterproductive to inter-group reconciliation, especially in deeply divided post-conflict societies. Case studies from identity-based conflicts in Sri Lanka, Northern Ireland, Croatia and Bosnia and Herzegovina suggest that in such conditions memorialization is politicized by ethno-nationalist groups in order to construct collective identities, reinforce narratives of in-group victimhood and out-group guilt, to mark territory and ethnic boundaries, and to signal out-groups that they are no longer welcome (Clark, 2013, McDowell & Braniff, 2014, Aiken, 2010).

There is no doubt that memorialization is one of many arenas where post-conflict symbolic battles take place and that it cannot be understood in isolation from the broader politics of remembering, which encompasses historiography, museology, school curriculums and history textbooks, public holidays, commemorative ceremonies, and the naming of streets and other public places. While all of these policies combined contribute to the creation and dissemination of information about the past, memorialization can be one of the most contested aspects in post-conflict symbolic politics. Unlike historiography, museums or school curriculums, memorials can be built quickly with modest effort and financial investment. Yet, they often engage the broader public because of their visibility and physical location in the heart of communities. Also, memorials are often designed as permanent markers, whose function is to communicate and transmit their message to both current and future generations. The implication of creating something eternal, or historical, makes memorialization particularly susceptible to nationalist manipulation in countries where ethnic cleansing or forced migration has taken place. In such societies, more than merely reflecting pre-existing ethnic or religious divisions, memorialization can be abused intentionally or unintentionally in ways that inflame inter-group tensions.

Basing her discussion on Sri Lanka, Sara McDowell (2012) argues that memorialization can become a form of symbolic warfare that inflames tensions in ethnically divided states. She points out that memorials have the capacity to mobilize political action and revitalize political support for armed conflict, help to redefine the social categories of victims and perpetrators to change historical narratives and to contribute to the symbolic reconfiguration of territories according to ethnicity. In an examination of the divided city of Vukovar in Croatia, Janine Clark (2013) argues that memorials obstruct reconciliation by promoting divisive ethnicized narratives about conflicts and discouraging acknowledgements of mutual blame and victimhood. Clark also points out that prevalence of war memorials fuels the ‘problem of too much memory’, which can discourage people from moving forward by constantly reminding them of the past conflict. Moreover, Clark notes that as a politicalized process memorialization tends to emphasize certain narratives and minimize others, leaving the memory of minority groups underrepresented or even unrepresented in the public domain.

Similarly, other scholars have argued that memorialization can hinder inter-group reconciliation by reinforcing competing claims of victimhood and guilt, highlighting, and reinforcing ethnic or religious differences and exclusive group identities and by promoting violent and divisive ideologies e.g. ethnic nationalism (Sokol, 2014). Judy Barsalou and Victoria Baxter (2007) have termed this the “dark side of memorialization.” Scholarly works have also shown that mere good intentions on the part of the memory entrepreneurs do not always suffice and that memorial projects, which originally enjoyed a broad national or international mandate, can become hijacked by ethno-nationalist groups, and end up reinforcing divisions instead of promoting reconciliation (Duijzings, 2009). The challenges of memorialization have also been acknowledged by international organizations: A United Nations report from 2014 referred to ‘memorial tyrannies’ to describe communities where memorials are built in large numbers without acknowledging alternative accounts of history and where people are trapped to relive and reenact the past.

The report states that while memorialization overall is a positive development, a particular challenge of post-conflict societies is to establish a balance between remembering

and forgetting (Shaheed, 2009). These and other analyses have shown that the relationship of memorialization and transitional justice can be complex and problematic. Yet, the existing literature rarely discusses whether and how transitional justice could mitigate the perils of memorialization in divided societies. This is perhaps because the relationship between transitional justice and identity-based conflicts is still a new area of research and one that warrants closer examination to fully appreciate the challenges of transitional justice in divided societies. Some scholars have argued that identity-based conflicts present challenges to transitional justice and that failures to understand the dynamics of intergroup conflict have hindered the success of transitional justice in ethnically divided societies. According to Nevil Aiken and Paige Arthur (2011), the nature and dynamics of identity-based conflicts calls to investigate collective victimization and collective blaming, their role in the construction of exclusive ethnic and/or religious identities as well as to the role of nationalist myths and stories in maintaining and reinforcing such identities. Memorialization, in return, should be understood and studied as a means for the elites to communicate such myths to the broader public.

Taking the example of the Good Friday Agreement in the Northern Ireland peace process – which established a Parades Commission to control all aspects of the nationalist and unionist parades during the generally violent marching season – Paige Arthur suggests that similar legally binding regulation based on a strategy of mutual respect can be a feasible and effective way to prevent commemorations and memorials from inflaming ethnic tensions also in other post-conflict countries. But what are the specific problems transitional justice faces vis-à-vis memorialization? What type of memorials should be regulated and why? When, how, and by whom should regulation be implemented? These are broad questions without definitive answers. Much like memory itself, which emerges and is expressed in highly specific ways without clearly detectable patterns (Jelin, 2011), the challenges of memorialization seem to be equally dependent on the context. What is highly contested and controversial in one society may get little attention in another, making it difficult to say exactly what can be done. However, this should not discourage scholars from exploring the potential pitfalls of memorialization further.

The motivation for writing about memorialization in divided post-conflict societies stems from two observations made in Bosnia and Herzegovina. First, Bosnia and Herzegovina stand to testify that international peace builders should be concerned about the perils of memorialization that occur in divided societies and that they should take seriously the idea of establishing legally binding regulation on the construction and use of war memorials. The problems posed by memorialization may understandably be a low priority compared to the most pressing issues: institutional reforms, trials, truth commissions and reparations. Yet, that is hardly an argument for not taking them into account when designing and implementing the post-conflict system. In Bosnia and Herzegovina, the international community has not been actively involved in memorialization process and has left the matter to be resolved by the Bosnian Authorities (on different levels). However, as it is Bosnia's ethno-nationalist political parties that systematically employ memorialization as part of their own political and nation-building strategies and as such have the most to gain from the absence of restrictions, memorialization remains unregulated. This is a pressing concern in Bosnia and Herzegovina

still 30 years after the war and one that should be considered in future transitional justice missions.

The second observation that motivated this article was that there are few scholarly works that would point out case-by-case the different ways in which memorialization can be intentionally or unintentionally abused or discuss how the problems of memorialization could be addressed in post-conflict societies. While these challenges vary from society to society, examples from Bosnia and Herzegovina discussed in this article can shed light on the pitfalls of memorialization more broadly and as such can be useful lessons for future transitional justice missions. These examples seek to highlight areas that scholars and international actors should consider when contemplating legal regulation on memorialization in other post-conflict societies. This is addressed in the final section of the article, which concludes that transitional justice initiatives should pay attention to: (1) establishing a right to memorialize for all ethnic, religious, or other groups, (2) regulating contentious content and hate speech in memorialization, (3) restricting the memorialization of convicted war criminals and of those on trial for war crimes, (4) regulating the strategic placement of memorials and monuments in sites where members of other ethnic groups are likely to contest them, and (5) fostering inclusive cross-ethnic commemorations as an alternative to ethno-nationalist narratives and the politicization of victimhood.

1. BOSNIAN WAR AND ITS AFTERMATH

Bosnia and Herzegovina was the most multi-ethnic of the six socialist republics that together made up the Socialist Federal Republic of Yugoslavia. A census conducted before the war in 1991 showed that Bosnia and Herzegovina was diverse both in terms of the overall demographic makeup of the country and territorial distribution of ethnic groups. Bosnian Muslims (43%), Serbs (31%) and Croats (17%) lived in ethnically mixed communities all over the Bosnia and Herzegovina, making the map of the country's ethnic structure look like a colorful patchwork. This demographic structure was pivotal in the Bosnian war that began in 1992. Although the causes of the Bosnian conflict are numerous, widely debated, and obviously far more complex than the essentialist account that these ethnical groups cannot coexist (Ramet, 2005), a driving force in the war was the violent pursuit of ethnically homogenous territories. In the context of country's ethnic patchwork, this entailed the forceful removal of people through intimidation, destruction of personal property, elimination of cultural heritage, physical violence, and mass killing. As such, the Bosnian war was the bloodiest conflict in the former Yugoslavia and the worst humanitarian crisis in Europe since the World War II. It left more than 100,000 dead and missing and over 2 million people internally and externally displaced (Noel, 1996).

Following a NATO military intervention in the autumn 1995 that changed the balance of power in the war and made ceasefire possible, a peace deal was struck in Dayton (Ohio) in November the same year. The Dayton Peace Accords, which included both a peace treaty and new constitution for the post-war Bosnia and Herzegovina (BiH), divided the country into two highly autonomous entities: the Federation of Bosnia and Herzegovina, which consists of 10 highly autonomous cantons, and the centrally governed Republika Srpska (additionally also Brčko District of BiH). In that way, the Dayton Accords endorsed both a highly complex

system of governance as well as the territorialization of Bosnia's ethnic communities and the ethnic cleansing that had taken place during the war. An understanding of this constitutional design and the division of BiH into ethnic territories is necessary to comprehend the motives and choices of Bosnia's ethno-political elites in the post-war era. Political scientists now widely argue that rather than defusing the ethnically charged political environment, the consociationalism approach adopted in the Dayton Accords has caused further ethnicization of politics and has in fact entrenched ethnic divisions in BiH (Soeren & Perry, 2014).

In addition to the internationally guided state-building project, also the internationally driven nation-building program has faced obstacles in Bosnia and Herzegovina. On a state-loyalty index measuring the success of nation-building in seven Southeast European countries, BiH was ranked at the bottom of the barrel, indicating the lowest level of identification with, and loyalty towards, the state and its official symbols (Kolsto, 2014). Although the international community, represented in BiH by the Office of the High Representative, has sought to foster a Bosnian state/civic identity based on multiculturalism and ethnic diversity, such identity remains contested in the Croat and Serb communities. While the Bosniaks have in broad endorsed a Bosnian civic identity alongside the ethnic affiliation, Croat and Serb communities, whose members often perceive a strong state privileging the Bosniaks, generally have not (Dević, 2014). According to Outi Keränen (2014), an unintended consequence of the international promotion of Bosnian state identity has in fact been the consolidation of exclusive ethnic identities and the reinforcement of parallel nation-building efforts among the three ethnic communities. As Keränen has shown, these nation-building projects have relied extensively on symbolic politics, exemplified by the promotion and use of different symbols of ethnicity, nationhood, and religion – flags, anthems, language and script, and public celebrations – which reinforce and sustain the exclusive politicized identities.

Although the symbolic politics of nation-building incorporate various political strategies that together construct a specific sense of 'Bosniakness', 'Serbness' and 'Croatness', there is a reason to single out memorialization for further analysis. This is the role memories of past conflicts play in the construction of post-conflict identities. In line with the work of cultural and collective trauma theorists (Alexander, 2004, Giesen 2004), – who have pointed out that both "traumas and triumphs constitute the "mythomoteurs" of national identity," – the processes of building post-conflict ethnic identities in BiH have relied on a strong sense of collective in-group victimhood and out-group guilt. This aspect of the nation building is analyzed commendably by Nicholas Moll (2013), who shows how each ethnic community in BiH has proclaimed themselves as the foremost victim not only in the 1990s war but also in prior conflicts, particularly the World War II. Jasmina Tepić (2012) has called BiH a culture of victimhood, whereby every group wants to be seen as the victim of war, while simultaneously denying, or at least refusing to acknowledge, the suffering of other ethnic communities. Memorialization, in return, has proven crucial to the construction and promotion of these notions of in-group innocence and out-group guilt among all three ethnic communities (Sokol, 2014).

2. UNMEDIATED MEMORIALIZATION IN BOSNIA AND HERZEGOVINA

Commemorating the victims of the 1992-1995 Bosnian war through physical memory sites, monuments and memorial plaques began during the conflict and continues actively today, 30 years after the war. Although the number of memorials built is unknown, scholars and journalists alike have referred to a 'monument boom' to describe the prevalence of war memorials all over Bosnia's cities, towns, and countryside (Jukić et al., 2013). According to the working document of *Transitional Justice Strategy for Bosnia and Herzegovina 2012-2016*, memorials are being built in large numbers in public places, including town and city squares, public institutions, schoolyards, busy roads, religious sites, business centers and burial and exhumation sites. This so-called monument or memorial boom in BiH is on the one hand a direct result of the catastrophic human loss in the Bosnian war, which calls people to remember and commemorate both civilian and military casualties.

Another reason for the large numbers of monuments is a complete lack of state-level oversight over the construction of war memorials in BiH, which has allowed memorialization to continue unregulated for 30 years. Even 30 years after formal end of war, the Parliament of Bosnia and Herzegovina has not passed a state law that would regulate and coordinate the construction of war memorials and memorial plates. The first reason for the absence of regulation is that matters concerning the postwar memorialization were effectively left outside the Dayton Peace Accords and as such overlooked in the transitional justice process. Although Annex 8 of the Dayton Peace Agreement defined obligations regarding the preservation of cultural heritage and established an independent Commission to Preserve National Monuments, their work is a response to the destruction of cultural heritage in the wartime and the post-war era and as such does not address nor regulate the post-war memorial projects. Initially, the lack of interest in memorialization in BiH on the part of the international community was undoubtedly caused by a lack of foresight about how divisive the memorialization practices would become. However, the international community has not changed its position and has remained reluctant to interfere in the commemoration and memorialization practices throughout its 30-year presence in Bosnia and Herzegovina. A notable exception is the Srebrenica-Potočari Memorial Centre, which was commissioned by the High Representative Wolfgang Petritsch in 2000 after years of disagreement between the Bosniak and Serb political parties about where the memorial should be located (Helms, 2008). With this exception to compensate for the failure to protect Srebrenica during the war, the international community has not been actively involved in matters related to the memory of the war in fear of controversy (Moll, 2013).

Having been overlooked by the international peacebuilders, matters concerning memorialization were left to be decided in the Parliament of the Bosnia and Herzegovina. The political landscape in Bosnia and Herzegovina is dominated by ethnic parties, which have shown no interest in regulating memorialization. The main reason for this can be found in the two key features of the post-war political system and society discussed above: the territorialization of ethnicity in the system of governance imposed by the Dayton Accords and the exclusive and competing nation-building strategies of the Bosniaks, Serbs, and Croats. As it is, the status quo stands to benefit the ethno-nationalist parties. In the absence of a state law on memorialization, the political elites from each ethnic community remain free to engage in

exclusive nation-building strategies, which involve the promotion of historical narratives that best suit the parties' political strategies in the territories they control. A former outreach coordinator for BiH at the International Criminal Tribunal for the former Yugoslavia, Refik Hodzic, summarized this practice:

“The absence of state-level law on memorials is something that the majority of the current ruling parties – which are seriously intent on using the past to further divisions among people for their own specific goals – use to preserve their monopoly on the truth ... Basically in the area that [politicians] control, where they are the majority in ethnic terms, they will not allow memorials [for victims of another ethnic group], especially of an educational nature.”

The absence of a state law on memorialization means that decisions regarding memorialization are made locally. Although the legal basis for building memorials is embedded in the laws of the ten cantons and two entities of Bosnia and Herzegovina, in fact decisions about memorials are taken in towns' planning divisions that issue permits for the construction of memorials. There are no meaningful criteria or standard the planning divisions need to consider when issuing such decisions nor is there any oversight on the type of memorials that are built. This lack of state-level oversight and regulation empowers local political elites as the foremost memory entrepreneurs, who yield power over other interest groups and actors – such as victims' advocacy groups and non-governmental organizations – in deciding who has the right to build memorials, what are acceptable and unacceptable forms of memorialization, and where memorials are placed. A report of the *UN Working Group on Enforced or Involuntary Disappearances* in 2010, identified numerous problems with the localization of memorialization practices in BiH and the dominance of local political elites over those practices. According to the report, victims' families have been prevented from visiting burial ceremonies or graves of their relatives, victim groups have been prevented from erecting memorials in areas dominated by other ethnic groups, and memorials are often built without consultation and with the purpose of intimidating members of other ethnic groups. The report proposes a national law on memorials as a solution to the problems of memorialization:

”At present the issue of memorials has caused much controversy and unhappiness. There are many problems associated with them... [which] should be dealt with by the national authorities... A national law on the issue of memorials should be enacted. Such a law should set out the criteria and the process for establishing memorials.”

A state law has also been demanded in Bosnia and Herzegovina, where scholars, journalists and non-governmental organizations alike have expressed a need for further regulation over memorialization practices. On the one hand, some people and organizations have proposed a state-law to establish an equal right for all groups to memorialize, to protect former sites of suffering from destruction and to clarify other unresolved issues, such as the private ownership of memorial sites and sites of suffering. On the other hand, the need for regulation is highlighted by what many have seen as systematic politicization and abuse of memorials in Bosnia and Herzegovina. Among others, such view has been expressed by Anida Sokol, who views the current memorialization practices one part of a broader nationalist agenda, which began with the destruction of Yugoslavian/communist heritage and continued with the destruction of non-Bosniak, non-Serb or non-Croat cultural heritage in the ethnically

cleansed territories as a means for erasing all reminders of prior multi-ethnicity. The post-war memorial building, in return, seeks to fulfil the void with new monuments and memorials that exclusively represent the Bosniak, Serb, or Croat version of history. According to Sokol, memorials are constructed to mark to which ethnic group a territory belongs, demarcate territory, tell the official narrative of the local majority population, disseminate that narrative by taking advantage of the public space, demonstrate power, create an illusion of creating something eternal and to provoke and repel other ethnic groups (Sokol, 2014).

3. INTERVENING IN MEMORIALIZATION IN DIVIDED SOCIETIES

Thus far this paper has made the case that memorialization is a multifaceted and contested social and political process in divided post-conflict societies and that memorials are susceptible to political manipulation from the part of ethnic and memory entrepreneurs, such as political parties. Although memorialization has been identified as something that can hinder inter-group reconciliation and although journalists, civil society activists and academics in and outside Bosnia and Herzegovina have expressed a need for a state law that would regulate memorialization, this discussion has offered few specific proposals regarding the issues such regulation should address and how it would function.

As a point of reference for this discussion it is possible to take Page Arthur's notion of the strategy of mutual respect, whose underlying idea is to create regulation and circumstances whereby each ethnic or religious community (or any other relevant group) is allowed "to pursue memorialization in a way that would offer the minimum level of offense to other communities." (Arthur, 2011) The strategy takes into account that each community has its history as well as narratives and symbols that correspond with that past and that they are an integral part of the way communities commemorate and memorialize. Every group should have the right to access and use those symbols in a manner that is not purposefully or overtly offensive to other communities: "The animating idea behind this strategy was one of mutual respect for the other group's symbols and narratives, which required that those symbols and narratives not be demeaning." As such, the process would require each side of the conflict to engage in a dialogue, make compromises and to give up some ways of commemorating and memorializing that are likely to stir up controversy. Ideally this would be achieved by establishing an authority comprised of representatives from each community who together would try to find common ground and negotiate the terms of memorialization. The example of such multiethnic/multireligious authority could be found in the Parades Commission in Northern Ireland, which is an independent quasi-judicial body established by the Good Friday Agreement to mediate and resolve issues concerning the Unionist and Nationalist parades and to regulate their location and content.

The Parades Commission represented an innovative attempt to alleviate the threat of sectarian violence caused by the contentious use of the public space while respecting people's basic rights to freedom of assembly and expression. The commission does not have the right to forbid parades, but it can issue legally binding determinations and place conditions, which the parades must fulfil in order to be concerned legal. Thus far it has, for example, regulated the marching routes and issued guidelines concerning the music played in the parades. The Parades Commission derives its powers from the 1998 Public Processions Act of Northern

Ireland, which gives the commission the right to impose conditions on public parades when they are likely to cause public disorder or damage to property, to disrupt the life of the community or to impact relationships within the community. It is important to note that the Parade Commission has interpreted *community* to mean not only individual towns or cities where parades are held but the “wider Northern Ireland community,” (Bryan, 2008), meaning that the commission reserves itself the right to regulate parades by taking into account the impact they may have on the inter-communal relations more broadly. Acknowledgement of the broader impact of commemorations is, undoubtedly, one of the most important lessons of the Parades Commission and a key precedent for international actors for future considerations about the legal remedies of regulating commemorations and memorialization in divided post-conflict societies.

The Parades Commission of Northern Ireland is a source of both legal and practical insight for a further discussion about legal regulation of commemorative activities in post-conflict states, but it has also brought to light some of the challenges, which regulation of commemorations is likely to encounter. Not everyone in Northern Ireland has welcomed the Parades Commission and its decisions have been controversial and contested. Unsurprisingly, its most vocal opponents have been some of the most active organizers of parades, such as the loyalist Orange Order, who have denied the commission’s authority and refused to engage in conversations about the parades. Overall, the Parades Commission has remained contested among the Unionists sect of the population. The Parade Commission has also been involved in several lawsuits regarding the imbalance of its appointees in cases when one side of the conflict felt inadequately represented (Hamilton & Bryan, 2006). Regarding its achievements, a study conducted 9 years after the Parades Commission was founded concluded that despite of the positive developments overall, “there are few locations where [parade] disputes might be considered as effectively addressed.” As Melinda Sutton (2013) has argued: “Issues surrounding contentious parades in Northern Ireland have continued beyond the ostensible end of the conflict, reflecting the fact that the fundamental dispute over identity and territory in Northern Ireland remains unresolved.” In addition to the key precedents set by the Parades Commission, these shortcomings also need to be studied in detail if similar interventions into commemorative activities are considered in other post-conflict societies. The Parades Commission’s work suggests that key challenges that need to be addressed are likely to concern the legitimacy of the intervention and the fair representations of the different sides of the conflict in designing and implementing regulation. Also, the work of the Parades Commission is limited to addressing the circumstances of the Unionist and Nationalist marching tradition in Northern Ireland and as such offers little insight into the broader issues concerning memorialization in post-conflict societies. The multifaceted process of remembrance in Bosnia and Herzegovina, on the other hand, can be extremely useful in pinpointing the different ways in which the transitional justice process could intervene into memorialization practices in order to reduce memory competition, reduce contention and support non-nationalist narratives as an alternative to the politicization of victimhood.

4. BOSNIA AND HERZEGOVINA AND MEMORIALIZATION

In the light of past parts of this article, that briefly summarize position of the memorialization in transitional justice processes, further taking in consideration experiences from Bosnia and Herzegovina, it is possible to focus on five separate areas of interest to which transitional justice should pay attention.

Establishing a right to memorialize

Establishing a right for different communities to have their memory preserved and their victims commemorated in the form of physical memorials is a central theme in the transitional justice literature. Allowing different ethnic or religious communities in divided societies to commemorate is important because every group has a need to mourn and because every community deserves to have their victimhood publicly recognized. Displaying divergent and sometimes utterly opposite narratives and accounts of history can also be important for more nuanced understandings about the past to emerge. Memorials can help to ensure that people are subjected to more than one version of history and perhaps, over time, come to accept its complexity: “The central issue is how to ensure that people hear the story of others and learn to recognize their common humanity.” (Shaheed, 2014). An unwanted consequence of having different accounts of history being displayed in divided communities can be memory competition, “A sort of tit-for-tat escalation of competing group symbols in the public sphere,” (Arthur, 2011) which can be detrimental to inter-group reconciliation.

While memorialization in a divided post-conflict can hardly be expected to be neutral, establishing further regulation to ensure that it is mutually respectful can be a feasible strategy. Overall, the challenge of transitional justice is to establish a balance between people’s genuine need to commemorate and the consequences that it bears on inter-group relations. In Bosnia and Herzegovina, the state does not guarantee minority groups the right to memorialize and the foremost problem in this regard is the absence of a national law on memorials (and commemorations). The localization of memorial practices means that an ethnic group, which has a majority in a given area, can dictate the terms of memorialization, while local minority groups are often prevented from erecting memorials. This imbalance has caused long and bitter political struggles in several ethnically divided towns and cities in BiH, where authorities have for years neglected the requests of victims’ families and advocacy groups to build a memorial. The municipality of Prijedor, which was the site for some of the most horrendous war crimes in the 1990s, is a case in point. There the Bosniak returnees’ demands for memorialization have constantly been met with resistance on the part of the Serb-led municipality (Sivac-Bryant, 2014), causing to divisive political struggles that continue 30 years after the war. The capital Sarajevo, which boasts about multi-ethnicity and where tens of thousands of Serbs and Croats stayed and defended the city against the Army of Republika Srpska during the war, for a long time failed to recognize the crimes committed against the non-Bosniak population. In 2013 the city made a commitment to memorialize Serb and Croat civilian victims killed in Kazani under the orders of the Bosniak commander Mušan Topalović Caco, once materialized in 2021, was highly contested.

Containing contentious messages and symbols

Although the priority should be to make sure that all groups have a legal right to have their memory represented in the public domain, the next task of transitional justice should be to ensure that memorials do not intentionally inflame intergroup tensions by using text and symbols, which are outright offensive or demeaning to other ethnic or religious communities. In that context, there is a need for a strategy of mutual respect, which could entail legally binding regulation on what is acceptable content in memorialization. However, this is an enormous challenge and one that can never be completed satisfactorily without turning memorials into meaningless expressions isolated from the context and history that led to their construction. In a divided post-conflict society nearly all symbols of nationhood and history can be, and oftentimes are, interpreted offensive by other groups. Yet, it is unrealistic and undesirable to expect people to commemorate without any reference to nation or history. However, memorialization in Bosnia and Herzegovina demonstrates that war memorials can also contain truly divisive and aggressive messages that are offensive and problematic far beyond the use of nationalist rhetoric and symbols. As such memorials arguably make the everyday lived environment seem hostile and alienating to people whose ethnic group is portrayed in such ways, it begs the question why representations should be allowed, among other places, on public buildings.

In Bosnia and Herzegovina, numerous memorials contain nationalist symbols that are associated with the war. The Bosnian lily, which was the symbol of the Army of the Republic of Bosnia and Herzegovina and has since become a symbol of the Bosniak people, is featured on countless memorials and plaques. Šahovnica, symbol of the Croatian Defence Forces, and the double-headed eagle and the Serbian cross used by the Army of Republika Srpska are also common on war memorials. The use of these nationalist symbols contributes to the shaping of the symbolic landscape, but the most evident controversy regarding war memorials concerns the way they name, describe, and portray former perpetrators. Although naming perpetrators and placing blame is a universal feature of war memorials, in BiH memorials and memorial plaques often portray an entire ethnic group guilty for the crimes committed. Instead of naming a particular brigade of the Army of Republika Srpska or individual perpetrators, most memorial plaques in the now Bosniak-led Sarajevo contain a generalizing reference to “Serb criminals”. As Anida Sokol (2014) has summarized, these memorials plaques “give room for the generalization of the guilt as the collective guilt of one nation and causes discontent among Serbs, who see these symbols as another way to depict the Serb nation as the evil one.”. Most importantly, similar generalizing descriptions of other ethnic groups are common among all three ethnic communities in BiH: In the Croat-led town of Vitez, for example, one memorial commemorates the Croat victims of a “Muslim siege” and another the child victims of a “grenade of the Muslim enemy”, and not of the Army of the Republic of Bosnia and Herzegovina.

Forbidding commemorations of war criminals

Even more contentious than the use of controversial messages and symbols on memorials are the public commemorations of convicted war criminals and those still on trial for war crimes. While the old remark ‘one man’s hero is another man’s villain’ aptly describes all post-conflict societies and makes commemorations of individuals almost always contentious, commemorations of convicted war criminals represent a particular challenge to post-conflict societies both locally and on a national level. The fact that war criminals are the most infamous perpetrators as well as the wide national coverage memorials for war criminals have received in BiH suggest that such commemorations are not contentious among the people they reach directly, but that they also resonate and have the capacity to anger, annoy and to inflame tensions more widely. The timing of such memorialization initiatives and the support they have on some occasions received from the higher echelons of government in Bosnia and Herzegovina also suggests that they are shamelessly used by ethno-political elites to provoke and to send strong messages not only to the members of their own ethnic groups but also to other communities. Political parties are not, however, responsible for all such commemorations. Sometimes, the culprits are veterans’ organizations or other nationalist groups, who, for the price of a memorial plaque, can buy nation-wide publicity for the ideology they represent.

In Bosnia and Herzegovina, commemorations of war criminals cut across all three ethnic communities and have at times been at the center of controversy. However, the most publicized and contested cases of war criminal commemorations have taken place in Republika Srpska regarding the two most notorious war criminals of the Bosnian war: Ratko Mladić and Radovan Karadžić. In June 2014, Mladić, sentenced for life for genocide at the ICTY, was commemorated on a memorial plaque at the Vraca Memorial Park in East Sarajevo. The modest black plaque with white text, which was put up by a veteran’s organization from East Sarajevo, was made public soon after on the most widely read news sites in Bosnia and Herzegovina. The news was followed by public commentary from high-ranking former officers from the Army of Republic of Bosnia and Herzegovina, who condemned the memorial. Even more widely publicized event took place in the end of March 2016, a few days before the trial of Radovan Karadžić in which he was found guilty of genocide and crimes against humanity against the Bosnian Muslim population. Then the president and highest-ranking politician of Republika Srpska, Milorad Dodik, opened a student dormitory in the city of Pale bearing Karadžić’s name and a memorial plaque. The inauguration, which was main news in Bosnia and Herzegovina, was an open political statement defending Karadžić’s legacy in founding Republika Srpska and his reputation against the trial, which was expected to find him guilty. Two more developments in this regard in BiH deserve to be mentioned. In both cases, those were interventions of the High Representatives in BiH to its legislation. Firstly, Valentin Inzko, former HR in BiH, on 23.07.2021 introduced amendments on the Criminal Code of BiH in regard criminalization of the denial of genocide, crimes against humanity and war crimes and glorification of its perpetrators. A couple of years later, it is far to say that these changes produced no significant change of glorification of war criminals and their deeds in BiH society. Second came from its successor Christian Schmidt in year 2024, introducing restriction to the

war criminals in BiH to be candidates on the elections or serve as public officials. Its effects are to be seen.

Regulating the strategic placement of memorials

Scholars have also argued that memorials can be built with the purpose of marking ethnic territory and boundaries and to highlight local power-relations. The underlying concern is that memorials and monuments ethnicize the symbolic landscape and make it appear as if it was the property of one group instead of another. As such, memorials can create hostile environments to which refugees of war feel uncomfortable to return, to which members of other ethnic groups are less likely to move for work and from where members of minorities are more likely to move away because they are made to feel unwanted and alienated by the public spaces and available symbols (Shaheed, 2014). One way to cope with this would be to ensure that the symbolic landscape does not stay monolithic and that it incorporates different narratives and perspectives by implementing legislation that also guarantees minorities the right to build memorials. However, numerous examples from Bosnia and Herzegovina show that guaranteeing the right to memorialize without further regulation can be insufficient, as memorials are also erected strategically with the distinct purpose of provoking other ethnic communities.

In Bosnia and Herzegovina, the strategic placement of memorials is reflected in two types of cases. The first type of case is those where one ethnic community as an act of provocation erects a war memorial in a site that for historical reasons is regarded as untouchable by the members of another ethnic group. Such places can, for example, be what Marc Ross (2004) describe as ‘sacred sites’: places that mark and symbolize key events in a group’s history and are associated with past defeats or victories. An example of this type of strategic placement is a war memorial dedicated to fallen Serb soldiers located at the site of the former Trnopolje concentration camp in the municipality of Prijedor, where non-Serbs were held and killed in 1992. Erecting memorials on such sites is seen widely as provocation among the ethnic groups. The second type of strategic placement involves instances when memorials have been built to mark an entire cityscape or landscape. Catholic Croat communities in Kiseljak and Mostar have erected large, illuminated crosses on nearby hilltops where they are visible from all sides of the ethnically divided cities. Although the local Catholic communities have justified the crosses as universal messages of peace, other ethnic groups have interpreted them as messages of animosity (Makas, 2005).

Fostering inclusive commemorations

Finally, transitional justice should consider the construction of memorials and memorial museums that are dedicated to all victims of war or conflict regardless of ethnic, religious or other affiliation. In theory, such memorials could make a tangible contribution to transitional justice by educating new generations about past conflicts, cultivating positive attitudes, and alleviating the acknowledgement of mutual guilt and suffering. They could also offer a public forum for those who wish to commemorate all victims of the war without taking part in the politicization of victimhood that is typical to post-conflict societies. Such commemorations are

both complex and sensitive. Commissioning inclusive memorials and museums is difficult when the former adversaries are unable or unwilling to come to terms about the causes of the conflict and to establish facts about victims. Another argument against forcing cross-ethnic commemorations is that they are unlikely to enjoy respect or wide support due to the mutually exclusive views about history among the different ethnic communities. Therefore, cross-ethnic memorials could be perceived as inauthentic, bland and meaningless and could hardly be expected to achieve the goals set for them (Brown, 2013, Arthur, 2011). However, the question transitional justice should ask is whether shared and inclusive memorial sites could help to empower voices that are currently in margins but which, over time, could grow into a broader civic movement that wants to deal with the past constructively. The near absence of shared memorial in Bosnia and Herzegovina thirty years after the conflict shows that achieving that can be very difficult to build without the support of international actors.

Nearly all war memorials in Bosnia and Herzegovina commemorate victims from one ethnic group and ethno-nationalist or religious symbols and texts are often used to emphasize their exclusivity. Building cross-ethnic memorials has been problematic and, in a few instances, when inclusive or cross-ethnic memorialization was possible, it became fraught with controversy. This was the case after the mid-2000s when commissioning a memorial for the children who died in Sarajevo during the war. The most debated question was whether the memorial should commemorate all children who died in the city, including the parts that were occupied by the Army of Republika Srpska, or only those who died within the siege itself. A choice was made for the latter and the names of the mostly Serb children who died outside the sieged area were therefore excluded from the memorial (Morrow, 2012).

CONCLUSION

Bosnia and Herzegovina, a country marked by the scars of a brutal conflict in the 1990s, faces a complex challenge in the process of memorialization. The act of commemorating the past, especially in divided post-conflict societies, is fraught with perils and pitfalls that can either hinder or help the healing process. The peril in memorialization lies in the potential to reignite old wounds and divisions. In Bosnia and Herzegovina, where ethnic and national identities were central to the conflict, memorials can become flashpoints for renewed tension. They often reflect the narrative of one group over another, creating a physical manifestation of the societal rifts that the country is striving to overcome. This selective memory can exacerbate feelings of injustice and victimization, leading to a cycle of resentment that hampers reconciliation efforts.

Another pitfall is the politicization of memory. Political entities may manipulate memorials to serve their agendas, using them as tools to solidify power or legitimize narratives that support their continued dominance. This can lead to a skewed representation of history, where certain events are exaggerated, downplayed, or even omitted to fit a particular political narrative. Such actions can distort the collective memory, leading to a fragmented society where different groups hold vastly different views of the past. Moreover, the process of memorialization can be exclusionary, often overlooking the voices of those who suffered the most. Survivors of the conflict and families of victims may feel that memorials do not

adequately represent their experiences or the magnitude of their loss. When memorials fail to be inclusive, they risk alienating the very individuals they are meant to honour and remember.

The challenge, then, is to approach memorialization with sensitivity and inclusivity. It requires a careful balancing act to acknowledge the suffering of all sides without creating hierarchies of victimhood. Memorials should aim to educate future generations about the complexities of the conflict, highlighting the human cost of war and the importance of peace. One way to navigate these perils is through participatory approaches to memorialization. Engaging diverse communities in the design and creation of memorials can ensure that multiple perspectives are considered. This collaborative process can foster dialogue and understanding, helping to bridge divides rather than deepen them. Another approach is to focus on universal themes of loss and resilience rather than specific events or figures. By emphasizing shared human experiences, memorials can resonate with a broader audience and promote empathy and solidarity among different groups. In conclusion, memorialization in Bosnia and Herzegovina is a delicate endeavour that must be handled with care. The perils and pitfalls are significant, but they are not insurmountable. With a commitment to inclusivity, dialogue, and education, memorials can serve as powerful tools for healing and unity in a society still grappling with the legacy of conflict. They can transform the landscape of memory into one that fosters reconciliation and paves the way for a more peaceful future.

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