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**PANEL BK2: MEMORY AND RECONCILIATION IN BOSNIA**

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**Living with Effects of Genocide: Denial and Remembrance in Postgenocide Bosnia\***

**Introduction**

This paper assesses effects of the genocide perpetrated in the course of the Bosnian War (1992-1995) with particular reference to the Srebrenica massacre (July 11-19, 1995). It demonstrates how the genocide discourse and war narratives remain active in the efforts to construct, or contest, the Bosnian polity and its political community.<sup>1</sup> In the intervening years following the conclusion of

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\* Based on my chapter, 'Constructions of Genocide Denial and Remembrance: Fractured National Identity in Postgenocide Bosnia', in Klejda Mulaj (ed), *Postgenocide: Interdisciplinary Reflections on the Effects of Genocide* (Oxford University Press, 2021).

<sup>1</sup> The worst episode in the European history since World War II, the Bosnian War led to nearly one hundred thousand people dead and over two million displaced. A database compiled by Patrick Ball, Ewa Tabeau and Philip Verwimp records 96,895 casualties—this figure being not the overall total number of victims but rather 'an approximation of a minimum ... total'. Patrick Ball, Ewa Tabeau and Philip Verwimp, 'The Bosnian Book of Dead: Assessment of the Database (Full Report)' (*Households in Conflict Network*, 7 June 2007) <<http://www.hicn.org/wordpress/wp-content/uploads/2012/07/rdn5.pdf>>. 24,826 of Bosnian War casualties were Serbs, of whom

the war, Bosnia's people have lived with the impact of the genocide. Their rather common sentiment of 'unsettled scores' reflects discontent with the postwar setting—discontent which is mediated, amongst other factors, by (divergent) explications or denial of genocide. The paper presents a reasoned interpretation of the relationship between genocide and the fragile peace in genocide's aftermath. It shows how interpretations of genocide affect and sometimes undermine the constitution of peace and the unity of the political community. The paper can be read also as an interpretation of how violence of war permutates in times of peace.<sup>2</sup>

A peace deal does not mean that effects of genocide on affected societies come to an end. Indeed, there are long-term repercussions of genocide—social, political, and legal. Suffering of survivors continues after killings end. The harm of genocide and the status of victims and survivors are often

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20,000 soldiers and 661 were police. This leaves 4,165 Serb civilian casualties in the course of the four year Bosnian War, which is roughly half of the number of Bosnian Muslims killed by Serb forces in Srebrenica (about 8,000) in just one week in July 1995. 62,069 Bosnian Muslims were killed in the course of the Bosnian War, 82 percent of whom were civilians. These figures are approximations; they do not include numbers of missing victims unearthed from mass graves since 2007 (the year when Ball *et al* report was published). For an authoritative study of the Bosnian War see David Campbell, *National Deconstruction: Violence, Identity, and Justice in Bosnia* (University of Minnesota Press 2008). For a detailed account of the 1995 Srebrenica genocide see United Nations, 'The Fall of Srebrenica, Report of the Secretary-General pursuant to General Assembly resolution 53/35' (*United Nations*, 15 November 1999) <<http://www.refworld.org/docid/3ae6afb34.html>>.

<sup>2</sup> 'Violence of war' is a broad term that includes 'asymmetrical violence against civilians—such as genocide, ethnic cleansing, rape and other dehumanizing acts of war, and their ensuing effects'. Klejda Mulaj, 'Violence of War, Ontology, and the Instrumental and Performative Constitution of the Political Community' (2018) 44(1) *Review of International Studies* 67. 'Peace' may be conceived as a dynamic process of resolving disputes without violent conflict and transforming conditions that cause war so that war is no longer feasible. See David Cortright, *Peace: The History of Movements and Ideas* (Cambridge University Press 2008) 8.

times denied, in turn undermining victims'/survivors' transition to a peaceful, postconflict community. Furthermore, frequently state officials resort to a purposeful use of genocide in the postgenocide era as a fragile peace takes hold. Such uses of genocide are oftentimes coupled with new manifestations of identity politics and (new) expressions of nationalist ideology. In the course of war, genocide violence—frequently used to advance war aims—benefits the perpetrators.<sup>3</sup> The illegality of such violence, nonetheless, is not lost on the side of organizers and perpetrators. In the entire course of the Bosnian War—including the Srebrenica genocide—there were extraordinary, coordinated efforts on the side of the Serb forces to conceal, and therefore deny, crimes they committed, efforts that ranged from coded language as the crimes unfolded to reburial of bodies in secret locations where they were expected to remain unfound.<sup>4</sup> Whilst genocide denial continues to-date, it bears emphasizing that denial is not merely an afterthought of genocide. Denial is an intrinsic part of genocide.

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<sup>3</sup> But genocide does not benefit perpetrators in times of war only. As shown in the ensuing analysis, genocide can benefit them also in times of peace as is the case, for instance, of the Serb entity—Republika Srpska—in Bosnia.

<sup>4</sup> Marija Tausan and Denis Dzidic, 'Srebrenica Convictions are Triumph of Justice says Karadzic Prosecutor' (*BalkanInsight*, 11 July 2019) <<https://balkaninsight.com/2019/07/11/srebrenica-convictions-are-triumph-of-justice-says-karadzic-prosecutor/>>. Cover-up operations to conceal the crimes have included use of mechanical diggers, tearing bodies apart, and dispersal of mass graves' contents as a result of which partial remains of victims are found in several sites, many miles apart. In one instance remains of one individual were found in five separate graves. Shaun Walker, 'Genocide Denial Gains Ground 25 Years After Srebrenica Massacre', *The Guardian*, 10 July 2020, <<https://www.theguardian.com/world/2020/jul/10/genocide-denial-gains-ground-25-years-after-srebrenica-massacre>> (hereafter Walker, 'Genocide Denial' (n 4)); Annie Hylton, "'You Simply Die All Over Again: The Agony of Srebrenica, 25 Years On', *The Guardian*, 14 July 2020, <<https://www.theguardian.com/global-development/2020/jul/14/you-simply-die-all-over-again-the-agony-of-srebrenica-25-years-on>>, (hereafter Hylton, 'You Simply Die' (n 4)).

Denial accompanies the unfolding of genocide—contra to a section of the existing genocide literature that conceives denial as the ‘final stage of genocide’, as a post-factum practice that ensues after genocide.<sup>5</sup> Indeed, as the tragedy at Srebrenica was taking place in those fateful days of July 1995, the war indicted criminal—then army General overseeing Serb operations—Ratko Mladić told the press that the Serb takeover of the UN safe area was done to neutralize Muslim terrorists, fictitious operations of the Army of Bosnia and Herzegovina (ARBiH) against Serb civilians. He used the notion of ‘necessity’ to justify atrocities. Then in the immediate aftermath of the tragedy, from September to November 1995, a massive cover up operation was undertaken by forces of the Army of Republika Srpska and Ministry of Interior who moved dead bodies from original mass graves to secondary, secret locations. For years following the fall of the enclave, Serb leaders in Bosnia and Serbia even promoted the lie that killings in Srebrenica had been committed by ARBiH. As evidence of the truth emerged from court proceedings at the International Criminal Tribunal for the former Yugoslavia (ICTY), the Serb elite in Republika Srpska (RS)—the Serb-ruled entity in Bosnia— and the Republic of Serbia gradually moved to a form of interpretative denial, arguing that what happened in Srebrenica was justified and contesting the gravity of crimes established via due process at the ICTY.<sup>6</sup>

In the course of war, genocide benefited perpetrators—although the latter seek to maintain their benefits in postgenocide by resorting to denial. In the aftermath of fighting, however, loss and suffering lend credibility to survivors’ demands for accountability, recognition, and redress. Yet, the persistent denial of crimes by the perpetrators’ and their supporters enables the community of perpetrators to avoid responsibility and reparations. According to a 2018 poll, 66 percent of Serbs in RS deny genocide, whereas 74 percent of Serbs consider genocide convicted criminal Radovan

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<sup>5</sup> For a representation of this literature see Gregory H. Stanton, ‘The Ten Stages of Genocide’ (*Genocide Watch*, 1996) <<https://www.genocidewatch.com/ten-stages-of-genocide>>.

<sup>6</sup> Refer to Lara J. Nettelfield and Sara E. Wagner, *Srebrenica in the Aftermath of Genocide* (Cambridge University Press 2014), chapter 8, particularly 255, 258-260, 267 (hereafter Nettelfield and Wagner, *Srebrenica* (n 6)).

Karadžić to be a hero.<sup>7</sup> In Srebrenica—which before the war was a Muslim-majority town but where now Bosnian Muslims, known as Bosniaks, are in minority—genocide denial is mainstream. Its Serb mayor, Mladen Grujičić, denies the genocide without hesitation. Courts of law which have determined beyond reasonable doubt that genocide occurred in Srebrenica, according to him, are ‘biased against the Serbs’.<sup>8</sup> Genocide denial has become mainstream in the political circles of Serbia proper too, as it will be explored below. These conflicting utilizations of genocide on the side of the community of victims and that of perpetrators undermine societal cohesion and victims’ aspirations for justice.

In Bosnia recognition of genocide and its denial are part of a broader struggle over salient issues of national identity, authority, legitimacy, and security mediated by competing frameworks on the use of force in the course of war. This broader struggle—expressed by diverse viewpoints on the above mentioned issues on the side of the Bosnian Muslims and the Serbs—constitute an intense contest over the re-imagination of the Bosnian political community, or contestation of it, that have produced serious fractures in the national unity. The Bosnian political community suffers from fractures both from without—mainly due to Serb denial of genocide, and from within—not only due to ethno-national divisions but also due to denial of rights of surviving victims, including women and men violated in the course of genocide and war, and children born of rape.

Before unpacking some legal, political, and social effects of genocide in the post/war setting, it is worth noting that there is a contested terminological debate on genocide in Bosnia. The Bosniak survivors of war violence—who have been subjected to a systematic, organized attempt at annihilation due to their national identity, and religion—conceive themselves as victims of genocide. However, the ICTY has ruled that, out of all mass atrocities perpetrated in the duration of the Bosnian War, only that of Srebrenica (July 11-19, 1995)—when Serb forces killed more

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<sup>7</sup> Figures from Mersiha Gadzo, ‘Canadians launch petition to ban Srebrenica genocide denial’ (*Al Jazeera*, 28 December 2018) <<https://www.aljazeera.com/indepth/features/canadians-launch-petition-ban-srebrenica-genocide-denial-181227115025333.html>>.

<sup>8</sup> Walker, ‘Genocide Denial’ (n 4).

than 8,000 Bosnian Muslim men and boys and expelled tens of thousands of women and children—qualifies as genocide. This legal determination—of crucial importance as it is—overlooks the fact that Bosnian Muslims were subjected to genocidal violence right from the onset of the war. Their systematic killing has been part of the same conflict and executed under the terms of the same Serb-designed war plan and strategy.<sup>9</sup>

That the Srebrenica massacre is the only atrocity in the entire Bosnian War to have been designated as genocide has disappointed victims' community and also many scholars. Critics argue that Srebrenica has been decontextualized from the rest of the Bosnian War. Their discontent stems from the fact that only one mass atrocity in the course of the four year Bosnian War has been classified as genocide, whereas too many similar such occurrences have not. Lara Nettelfield and Sara Wagner have argued that Srebrenica 'was neither isolated nor aberrant'.<sup>10</sup> Similarly, Ed Vulliamy writes: 'Srebrenica was not an isolated incident. ... It 'ticks the box' of appearing to reckon with Bosnia, without doing so. Who ever hears these days about Vlasenica, Bjeljina, Doboj, Brcko, Prijedor, Foca, Visegrad, Caplinja, East Mostar ... the list is endless, beyond those bereaved, shattered and scattered by the slaughter there?'.<sup>11</sup> This decontextualization of genocide

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<sup>9</sup> The latter theme has been expanded upon in Klejda Mulaj, *Politics of Ethnic Cleansing: Nation-State Building and Provision of In/Security in Twentieth Century Balkans* (Lexington Books/Rowman & Littlefield 2008) chapter 3.

<sup>10</sup> Nettelfield and Wagner, *Srebrenica* (n 6) 8; Gregory Kent, 'Justice and Genocide in Bosnia' (2013) 3(2) *Law, Crime and History* 141-142 (hereafter Kent, 'Justice and Genocide' (n 10)).

<sup>11</sup> Ed Vulliamy, 'Srebrenica: The World fails, but never one's own government' (*Open Democracy*, 12 July 2014) <<https://www.opendemocracy.net/can-europe-make-it/ed-vulliamy/srebrenica-world-fails-but-never-one%E2%80%99s-own-government>> (hereafter Vulliamy, *Srebrenica* (n 11)). See also, Daniel Toljaga, 'Prelude to the Srebrenica Genocide: Mass Murder and Ethnic Cleansing of Bosniaks in the Srebrenica Region During the First Three Months of the Bosnian War (April – June 1992)' (*Congress of North American Bosniaks*, 23 November 2010) <<https://bosniak.org/2010/11/23/prelude-to-the-srebrenica-genocide-mass-murder-and->

has created resentment in towns and cities across Bosnia where genocide memorials do not exist and demands for reparations remain unheeded. As Jelena Subotic observes affixing different labels onto the same conflict matters greatly for the everyday politics in genocidal spaces. That Srebrenica only has been designated as genocide has created a particular type of postgenocide identity of the city that renders difficult rebounding in the aftermath of atrocity. Furthermore, deprivation of such designation for the rest of Bosnia allows Serbia to deny genocide and eschew responsibility for Serbian assistance during the war.<sup>12</sup> Genocide denial has attained approval also outside the region. The award of the 2019 Noble Prize for Literature to the Austrian writer Peter Handke—a genocide apologist and an admirer of the genocide indictee Slobodan Milošević (having delivered a eulogy at the latter’s funeral in Požarevac, Serbia, in 2006)—engenders truth and enrages survivors.<sup>13</sup> For victims of the Bosnian War and their community to be denied recognition of genocide harms is an injury to their identity—an injury to who they are.<sup>14</sup> As it will be argued in the penultimate section of the paper, such denial undermines—too—victims’ full integration in postgenocide Bosnia in so far as their suffering remains inadequately acknowledged

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ethnic-cleansing-of-bosniaks-in-the-srebrenica-region-during-the-first-three-months-of-the-bosnian-war-april-june-1992/> (hereafter Toljaga, ‘Prelude to the Srebrenica Genocide’ (n 11)).

<sup>12</sup> Jelena Subotic, ‘The Meaning of Genocide and the Political Stakes of Naming’ (*The Disorder of Things*, 4 July 2019) <<https://thedisorderofthings.com/2019/07/04/the-meaning-of-genocide-and-the-political-stakes-of-naming/#more-17381>>.

<sup>13</sup> Peter Maass, ‘Congratulations, Nobel Committee, You Just Gave the Literature Prize to a Genocide Apologist’, *The Intercept*, 10 October 2019, <<https://theintercept.com/2019/10/10/congratulations-nobel-committee-you-just-gave-the-literature-prize-to-a-genocide-apologist/>> (hereafter Maass, ‘Congratulations’ (n 13)); Ed Vulliamy, ‘Peter Handke’s Nobel Prize Dishonours the Victims of Genocide’, *The Guardian*, 12 October 2019 <<https://www.theguardian.com/commentisfree/2019/oct/12/a-nobel-prize-that-dishonours-the-victims-of-genocide-peter-handke>>.

<sup>14</sup> For victims’ views refer to Diane Orentlicher, *Some Kind of Justice: The ICTY’s Impact in Bosnia and Serbia* (Oxford University Press 2018) especially 167-170 (hereafter Orentlicher, *Kind of Justice* (n 14)).

and insufficiently addressed. But, before delving on the political and social effects of genocide in Bosnia it is worth considering briefly the legal discourse related to the determination of genocide in courts of law and the construction of genocide knowledge therein.

### **Legal Effects: Construing Genocide Knowledge in the Courts of Law**

Faced with the international community's hesitation to intervene and end the war, in March 1993, the newly recognized government of the Republic of Bosnia and Herzegovina filed in the International Court of Justice (ICJ) a case against the Federal Republic of Yugoslavia (then comprising Serbia and Montenegro). This action marks the inception of the genocide debate in the setting of the Bosnian War. In this unparalleled case, the Bosnian government argued that the Federal Republic of Yugoslavia was responsible for violating the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the 'Genocide Convention').<sup>15</sup> This was not merely a legal case; it was also a political and social one. Via it the Sarajevo government aimed to bring the suffering of its people to the attention of the international community and convince world leaders to act and stop atrocities against civilians and make the Serb military end their aggression in Bosnia. Long delays were encountered in this case's proceedings mainly attributed to scarce resources by the Bosnian government and Serbia's hostile aversion to the court case. This notwithstanding the ICJ—following thirteen years of proceedings—concluded it and the relative judgment pronounced by the world court is discussed below.<sup>16</sup>

Legal contemplations related to atrocities perpetrated during the Bosnian War—including genocide—continued in numerous prosecutions considered by the ICTY in The Hague. A number of the charges related directly to Srebrenica including the proceedings against Radovan Karadžić

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<sup>15</sup> Francis Anthony Boyle, *The Bosnian People Charge Genocide: Proceedings of the International Court of Justice Concerning Bosnia vs. Serbia on the Prevention and Punishment of the Crime of Genocide* (Aletheia Press 1994).

<sup>16</sup> ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports* 2007, 43 (hereafter ICJ, *Bosnia v. Serbia* (n 16)).



and Radko Mladić, and the cases of Radislav Krstić, Vujadin Popović *et. al.*, and Zdravko Tolimir.<sup>17</sup> Of these cases the 2001 Krstić judgment<sup>18</sup> is of seminal preponderance principally as it confirms without a shred of a doubt that genocide did take place at Srebrenica. Guided by the legal definition provided in the UN Genocide Convention that considers intent of the perpetrators and scale of the crimes as key, distinguishing elements of genocide, the Krstić judgement determined that the destruction of such a large number of Srebrenica men and boys would ‘inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica’.<sup>19</sup> Up to this point in time, this was the first and only case wherein the ICTY confirmed that genocide was perpetrated by Serb troops against Muslims of Srebrenica. The ICTY contemplated for another fourteen years

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<sup>17</sup> ICTY, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, IT-95-18-I (Indictment, 14 November 1995) <<http://www.icty.org/x/cases/karadzic/ind/en/kar-ii951116e.pdf>>; ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T (Judgment, 24 March 2016) <[http://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf)>; ICTY, *Prosecutor v. Radislav Krstić*, IT-98-33-T (Judgment, 2 August 2001) <<http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>> (hereafter ICTY, *Prosecutor v. Krstić* (n 17)); ICTY, *Prosecutor v. Vujadin Popović et al.*, IT-05-88-T (Judgment, 10 June 2010) <<http://www.icty.org/x/cases/popovic/tjug/en/100610judgement.pdf>>; ICTY, *Prosecutor v. Zdravko Tolimir*, IT-05-88/2-T (Judgment, 12 December 2012) <<http://www.icty.org/x/cases/tolimir/tjug/en/121212.pdf>>.

<sup>18</sup> ICTY, *Prosecutor v. Radislav Krstić* (n 17).

<sup>19</sup> Refer to ICTY, *The Prosecutor v. Radislav Krstić*, (Appeals Judgement), IT-98-33-A. (19 April 2004) paras 28-33 <<http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>>. For in depth analysis of the Krstić decision see Mark Drumbl, ‘Prosecutor v. Radislav Krstić: ICTY Authenticates Genocide at Srebrenica and Convicts for Aiding and Abetting’ (2004) 5(2) *Melbourne Journal of International Law* 434-450; and Patricia M. Wald, ‘General Radislav Krstić: A War Crimes Case Study’ (2003) 16 *Georgetown Journal of Legal Ethics* 445-472.

before delivering—in 2015—the first full genocide judgement.<sup>20</sup> Only five indictees have been sentenced on genocide charges so far.<sup>21</sup> Moreover, only 161 individuals have been accused of war crimes and crimes against humanity—including genocide—perpetrated in the course of the wars of the dissolution of the former Federation of Yugoslavia, of which 145 cases have been concluded.<sup>22</sup>

It was the 2007 ICJ *Bosnia v Serbia* ICJ judgment that brought about a breakthrough in categorizing as genocide the atrocious misdeeds that took place at Srebrenica. The ICJ proceedings dealt with ‘the Application of the Convention on the Prevention and Punishment of the Crime of Genocide’ and were filed by Bosnia against Serbia in 1993. Grounding its deliberations on ICTY material, the ICJ arrived at the view that the July 1995 killings taking place at Srebrenica fell squarely under the heading of the crime of genocide in terms of International Criminal Law. Noteworthy about the ICJ 2007 decision are two facts: first, the forcible clout exercised by Belgrade over Bosnian Serb leaders; and second the enormous amount of backing that Serbia provided to Bosnian Serb forces through military, financial and political assistance. Both these

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<sup>20</sup> ICTY, *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević* (Appeals Judgement), IT-05-08-A. (30 January 2015) <[http://www.icty.org/x/cases/popovic/acjug/en/150130\\_judgement.pdf](http://www.icty.org/x/cases/popovic/acjug/en/150130_judgement.pdf)>.

<sup>21</sup> As of August 2019 the indictees sentenced on genocide charges were: Radislav Krstić, Vujadin Popović, Ljubiša Beara, Zdravko Tolimir, and Radovan Karadžić. Ratko Mladić was also found guilty of genocide by the Trial Chamber but his case is still pending appeal. See United Nations International Residual Mechanism for Criminal Tribunals, ‘MLADIĆ, Ratko (MICT-13-56)’ <<https://www.irmct.org/en/cases/mict-13-56>>; United Nations International Residual Mechanism for Criminal Tribunals, ‘ICTY Remembers: The Srebrenica Genocide 1995 – 2015’ <<https://www.irmct.org/specials/srebrenica20/index.html>>; and United Nations International Residual Mechanism for Criminal Tribunals, ‘Judgment List’ <<http://www.icty.org/en/cases/judgement-list>>.

<sup>22</sup> Figures from the ICTY. See United Nations International Residual Mechanism for Criminal Tribunals, ‘Key Figures of the Cases’ <<http://www.icty.org/en/cases/key-figures-cases>>.

factors contributed overwhelmingly to confirm Serbia's involvement as an accomplice in the monstrosities committed in Bosnia.<sup>23</sup>

Serbia was found by the world court's 2007 judgment guilty on three counts, these being: for failing to prevent genocide; for abstaining from taking the necessary measures to punish genocide; and for erecting obstacles to assist the ICTY in the latter's court proceedings.<sup>24</sup> Nevertheless, the judgment did not go as far as to declare Serbia guilty of genocide as the court concluded that Serbia did not have the *dolus specialis* to perpetrate genocide in Bosnia.<sup>25</sup> Understandably, this restriction of Serbia's culpability has caused upset to survivors' community. It has also exposed legal inconsistency regarding the ICJ interpretations. The ICTY, on whose work the ICJ relied, inferred genocidal intent from factual, circumstantial evidence. Yet, the world court did not imply in its judgment that Serbia acted as an accomplice in the Srebrenica genocide, or had the intention to commit genocide, thereby demonstrating that the ICJ took a strict and conservative construction of the term notwithstanding the fact that the said court established that the Belgrade government exerted huge influence on its ethnic kin in Bosnia and offered massive support to Bosnia's Serbs.<sup>26</sup>

The space is limited here to engage more elaborately with relevant ICTY judgements.<sup>27</sup> The disappointment that only the Srebrenica massacre has been designated as genocide by the ICTY

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<sup>23</sup> Refer to ICJ, *Bosnia v Serbia* (n 16) paras 236-241. Paragraph 386 of this decision citing UN Security Council resolutions 752 (1992), 757 (1992), 762 (1992), 819 (1993), 838 (1993) demanded that Former Republic of Yugoslavia put an end to its support to Bosnian Serbs.

<sup>24</sup> ICJ, *Bosnia v Serbia* (n 16) paras 425-438 and 439-450.

<sup>25</sup> Ibid. paras 386-415, especially 413.

<sup>26</sup> An analysis of the ICJ 2007 judgement can be found in Kevin Aquilina and Klejda Mulaj, 'Limitations in Attributing State Responsibility under the Genocide Convention' (2018) 17(1) *Journal of Human Rights* (hereafter Aquilina and Mulaj, *State Responsibility* (n 26)).

<sup>27</sup> The record of the ICTY is discussed by Orentlicher, *Some Kind of Justice* (n 12); Richard Ashby Wilson, 'Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia' (2005) 27(3) *Human Rights Quarterly*; James Gow, Rachel Kerr, and Zoran

was noted in the introduction. Moreover, 161 indictments may present an achievement of the legal process but is far from attaining justice for the victims especially in relation to those criminal architects and/or perpetrators who were not indicted or who, though indicted, died during the proceedings before judgment was delivered. Such distinct drawbacks notwithstanding, overall, the ICTY judgements have contributed to establish an all-encompassing accurate record of the genocidal happenings at Srebrenica, and also other atrocities perpetrated in the course of the Bosnian War. The ICTY's characterization of the Srebrenica massacre as genocide indelibly memorializes violence.<sup>28</sup> The ICTY and ICJ 2007 judgements narrate the evil which befell the people of Bosnia in the course of war: criminals involved, crimes committed, extent of planning, and details of such plans. One significant hallmark of the ICTY jurisprudence pertains to the recognition of mass rape as a war crime and a crime against humanity when perpetrated as part of a pre-planned war strategy.<sup>29</sup> Judgements pertaining to genocide and war crimes in Bosnia influence the understanding and interpretation of events as well as their implications for the postconflict era (regarding crimes perpetrated, suffering incurred, and the redress). It bears emphasizing that the gamut of court judgements brought about by penal proceedings have contributed to construction of social knowledge about the Srebrenica genocide as well as other serious human rights violations conducted during the Bosnian War.<sup>30</sup> The massive amount of evidence presented in the international criminal courts and tribunals shrink the space for denial.<sup>31</sup> Furthermore, these fora are key sites where the process of recognition of harms incurred unfolds—

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Pajić (eds), *Prosecuting War Crimes: Lessons and Legacies of the International Criminal Tribunal for the Former Yugoslavia* (Routledge 2013).

<sup>28</sup> Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007) 175.

<sup>29</sup> See Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (Penguin Press 1999) 285.

<sup>30</sup> Refer to Nettelfield and Wagner, *Srebrenica* (n 6) chapter 7.

<sup>31</sup> Dianne F. Orentlicher, 'Shrinking the Space for Denial: The Impact of the ICTY in Serbia' (Open Society Justice Initiative May 2008) <[https://www.justiceinitiative.org/uploads/a0be82c5-aa8a-4bcd-9d23-bcef4d94f93c/serbia\\_20080501.pdf](https://www.justiceinitiative.org/uploads/a0be82c5-aa8a-4bcd-9d23-bcef4d94f93c/serbia_20080501.pdf)>.

including gendered forms of harm. As feminist transitional justice scholars suggest naming and officially recognizing such harm is essential to the postconflict transitional constitution of social and political order.<sup>32</sup> Such recognition is the first crucial step in the process of addressing harms done to innocent civilians, even if the process of implementing the related law may be flawed.

### **Genocide Remembrance and Denial**

It is not that the effects of genocide manifest themselves only in courts of law. Indeed, for Bosnia's people the significance of genocide is not constrained merely to legalistic criteria and court cases pertaining to the Srebrenica massacre of July 1995 and other massacres perpetrated during the war. In point of fact, genocide has become an intrinsic part of who Bosnians are.<sup>33</sup> Their thinking about the present and the past, and how they relate to the international community and their former opponents—Serbia and the Serbs—are informed by the genocide. The limited convictions notwithstanding, the designation of Srebrenica massacre as genocide has great importance for victims' families and their wider community because it recognizes their suffering and legitimizes victims' claims for redress. Victims' communities have persistently demanded recognition of their calamity. They have engaged in acts of commemorations—most remarkably those at the Memorial

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<sup>32</sup> Doris Buss, 'Making Sense of Genocide, Making Sense of Law: International Criminal Prosecutions of Large-Scale Sexual Violence' in Amy E. Randall (ed), *Genocide and Gender in the Twentieth Century: A Comparative Survey* (Bloomsbury 2015) 278 (hereafter Buss, 'Making Sense' (n 32)); Fionnuala Ni Aoláin, 'Emerging Paradigms of Rationality: Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflicted Societies' (2009) 35(1) *Queen's Law Journal* 219-244.

<sup>33</sup> 'Bosnians' here refer to the inhabitants of the Bosnian republic who adhere to the idea of Bosnian statehood. Bosnia's population is estimated at 3.3 million people of whom 48% are Bosniak, 37% Serbs, 14% Croats, and 0.6 other. World Population Review, 'Bosnia and Herzegovina Population 2020 Live' (*World Population Review*, 18 June 2020) <<http://worldpopulationreview.com/countries/bosnia-and-herzegovina-population/>>.

and Cemetery Centre at Potočari, the Peace March (Marš Mira), and acts of mass burials—which reinforce collective memory and exert public recognition of victims’ ordeals.<sup>34</sup>

Commemorations and collective memorialization serve not solely a psychological need—expressing mourning for death and suffering on a massive scale. Commemorations and collective memorialization are also profoundly *political*. They are a key element in the symbolic repertoire available to leaders for binding citizens into a collective national identity.<sup>35</sup> Sociological research has stressed the power of commemorations to draw upon the loss and sacrifice occasioned by war and genocide as a means of shaping national identity, and also as a means of reinforcing, or undermining, dominant ideologies in a given state.<sup>36</sup> Suffering incurred in the course of war and genocide becomes central to the identity as well as symbolic continuity of a nation. Benedict Anderson was right to observe that a nation ‘ensures its symbolic continuity by construing its members as forming an imagined community that surpasses death’, therefore securing the nation’s

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<sup>34</sup> The Potočari Memorial and Cemetery and the Peace March are important symbols of Bosnian identity, and part of a movement committed to remember the Srebrenica genocide. The Potočari Memorial and Cemetery—opened on September 20, 2003—honours victims of the Srebrenica genocide, supports efforts to identify and return to this cemetery remains of the missing, and encourages internally displaced people to return to Srebrenica. The Peace March—Marš Mira—is a commemorative walk in respect of about fifteen thousand men who sought to escape the Srebrenica genocide in 1995.

<sup>35</sup> T.G. Ashplant, Graham Dawson, and Michael Roper, ‘The Politics of War Memory and Commemoration: Contexts, Structures and Dynamics’ in T.G. Ashplant, Graham Dawson, and Michael Roper (eds), *The Politics of War Memory and Commemoration* (Routledge 2000) 7.

<sup>36</sup> Eric Hobsbawm, ‘Inventing traditions’, in Eric Hobsbawm and Terrence Ranger (eds), *The Invention of Tradition* (Cambridge University Press, 1983); Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (Verso, 1983) (hereafter Anderson, *Imagined Communities* (n 36)); Jay Winter and Emmanuel Sivan (eds), *War and Remembrance in the Twentieth Century* (Cambridge University Press, 1999).

imagined continuity and transcendence of time.<sup>37</sup> In the same vein, memory of loss, suffering and persecution has become a crucial marker of the Bosnian identity and heritage.<sup>38</sup>

The legacy of suffering and loss has become a core component of national identity, and claims for entitlements and redress. For instance, Srebrenica's Bosniak population, generally quite poor,<sup>39</sup> has developed its own criteria of suffering and entitlement which in turn have been tied up to humanitarian aid and social welfare. There are implicit criteria regarding who is most deserving of aid. These criteria are based on the view who has lost and suffered most. There is a distinction, for example, between those who fled in the spring of 1992—before the violence engulfed the city—and the 365 residents who remained in the enclave and suffered throughout the war including the Srebrenica massacre in July 1995.<sup>40</sup> The most implicit measure of entitlement and suffering

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<sup>37</sup> Anderson, *Imagined Communities* (n 36) 6-7, 9-10.

<sup>38</sup> Srebrenica is symbolic to genocide commemorations not only in Bosnia but also abroad. For example, the High Representative for the implementation of the Peace Agreement on Bosnia and Herzegovina—Mr Christian Schwartz-Schilling—urged the United Nations in May 2007 to establish the UN Day of Srebrenica to pay respect to genocide victims and families. United Nations Security Council, 'Press Release. Bosnia and Herzegovina has historic window of opportunity to move closer to Europe, Leaders must "Seize the Moment" Security Council Told' (*United Nations*, 16 May 2017) <https://www.un.org/press/en/2007/sc9018.doc.htm>. In January 2009, the European Parliament declared July 11 Srebrenica Genocide Commemoration Day. Other parliaments of European countries have followed suit. Isabelle Delpla, Xavier Bougarel, and Jean-Louis Fournel, 'The Judge, the Historian, the Legislator' in Isabelle Delpla, Xavier Bougarel, and Jean-Louis Fournel (eds), *Investigating Srebrenica: Institutions, Facts, Responsibilities* (Bergham Books 2012) 15.

<sup>39</sup> Lorenzo Tondo, "'They've Abandoned Us": Srebrenica Survivors Still Living in Camps' (*The Guardian*, 17 February 2020) <<https://www.theguardian.com/world/2020/feb/17/theyve-abandoned-us-srebrenica-survivors-still-living-in-camps>>.

<sup>40</sup> Sarah Wagner, *To Know Where He Lies: DNA Technology and the Search for Srebrenica's Missing* (University of California Press 2008) 66.

relates to loss of family members. As Sarah Wagner observes although survivors do not compare their losses openly, ‘there is an unspoken ‘hierarchy of sufferers’ in which special status is reserved for those who suffered most’.<sup>41</sup> Therefore, the memory of Srebrenica genocide has infiltrated Bosnia’s social structures; it permeates social practices of status and entitlement. This memory is also politically framed: it is mediated by Bosnian elites and their interests. In other words, the framing of Srebrenica genocide is conditioned not solely by the tragedy and suffering incurred in the past but also by present political circumstances and power relations.

It is not only Bosnian Muslim politicians who use genocide to ground their claims for entitlements and redress. Serbian nationalists—both in Bosnia and Serbia—have been keen to capitalize on the utility of genocide’s denial. As observed in the introduction, genocide denial is still common among the Serbs both in Republika Srpska and Republic of Serbia.<sup>42</sup> An expression of such denial is the memorial that Serbs have erected near Potočari—a symbol of antagonistic struggle over competitive memory and victimhood. Moreover, Serb leaders refuse to categorize the Srebrenica massacre as genocide. Promptly after assuming office in May 2012, the Serb President Mr Tomislav Nikolić (2012-2017) declared that no genocide took place in Srebrenica, openly contradicting the findings of the ICTY and ICJ.<sup>43</sup> The April 2013 President Nikolić’s apology in relation to Srebrenica, whilst avoiding referring to the massacre as genocide, casts into doubt the value of his apology.<sup>44</sup> In a similar fashion, the current Serbian Prime Minister Ana Brnabic stated

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<sup>41</sup> Ibid.

<sup>42</sup> See generally, Nettelfield and Wagner, *Srebrenica* (n 6) especially chapter 8; Orentlicher, *Some Kind of Justice* (n 14) especially chapters 7 and 8; Jelena Obradovic-Wochnik, *Ethnic Conflict and War Crimes in the Balkans: The Narratives of Denial in Post-Conflict Serbia* (I.B. Tauris 2013).

<sup>43</sup> CBC News, ‘Serbian President denies Srebrenica genocide’ (Canadian Broadcasting Corporation, 2 June 2012 <https://www.cbc.ca/news/world/serbia-president-denies-srebrenica-genocide-1.1135489>).

<sup>44</sup> Damien McElroy, ‘Serbian President in historic Srebrenica massacre apology’ (*The Telegraph*, 25 April 2013) <<http://www.telegraph.co.uk/news/worldnews/europe/serbia/10017552/Serbian-preident-in-historic-Srebrenica-massacre-apology.html>>. Moreover, on 8 July 2015 President



in an interview with broadcaster Deutsche Welle on November 15, 2018 that the massacre of Srebrenica was not a genocide—a denial that drew harsh criticism by legal experts and liberal circles.<sup>45</sup>

Serb genocide denial can be conceived to be posited in relation to both the past and the present. On the one hand, the Serbian denial is predicated on a relation with the past, i.e., a determined refusal to acknowledge the severity of Srebrenica crimes for what they were and for what they represent in international law. Serbs' denial of genocide denigrates claims to truth championed by survivors, in addition to eroding social knowledge about the past which emanates from the findings of the legal judgements. On the other hand, genocide denial is intertwined with the present. The Serbian elite in Belgrade are aware that admitting that the Srebrenica massacre classifies as genocide renders them liable for reparations. Furthermore, admitting Serbia's involvement in Srebrenica genocide—and in the Bosnian War, in general—unsettles the Belgrade sponsored narrative which claims that the war was a civil one, a narrative grounded on a false reciprocity of victimhood according to which all parties were portrayed as equally victims.<sup>46</sup> It is baffling that

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Nikolić praised the Russian veto of a United Nations Security Council Resolution that, 20 years after, would have condemned the Srebrenica massacre as genocide. Dan Bilefsky and Somini Sengupta, 'Srebrenica massacre, After 20 years, Still casts a long shadow in Bosnia' (*New York Times*, 8 July 2015) <[http://www.nytimes.com/2015/07/09/world/europe/srebrenica-genocide-massacre.html?\\_r=0](http://www.nytimes.com/2015/07/09/world/europe/srebrenica-genocide-massacre.html?_r=0)>

<sup>45</sup> Deutsche Welle, 'Serbian PM Ana Brnabic: "Srebrenica a Terrible Crime", not Genocide' (Deutsche Welle, 15 November 2018) <<https://www.dw.com/en/serbian-pm-ana-brnabic-srebrenica-a-terrible-crime-not-genocide/a-46307925-0>>. Filip Rudic, 'Hague Court Chief Criticizes Serbian PM's Genocide Denial' (*Balkan Insight*, 20 November 2018) <<https://balkaninsight.com/2018/11/20/hague-tribunal-chief-criticises-serbian-pm-s-genocide-denial-11-20-2018/>>. Mersiha Gadzo, 'Canadians launch petition to ban Srebrenica genocide denial' (*Al Jazeera*, 28 December 2018) <<https://www.aljazeera.com/indepth/features/canadians-launch-petition-ban-srebrenica-genocide-denial-181227115025333.html>>.

<sup>46</sup> Refer to Nettelfield and Wagner, *Srebrenica* (n 6) 269-273; Maass, 'Congratulations' (n 13).

this rhetoric (of false reciprocity of victimhood) persists despite the fact that no less than 80 percent of civilian casualties in the course of the Bosnian War were Bosnian Muslims, and that the overall number of Serb civilian casualties in this war is about half of the number of Bosniaks killed by Serb military in Srebrenica in one week alone.<sup>47</sup> Moreover, domestic stakeholders in Serbia have utilized the Srebrenica discourse for the purposes of defining their own political profile to take advantage in domestic political competition and also tarnish their competitors. Progressivist parties argue that Serbia should improve her international standing and work toward establishing its credibility in Europe, whereas nationalists accuse progressivists of ‘selling the country out to Europe’.<sup>48</sup>

In a similar vein, for Serb politicians in Bosnia contestation of the war and Srebrenica’s bloodshed offers not merely a response to the past, but also a distinct position towards the present. Mr Milorad Dodik—former President of Republika Srpska (2010-2018) and currently the Serb member of Bosnia’s tripartite presidency—has reiterated that no genocide occurred at Srebrenica.<sup>49</sup> For Serb nationalists genocide denial is self-serving: it challenges the construction of Bosnia’s political

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<sup>47</sup> Refer to figures cited in footnote 1 above.

<sup>48</sup> These themes were manifested in the Serbian parliamentary debate on Srebrenica in March 2010 initiated by then Serbian President Boris Tadić in response to the European Parliament’s resolution of January 2009 which declared July 11 a Europe-wide day of remembrance for the Srebrenica genocide. The Serbian Parliament’s declaration on Srebrenica omitted the term ‘genocide’. See Daniela Mehler, ‘Understanding narrative gaps in transitional justice: The Serbian discourse on the Srebrenica Declaration of 2010’ (2013) 11(4) *Journal on Ethnopolitics and Minority Issues in Europe* particularly 142-147.

<sup>49</sup> Dodik explicitly denied that the Srebrenica massacre amounted to genocide on July 12, 2010, the 15<sup>th</sup> anniversary of the Genocide. ‘If a genocide happened’ he said ‘than it was committed against Serb people of this region where women, children and the elderly were killed *en masse*’. *The Sidney Morning Herald*, ‘Srebrenica Massacre not “genocide”’ (*The Sidney Morning Herald*, 13 July 2010) <<http://news.smh.com.au/breaking-news-world/srebrenica-massacre-not-genocide-20100713-1083q.html>>; Walker, ‘Genocide Denial’ (n 4).

community in postgenocide, because it undermines—even denies—survivors’ return to their former homes, and the rebuilding of their lives. The announcement of the United Nations High Commissioner for Refugees (UNHCR) in September 2004 that one million people had returned back home in Bosnia sounded encouraging. However, the reality of those returns is a largely sobering one. Indeed, the peak years for returns had passed by 2004. Furthermore, the one million figure included only 40 percent of the refugees who were forced out of the country during the war. 56 percent of returns were majority returns. In most places the number of minority returns is below 20 percent. 720,000 Bosnians remained outside the country.<sup>50</sup> Specifically, genocide denial for the Serb elite of the Republika Srpska (within the jurisdiction of which Srebrenica has been assigned by the Dayton Agreement that ended the Bosnian War) is conducive to a new political reality where Bosnian Muslims have been uprooted permanently.

Divisive ethno-nationalist rhetoric is a striking element of the political discourse on Srebrenica in particular, and Bosnia in general. Noticeably, the conflict over the genocide terminology and genocide denial is part of a broader struggle pertaining to national identity mediated by irreconcilable interpretations of the use of armed force during the war. For the Serbs, genocide denial serves to render their meaning of violence dominant in order to secure acceptance for their own use of force in Srebrenica, and in the course of the Bosnian War in general, as well as to secure legitimacy for a new socio-political reality in Republika Srpska where Bosniaks have been ethnically cleansed. For the Bosniaks, on the other hand, the genocide debate and the recognition of loss and suffering present avenues for delegitimizing Serb violence in Srebrenica and in the

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<sup>50</sup> Gerard Toal and Carl T. Dahlman, *Bosnia Remade: Ethnic Cleansing and Its Reversal*, (Oxford University Press 2011) 285-287. Minority returns refer to returns of the people uprooted in the course of the war to areas where they form a minority. Most of the refugees and internally displaced Bosnians would be in the minority if they returned to the homes they occupied before the war. Refer to International Crisis Group (ICG), ‘Minority Returns or Mass Relocations’, Report 33 (*International Crisis Group*, 4 May 1998) <<https://www.crisisgroup.org/europe-central-asia/balkans/bosnia-and-herzegovina/minority-return-or-mass-relocation>>.

entire course of the war, because genocidal violence can never be justified neither on legal nor on moral grounds. Therefore, naming the Srebrenica massacre as genocide or otherwise is grounded on attempts to use alternative frames of meaning, which in turn provide the basis for the contestation of (i) the use of armed force in the course of the Bosnian War, (ii) memories of genocide and other mass atrocities, and (iii) the postwar constitution of the political community.

### **Letting Genocide Survivals Down: Denial of Victims' Rights and Fractures of National Unity**

The fracturing of Bosnia's national community does not stem only from denial of genocide by the Serbs and their contestation of war narratives that underpin dominant interpretations of genocide. The national community is also split from within. There are multiple reasons for such inner split, including the constitutional organization of Bosnia that shapes the new federation along ethnic lines (not entirely detached from rationales that justified the war in the first place) which have led to persistent political crises.<sup>51</sup> As a result the rights of minorities are subordinate to those of majorities both at entity and municipality levels. In addition, there is ethnic grounding of citizenship, separate media sources for Bosnian Muslims, Serbs, and Croats, as well as segregation of education and politically driven text books.<sup>52</sup> Unlike the example of Germany, where Holocaust education has been incorporated in school curriculum since the 1960s, and open public debates on the Nazi crimes in the 1970s and 1980s provided a space for acknowledging and critically examining past crimes<sup>53</sup>—there are no such undertakings either in Bosnia or in Serbia. It is not

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<sup>51</sup> See Sofia Sebastian-Aparicio, *Post-War Statebuilding and Constitutional Reform: Beyond Dayton in Bosnia* (Palgrave Macmillan 2014) chapter 6.

<sup>52</sup> Flávia Saldanha Kroetz, 'Post-genocide Identity Politics in Rwanda and Bosnia and Herzegovina and their Compatibility with International Human Rights Law' (2016) 23 *International Journal of Minority and Group Rights* 328-354; Marianne Hanson, 'Warnings from Bosnia: The Dayton Agreement and the Implementation of Human Rights' (2001) 4(3-4) *International Journal of Human Rights* 86-104.

<sup>53</sup> Armen T. Marsoobian, 'Epilogue: Reconciliation in the Aftermath of Genocide', in Claudia Card and Armen T. Marsoobian (eds), *Genocide's Aftermath: Responsibility and Repair*, (Blackwell 2007) 264-265.

unreasonable therefore to suggest that a meaningful process of reconciliation between Serbia and Bosnia has not begun yet.

The remaining part of the paper will emphasize a less mentioned reason for the inner fracturing of the national community in Bosnia, namely the failure to fully recognize and address the needs of victims of genocide and war—epitomized by the neglect of victims of sexual violence, referred to also as gender-based violence. Intensity of genocidal rape in the course of the Bosnian War brought visibility to rape in war and has been a key factor in the explicit recognition of this crime as a weapon of war. Scholars have analyzed how gender-based violence has been used as a genocide weapon—and as a weapon of war more generally—developing frameworks that challenge older narratives which depict sexual violence, including rape, as incidental, merely a by-product of war. Their investigations of martial rape and genocidal violence has shown how construction of national identity is gendered—mediated by certain beliefs about gender and gender roles in society.<sup>54</sup> The popular believe that a child’s social identity is determined by his or her biological father, that women are vessels for paternal identity and that their maternal biology and contribution to a child’s upbringing does not determine a child’s identity informed campaigns of rape and forced impregnation initiated by planners and perpetrators of the genocide. The Serb leaders and militias believed that impregnating Bosnian women would lead these women to bear Serb children through forced ‘occupation of the womb’<sup>55</sup>—in the process fracturing Bosnian identity. As Claudia Card opines:

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<sup>54</sup> Claudia Card, ‘Rape as a Weapon of War’ (1996) 11(4) *Hypatia: A Journal of Feminist Philosophy* 5-18 (hereafter Card, ‘Weapon of War’ (n 54)); Amy E. Randall, ‘Introduction: Gendering Genocide Studies’ in Amy E. Randall, (ed), *Genocide and Gender in the Twentieth Century: A Comparative Survey* (Bloomsbury 2015) 2.

<sup>55</sup> Patricia A. Weitsman, ‘Constructions of Identity and Sexual Violence in Wartime: The Case of Bosnia’ in Amy Randall (ed), *Genocide and Gender in the Twentieth Century* (Bloomsbury 2015) 123 (hereafter Weitsman, *Constructions of Identity* (n 55)); Siobhan K. Fischer, ‘Occupation of the Womb: Forced Impregnation as Genocide’ (1996) 46(1) *Duke Law Review* 91-133.

there is more than one way to commit genocide. One way is mass murder, killing individual members of a national, political, or cultural group. Another is to destroy a group's identity by decimating cultural and social bonds. Martial rape does both. Many women and girls are killed when rapists are finished with them. If survivors become pregnant or are known to be rape survivors, cultural, political, and national unity may be thrown into chaos. ... Martial rape can undermine national, political, and cultural solidarity, changing the next generation's identity, confusing the loyalties of all victimized survivors.<sup>56</sup>

Effects of martial rape therefore go beyond the immediate infliction of pain and suffering on directly affected individuals to destroy social bonds of solidarity and trust needed to sustain a healthy group life.<sup>57</sup> Sexual violence as a weapon of genocide attacks women's and men's physical and emotional sense of security while simultaneously launching an assault, through their bodies, upon the genealogy of security as constructed by the body politic.<sup>58</sup> Laura Sjoberg has argued that the gendered strategy of intentional victimization that targets women as a centre of gravity for states is a key war tactic due to the symbolic function it serves. Violence against women is intended not only as an injury to the women subjected to rape and men responsible for their protection. More importantly, genocidal rape is intended to disrupt the national or ethnic community by planting alien seeds, or worse destroying reproductive viability. Forced impregnation is a 'material attack on the sustainability of an ethnic group, state, or nation looking to corrupt its ability to reproduce, biologically and socially'.<sup>59</sup>

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<sup>56</sup> Card, 'Weapon of War' (n 54) 8.

<sup>57</sup> Douglas Irvin-Erickson, *Raphael Lemkin and the Concept of Genocide* (University of Pennsylvania Press 2017) 236.

<sup>58</sup> Katrina Lee Koo, 'Confronting a Disciplinary Blindness: Women, War and Rape in the International Politics of Security' (2002) 37(3) *Australian Journal of Political Science* 528.

<sup>59</sup> Laura Sjoberg, *Gendering Global Conflict: Toward a Feminist Theory of War* (Columbia University Press 2013) 222 (hereafter Sjoberg, *Gendering Global Conflict* (n 59)).

The final report of the United Nations Commission of Experts established pursuant to Security Council Resolution 789 (1992), has documented that there were 162 detention sites in Bosnia, Croatia and Serbia where civilian were routinely sexually and mentally violated.<sup>60</sup> Muslim, Croatian, and Serbian women have been subjected to rape, but the majority of cases pertain to Bosnian Muslim women raped by Serb men—soldiers, paramilitaries, policemen, and some civilians.<sup>61</sup> The Bosnian Government reported in October 1992 that as many as 50,000 Muslim women had been raped.<sup>62</sup> Forced impregnations camps in Bosnia gave rise to thousands of children born of rape, whose fate is by and large unspoken of and stigmatized to an identity of shame.<sup>63</sup> In the course of the Bosnian War, men, too, were subjected to sexual violence, as well as mental abuse. Around 3,000 male victims are estimated to have suffered rape during the Bosnian War.<sup>64</sup> Both female and male victims have been reluctant to speak out about their ordeal but more so the men. Generally there is silence regarding their suffering. Men’s reluctance to speak out is

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<sup>60</sup> Final report of the United Nations Commission of Experts established pursuant to Security Council Resolution 789, under the direction of M. Cherif Bassiouni, chairman and rapporteur on the gathering and analysis of the facts, S/1994/674 (*United Nations Commission of Experts*, 27 May 1994) particularly 55-57 <[http://www.icty.org/x/file/About/OTP/un\\_commission\\_of\\_experts\\_report1994\\_en.pdf](http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf)>.

<sup>61</sup> Ibid. 57-60.

<sup>62</sup> Aryeh Neier, ‘Watching Rights: Rapes in Bosnia-Herzegovina’, *The Nation*, 1 March 1993 259; see also Alexandra Stiglmayer, ‘The Rapes in Bosnia-Herzegovina’ in Alexandra Stiglmayer (ed), *Mass Rape: The War Against Women in Bosnia-Herzegovina* (University of Nebraska Press 1993) (hereafter Stiglmayer, *Mass Rape* (n 62)).

<sup>63</sup> Patricia Weitsman, ‘Children Born of War and the Politics of Identity’, in Charli Carpenter (ed), *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones* (Kumarian Press 2007) 110-127 (hereafter Weitsman, *Children Born of War* (n 63)).

<sup>64</sup> All Survivors Project, ‘Legacies and Lessons: Sexual Violence against Men and Boys in Sri Lanka and Bosnia & Herzegovina’ (*UCLA School of Law*, May 2017) <<https://allsurvivorsproject.org/wp-content/uploads/2017/05/Sexual-violence-against-men-and-boys-in-Sri-Lanka-and-BiH.pdf>>.

conditioned by gender norms and stereotypes that render difficult to portray men as victims of sexual violence. There is greater social stigma regarding sexual violence against men which hinders reporting of their experiences.<sup>65</sup> As a result, male victims are paid little or no attention by local, national, and international communities. Male victims have neither received meaningful assistance to overcome their traumas, nor have their violators been prosecuted for crimes committed.<sup>66</sup> The rapes have had devastating effects on female victims, too. Women subjected to rape have suffered severe emotional and psychological trauma in addition to physical injuries.<sup>67</sup>

Feminist scholars contend that gendered experiences of genocide and war have sex-differential impacts which tend to be felt more severely by women.<sup>68</sup> Women constitute the largest group subjected to sexual maltreatment.<sup>69</sup> Not only do women suffer disproportionate levels of sexual

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<sup>65</sup> Douglas Page and Samuel Whitt, 'Confronting Wartime Sexual Violence: Public Support for Survivors in Bosnia' (2020) 64(4) *Journal of Conflict Resolution* 679 (hereafter Page and Whitt, 'Confronting Wartime Sexual Violence' (n 65)).

<sup>66</sup> Refer to Olivera Simić, 'Wartime Rape and its Shunned Victims' in Amy Randall (ed), *Genocide and Gender in the Twentieth Century* (Bloomsbury 2015). Research on male victimization in the course of war is emerging slowly. For an account of sexual violence against men and boys in the ongoing Syrian War, see Sarah Chynoweth, 'We Keep it in our Heart: Sexual Violence Against Men and Boys in the Syrian Crisis' (*United Nations High Commissioner for Refugees*, October 2017)

<[https://data2.unhcr.org/es/documents/download/60864#\\_ga=2.237354944.1734073480.1559823107-245140757.1552824982](https://data2.unhcr.org/es/documents/download/60864#_ga=2.237354944.1734073480.1559823107-245140757.1552824982)>. An Al Jazeera documentary has publicized sexual violence against men in the ongoing civil war in Libya. Refer to Al Jazeera, 'Unspeakable Crime: Rape as a Weapon of War in Libya', broadcasted on 7 September 2019.

<sup>67</sup> Vera Folnegovic-Smalc, 'Psychiatric Aspects of the Rapes in the War Against the Republic of Croatia and Bosnia-Herzegovina' in Stiglmayer, *Mass Rapes* (n 62) 203.

<sup>68</sup> Sjoberg, *Gendering Global Conflict* (n 59) 286; Jeanne Vickers, *Women and War* (Zed, 1993).

<sup>69</sup> Use of rape as a war tactic has been a recurring feature of many armed conflicts, including the Japanese invasion of China (1937-1944), World War II (particularly the operations in the Eastern



violence in the course of conflict, but violence against them does not end in the postconflict era. They are subjected to additional violence, including sexual exploitation and verbal abuse. Martial / genocidal rapes customarily result in shame and abandonment of women subjected to sexual assaults. Many of the violated women, abandoned by their families, live in destitution unable to provide a decent standard of living and decent education to their children.<sup>70</sup> Gender perceptions that informed perpetrators' sexual assaults during genocide continue in postgenocide setting to enable victimization of women survivors and also their relatives.

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front), East Pakistan (now Bangladesh) secessionist war (1971), and more recent armed conflicts in the Democratic Republic of Congo (DRC), Rwanda, Libya, Côte d'Ivoire, etc. Refer, for instance, to Takahasi Yoshida, *The Making of the 'Rape of Nanking': History and Memory in Japan, China, and the United States* (Oxford University Press 2006); Atina Grossman, 'A Question of Silence: The Rape of German Women by Occupation Soldiers' (1995) *72 October* 42-63. See also Human Rights Watch, 'Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath' (*Human Rights Watch*, 24 September 1996) <<https://www.hrw.org/reports/1996/Rwanda.htm>>; Human Rights Watch, 'Côte d'Ivoire: Ouattara Forces Kill, Rape Civilians During Offensive' (*Human Rights Watch*, 9 April 2011) <<https://www.hrw.org/news/2011/04/09/cote-divoire-ouattara-forces-kill-rape-civilians-during-offensive>>. At least 200,000 Bengali women were reportedly raped by West Pakistani soldiers in the 1971 war. Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Open Road Media 2103) 167.

<sup>70</sup> Card, 'Weapon of War' (n 54) 8. The rejection of women subjected to sexual violence is not an exclusive feature of Bosnia. It is also a feature of other societies which have suffered from genocide and war violence. See, for example, a study by Jeannie Annan and Moriah Brier on women experience in Northern Uganda, 'The Risk of Return: Intimate Partner Violence in Northern Uganda's Armed Conflict' (2010) *70(1) Social Science and Medicine*.

Moreover, children born of rape have often been shunned and abandoned. They have been frequently rejected by both the community of the rapist father and the biological mother.<sup>71</sup> As Patricia Weistman has persuasively argued the assumptions inherent in the policies of forced impregnation and maternity witnessed in the course of the Bosnian War continue to have a grave effect on the human rights of children born of violence. This can be seen in a number of ways, not least in the derogatory language used to describe these children which links them to the rapist fathers. Shame hangs over offsprings of genocidal rape due to circumstances beyond their control. Moreover, they live in destitute conditions and have suffered a large incidence of infanticide. The Bosnian government declined to allow them to be adopted overseas due to official preoccupation with repopulating the country.<sup>72</sup> Given that due to financial constraints few Bosnian families could adopt children, the chances of a normal family life for children born of rape have been slim.

It is saddening that the acute challenges that children born of violence face are by and large unaddressed. In a forceful critique of the human rights record of the offsprings of wartime rape in Bosnia, Charli Carpenter has argued that lack of protection for these children is contingent to the fact that human rights advocates, when construing specific categories of rights claims, are conditioned by myriad political, organizational, cultural, structural, coalitional, and economic factors; which sometimes may draw attention away from the merits of their case. Children born of rape have been treated as marginal participants in transitional justice processes. This may be due to the fact that the crime of forced maternity is viewed as a crime against the victim of the rape;

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<sup>71</sup> R. Charli Carpenter, *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond* (Columbia University Press 2010) 29-30 (hereafter Carpenter, *Born of War* (n 71)); Patricia A. Weitsman, 'The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda' (2008) 30(3) *Human Rights Quarterly*.

<sup>72</sup> Weitsman, *Constructions of Identity* (n 55) 131-132; Weistman, *Children Born of War* (n 63) 110-127.

that is, the mother, whereas the children are viewed merely as evidence of the atrocity.<sup>73</sup> No provisions are made to award reparations to offsprings of genocidal rape.

The marginalization of victims hurts and harms them beyond their agony incurred in the genocide. Yet, recognition of victims' suffering is an important aspect of redress. Victims cannot be reconnected with a society and a government that does not fully recognize their suffering. Echoing Hegel, Nancy Frazer has argued that mutual recognition is important for the dialogical construction of identity.

[R]ecognition designates an ideal reciprocal relation between subjects... (a) relation (that) is constitutive for subjectivity: one becomes an individual subject only by virtue of recognizing, and being recognized by, another subject. Recognition from others is thus essential to the development of a sense of self. To be denied recognition—or to be 'misrecognized'—is to suffer both a distortion of one's relation to one's self and an injury to one's identity.<sup>74</sup>

Misrecognizing victims—failing to recognize their suffering and providing redress—produces for victims a form of social subordination which is directly responsible for their disconnect with the community of the nation which ought to embrace them.<sup>75</sup> Doris Bus rightly suggests that the lawful acceptance of harms experienced by genocide victims is a means of overcoming their status of

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<sup>73</sup> Carpenter, *Born of War* (n 71) 100-1 108. See also Cécile Aptel and Patrick Nagler, 'Children and Transitional Justice' (2019) 13 *International Journal of Transitional Justice* 185-186.

<sup>74</sup> Nancy Fraser, 'Rethinking Recognition' (2000) 3 *New Left Review* 109.

<sup>75</sup> Although public programmes exist in Bosnia to provide legal aid and stipends for survivors, the implementation of such programmes has been hampered by disagreement on the side of Serb/Bosnian/Croat politicians as well as ethnocentric views and social stigma. Page and Whitt, 'Confronting Wartime Sexual Violence' (n 65). See also Eleanor Rose, 'Bosnia Accused of Failing Wartime Rape Victims' (*Balkan Insight*, 13 March 2017) <<https://balkaninsight.com/2017/03/13/amnesty-international-slams-bosnia-for-failing-victims-of-wartime-rape-03-13-2017/>>.

subordination. Bus contends that the legal and social recognition of gendered forms of harm and in particular categories of victims and perpetrators afford a solid foundation for claims to full inclusion, both in relation to the reckoning with the widespread barbarity caused by atrocity and the societal reconstruction that ensues.<sup>76</sup> For so long as suffering of genocide victims is not recognized and meaningfully redressed their integration in the postgenocide political community will remain incomplete, with detrimental effect for the national unity.

### **Concluding Remarks**

This paper has aimed to advance an understanding of correlations between genocide in Bosnia and the ensuing fragile peace. It has offered an appreciation of the long shadow genocide continues to cast twenty five years after the ending of the Bosnian War. Relations of power as well as social and gender mores have been pivotal to the happening of genocide as much as they remain central to ways of dealing with the devastation in the postgenocide setting. The tragedy of the Bosnian War, and genocide in its midst, has produced a legal discourse—in the form of extensive judgements and academic studies—that have deepened genocide scholarship and constructed social knowledge about the Srebrenica genocide and other atrocious crimes perpetrated during the war, extent of planning and criminals involved. The extensive legal work produced by the ICTY has provided the ground for informed debates on the meaning of genocide and interpretations of its constitutive elements. Yet, this legal discourse is not entirely complete. The ICTY case law has not offered an unambiguous explication of intent, state responsibility for genocide, and the (size of the) group subjected to destruction.<sup>77</sup> In addition, critics are discontent that Srebrenica has been decontextualized from the rest of the Bosnian War since only this mass atrocity has been designated as genocide—amongst other similar cases in the midst of this war.<sup>78</sup> Such

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<sup>76</sup> Buss, ‘Making Sense’ (n 32) 290.

<sup>77</sup> Aquilina and Mulaj, ‘State Responsibility’ (n 26). Gregory Kent, ‘Genocidal Intent and Transitional Justice in Bosnia: Jelisic, Foot Soldiers of Genocide, and the ICTY’ (2013) 27(3) *East European Politics and Society*.

<sup>78</sup> Nettelfield and Wagner, *Srebrenica* (n 6) 8; Vulliamy, ‘Srebrenica’ (n 11); Kent, ‘Justice and Genocide’ (n 10); Toljaga, ‘Prelude to the Srebrenica Genocide’ (n 11).

decontextualization of genocide is disappointing for the community of victims and also a source of contention amongst analysts.

A key feature of the genocide discourse has been a divisive ethno-nationalist rhetoric predicated on the political agendas of Bosnian and Serb elites as they vie to achieve legitimacy for their postwar policies. Not only can genocide provide elites with a symbolic repertoire for binding citizens into the national community but it can also underline social practices of status and entitlements, and claims to authority and political control. Central to recognizing or denying categorization of mass violence in Srebrenica (and elsewhere in Bosnia) as genocide are attempts to utilize competing frames of meaning that dispute narratives of war, memories of genocide, and postwar constitution of the political community. Therefore, the genocide discourse is profoundly divisive and political.

The Serb establishment continues to deny that genocide occurred at Srebrenica whilst the Bosnian Muslims memorialize this tragedy more so that novel tidings about brutal killings have come to the fore in court proceedings and the dissemination by the media of information about the unearthing of mass graves in Bosnian grounds.<sup>79</sup> These competing and divisive narratives have contributed to persistent misgivings and acrimony among Bosnian Muslim and Serb populations as well as their elites. Such suspicion and uneasiness diminishes the likelihood that the country moves forward to establish a shared historical chronicle of the past and develop a healthy dialogue between and within ethnic communities. The divisive legacy of genocide impedes the consolidation of peace, undermines Bosnia's socio-political cohesion, and hinders victims' search for justice.

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<sup>79</sup> A mass grave was unearthed on Mount Igman near Sarajevo as recent as June 2019. Haris Rovcanin, 'Bosnia Finds Suspected Wartime Mass Grave on Mount Igman' (*Balkan Insight*, 5 June 5 2019) <<https://balkaninsight.com/2019/06/05/bosnia-finds-suspected-wartime-mass-grave-on-mount-igman/>>. Nine more newly identified genocide victims were buried in July 2020. Hylton, 'You Simply Die' (n 4). The remains of more than 1,000 victims killed at Srebrenica are still missing.

At the present, Bosnia's political community is fractured both from without due to the denial of genocide by the Serbs and the latter's contestation of war narratives that underpin dominant interpretations of genocide, and from within due to failures to fully recognize and address the needs of victims—including victims of gender-based violence. In particular, misrecognizing victims—failing to recognize their suffering and providing redress—produces for them a form of social subordination which is responsible for their disconnect with the community of the nation which ought to embrace them. The legal and social recognition of harms experienced by genocide victims affords a sound foundation for victims' claims to full inclusion in the postgenocide polity. For so long as the suffering of genocide victims is not fully recognized and meaningfully redressed their integration in the postgenocide political community will remain incomplete, with detrimental repercussions for Bosnia's national unity.