**History of a Failure:**

**Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997-2006**

Jasna Dragovic-Soso

Goldsmiths, University of London

Accepted for publication at *International Journal of Transitional Justice*

forthcoming July 2016

**Abstract:**

[http://ijtj.oxfordjournals.org/cgi/content/abstract/ijw005?
ijkey=ypVrHVdqsygLW5N&keytype=ref](http://ijtj.oxfordjournals.org/cgi/content/abstract/ijw005?ijkey=ypVrHVdqsygLW5N&keytype=ref)

**Full Text:**

[http://ijtj.oxfordjournals.org/cgi/content/full/ijw005?
ijkey=ypVrHVdqsygLW5N&keytype=ref](http://ijtj.oxfordjournals.org/cgi/content/full/ijw005?ijkey=ypVrHVdqsygLW5N&keytype=ref)

**PDF:**

[http://ijtj.oxfordjournals.org/cgi/reprint/ijw005?
ijkey=ypVrHVdqsygLW5N&keytype=ref](http://ijtj.oxfordjournals.org/cgi/reprint/ijw005?ijkey=ypVrHVdqsygLW5N&keytype=ref)

***Abstract:*** Several initiatives to create a national Truth and Reconciliation Commission (TRC) for Bosnia and Herzegovina were launched between 1997 and 2006, but none came to fruition. This article explains the rationale behind the pursuit of a truth telling mechanism alongside the existing International Criminal Tribunal (ICTY), as well as the resistance to such initiatives both internationally and domestically. It argues that, despite the considerable efforts of external actors to create a TRC for Bosnia, the project foundered for three principal reasons: political resistance, institutional rivalry between the ICTY and the TRC project, and the proposed TRC project’s lack of legitimacy, notably among Bosnia’s victim associations. The history of the failed TRC project in Bosnia holds important lessons for ongoing truth-seeking attempts in the region and beyond, and highlights problems that arise in post-conflict societies with a high level of international involvement.

 Truth commissions have evolved since the 1990s into one of the principal mechanisms of transitional justice in societies emerging from periods of conflict and authoritarianism, and are now a staple of international peacebuilding efforts.[[1]](#footnote-1) Whereas initially they were viewed as a second best option for achieving accountability when prosecutions were impossible, over time they increasingly became regarded as worthy mechanisms in their own right and a complement rather than a substitute to trials.[[2]](#footnote-2) In a variety of settings, truth commissions aided peaceful political transitions, countered political and social denial and paved the way for addressing the legacy of past crimes.[[3]](#footnote-3) However, post-conflict societies have also seen many attempts at truth commissions that did not bear fruit, giving rise to what Erin Daly has called ‘truth skepticism’.[[4]](#footnote-4) Not only did they fail to produce results, fulfil their mandates or have a broader impact, but in some cases they never even managed to come into being despite the considerable efforts of their proponents—something that has not been given sufficient attention in the literature on transitional justice. While we can learn from limitations or weaknesses of actual commissions, we can also gain much from examining the prior failure to establish such mechanisms. These experiences can highlight the contradictions and conflicts of interest which underpin and can crucially determine the fraught process of a society’s attempts to come to terms with the legacies of conflict.

This last scenario applies to the case of Bosnia and Herzegovina[[5]](#footnote-5) considered here, which saw several attempts to create a national Truth and Reconciliation Commission (TRC) in its first post-conflict decade, none of which materialized.[[6]](#footnote-6) The story of the failed truth commission merits being fully elaborated in all its complexity, particularly as it has only received scant attention in the vast scholarship on the Bosnian War and its aftermath. As the product of a discrete historical moment characterized by a temporal closeness to the conflict and extensive international intervention, the Bosnian TRC’s failure highlights the difficulties and paradoxes of externally driven processes to promote transitional justice and nation-building in immediate post-conflict settings. As such, its story contains valuable insights—both for continuing transitional justice initiatives in the region itself and for the broader debate on truth commissions as mechanisms of peacebuilding and social reconstruction in a war-ravaged country.

This article examines the process of trying to establish a Bosnian truth commission and the multiple reasons for the project’s failure. In view of the scarcity of scholarly examinations of this case and the growing temporal distance from the events under consideration, I have adopted a primary source-based historical methodology, seeking to explain the trajectory and eventual failure of the project.[[7]](#footnote-7) My research reconstructs this nearly decade-long process by focusing on three questions: first, what role was envisaged for a national truth commission when the ICTY already existed as a mechanism for achieving justice and reconciliation in the region? Second, how was this idea put into practice? And, finally, what factors contributed to the failure of all attempts to create a TRC? My analysis relies on an examination of the various forms of evidence available: project-specific documents (both published and unpublished);[[8]](#footnote-8) transcripts of the relevant NGO conferences; local and international media of the time; relevant opinion polls; reports of domestic and international NGOs working in Bosnia; and, importantly, interviews and correspondence with actors involved in the process (including members of Bosnian human rights NGOs and victim associations, political party representatives, and representatives of international organizations).

In what follows, I first elucidate the rationale for creating a truth commission for Bosnia, highlighting in particular the TRC’s envisaged contribution to a nation-building narrative for the divided state as one of its key aims. Second, I examine the lengthy process of attempting to establish the commission, detailing the changing roles and positions of national and international actors at different stages. I argue that the main drivers of all these initiatives were the commission’s international sponsors, who struggled to find domestic political partners for what was to be an official state institution. The third part of the article seeks to identify and explain the resistance encountered during this process leading to its eventual failure. It highlights the political obstacles and ultimately insurmountable problems of domestic legitimacy and ownership that the initiative faced, even among those groups that were viewed as its prime beneficiaries, namely the survivors of war crimes and the families of victims. It also examines the considerable opposition that the initiative encountered on the international level from the other main transitional justice institution for the region—the International Criminal Tribunal for the former Yugoslavia (ICTY). Despite the claims by many transitional justice advocates about the complementarity of various mechanisms for dealing with the past,[[9]](#footnote-9) I propose that the failure of the Bosnian TRC tells a very different story, of institutional rivalry and competition for resources.

***Why a Truth Commission for Bosnia?***

The idea of a truth and reconciliation commission for Bosnia first arose in the international human rights community in the early 1990s, while the Bosnian war was still raging with growing evidence of mass atrocity crimes.[[10]](#footnote-10) It was initially considered in the context of debates about the creation of an international criminal tribunal revolving around the feasibility of a judicial response to a conflict that was ongoing and in which those most responsible for the atrocities were still in power. Some human rights advocates thus believed that the establishment of a war crimes tribunal was almost certain to fail and proposed the alternative of creating a UN-sponsored truth commission. In keeping with the thinking of the time—influenced as it was by the Latin American experiences of the previous decade—the proponents of such an approach foresaw the possibility of trials taking place at a later stage using the information gained by the truth commission.[[11]](#footnote-11) On the other hand, advocates of the international criminal tribunal were opposed to the idea of creating a truth commission, contrasting the very visible nature of the atrocities committed in Bosnia to the ‘hidden crimes’ perpetrated by the Latin American military regimes. As Aryeh Neier, the former director of Human Rights Watch, argued, in Bosnia, where the crimes were both extensive and visible, the establishment of a truth commission ‘would have been a meaningless gesture’ and ‘only a process to secure justice seemed appropriate’.[[12]](#footnote-12) Neier’s intervention also reflected the fact that many human rights activists at the time viewed truth commissions as ‘second best’—to be pursued in those situations when criminal trials were impossible.

However, despite the victory of the advocates of a judicial mechanism and the creation of the ICTY in 1993, the idea of a truth commission did not die, as was shown by the two side-letters to the Dayton Peace Agreement that foresaw the establishment of a ‘commission of inquiry’ to examine the causes, conduct and consequences of the Yugoslav conflict.[[13]](#footnote-13) Clearly, the perception remained that something more than criminal trials would be needed to reconstruct the Bosnian state and society after the devastating conflict of 1992-95. The continued references to the creation of a truth commission for Bosnia were in part a reflection of broader international trends. The remarkable achievements of the South African TRC (inaugurated in December 1995, coinciding with the Dayton Peace Agreement for Bosnia) breathed new life into the project for a Bosnian TRC. While the South African experience has since been subject to more critical scrutiny, at the time when the Bosnian truth commission idea was revived in the late 1990s, the South African model—particularly its innovative practice of public hearings transmitted by extensive media coverage—was very prominent in the minds of its advocates.[[14]](#footnote-14) Indeed, both Alex Boraine, the deputy chair of the South African TRC, and Richard Goldstone, a judge on South Africa’s constitutional court and the first ICTY prosecutor, took part in the efforts to set up truth commissions in the post-Yugoslav region.[[15]](#footnote-15) As Goldstone argued in 1998:

In addition to criminal prosecutions, it is necessary for a damaged society to arrive at a wider understanding of the causes of its suffering. For no matter how well the tribunal does its job, the scope of history is far broader than proving the guilt of a few specific individuals... The tribunal can tell an important part of the story but it is equally important that the people come to their own consensus about their recent history and acknowledge the abuses suffered by all victims.[[16]](#footnote-16)

Goldstone’s views reflected the evolution in the thinking on transitional justice away from the initial vision that posited ‘truth’ and ‘justice’ as alternatives to seeing them as complementary strands of a comprehensive approach aimed at achieving both accountability and social reconstruction in post-conflict societies.[[17]](#footnote-17)

 The initial task for advocates of a Bosnian truth and reconciliation commission was to define the role of such a body, while taking into account the existence of the ICTY. What purpose should a national truth commission serve when there was already an international tribunal dealing with the crimes of the 1990s? What could such a body achieve in Bosnia? The idea of a Bosnian TRC was elaborated above all by Neil Kritz, the author of a three-volume work on transitional justice and the Director of the Rule of Law Programme at the United States Institute of Peace (USIP). In the latter part of the 1990s, the USIP organized a series of meetings with Bosnian political and religious leaders, justice officials and representatives of NGOs as part of its ‘Bosnia initiative’.[[18]](#footnote-18) One such meeting, held in Strasbourg in July 1997, explored the possibility of a truth and reconciliation commission.[[19]](#footnote-19) Among those who took part, the most enthusiastic support for the initiative came from Jakob Finci, the president of Bosnia’s Jewish Community and executive director of the country’s Open Society Fund, who later became Chairman of the ‘National Coordinating Committee for Establishment of a Truth and Reconciliation Commission in Bosnia-Herzegovina’.

In 2001, Kritz and Finci co-authored an article elaborating their vision, which echoes the broader arguments articulated in transitional justice literature about the contributions of truth commission to processes of peacebuilding and national dialogue about the past.[[20]](#footnote-20) They argued that truth commissions were not only necessary in situations when human rights abuses were designed to hide the facts (as in the Latin American cases), but also in cases where multiple truths existed propagating exclusive versions of history, which cast their own group as the sole victim and other groups as collective perpetrators. Recalling the German philosopher Karl Jaspers’ conceptualization of different types of guilt, they also argued that courts such as the ICTY were appropriate for prosecuting individuals who were criminally guilty, but that societies that had experienced mass atrocities also had to consider collective forms of responsibility that were not criminal but ‘moral’ in nature. For this latter form of responsibility, a truth and reconciliation commission was best suited, not only to expose the facts of the abuses suffered, but also to examine the broader context in which they occurred and the role played by social and political institutions, including the media, political parties, religious institutions, the judiciary, state security and the educational system.[[21]](#footnote-21) Furthermore, because trials were long and narrowly focused (enabling only a small number of victims to testify for the purpose of proving the guilt of a defendant), a truth commission was a much better platform for both victims and perpetrators to tell their stories and preserve their experiences as part of a definitive ‘publicly acknowledged history’ of the country.[[22]](#footnote-22)

 This last point was particularly important, signalling that the Bosnian TRC would be charged with producing an authoritative historical narrative that would support nation-building in the fragile and divided country. The commission’s advocates argued that a future conflict could only be avoided if a truthful and all-encompassing historical account of the victimhood and suffering of all Bosnian citizens during the 1990s was tackled at the national level and believed that public hearings of people’s experiences would counter forgetting.[[23]](#footnote-23) They also emphasized that a national TRC would allow Bosnians themselves to write their own history, rather than basing it on the accounts of ‘all those who passed through Bosnia thinking they understood everything about it’.[[24]](#footnote-24) Finally, they argued that a Bosnian TRC would counter the prevailing three ethnic truths (of Serbs, Croats and Bosniaks) and would thus serve to ‘bring our citizens and peoples to a position of constructively considering a common future’ and help ‘reconstruct our multi-ethnic society’.[[25]](#footnote-25) This vision was shared by USIP—which wanted the commission to produce a ‘definitive history of the war’ that would be included in the national curriculum as part of a sustained peace-building strategy.[[26]](#footnote-26) The Bosnian TRC was thus seen as an important part of the broader international agenda of reinforcing and supporting a united Bosnian state, while domestically it was endorsed by civil society actors who promoted a broad process of confronting the recent past and creating a new sense of national identity. A Bosnian TRC would not just aid the establishment of democratic governance, the rule of law and respect for human rights, but also help legitimize the fragile Bosnian state. However, as subsequent events made evident, the project of trying to create a national truth commission turned out to be an impossible task.

***Putting Ideas into Practice: Attempts to Create a Bosnian Truth and Reconciliation Commission, 1997-2006***

The project of putting these ideas into practice spanned almost a decade, but never got beyond the stage of producing a draft law for the creation of a Bosnian TRC. It went through two main phases: a first, from 1997 to 2001, in which it was developed as a civil society initiative, and a second, from 2005 to 2006, in which it became the remit of a working group within the Bosnian parliament and was linked to the larger process of Bosnian constitutional reform.[[27]](#footnote-27) Despite their different emphases, both phases aimed ultimately at the creation of an official national body, and both stalled as soon as they passed the preliminary stage.

As one perceptive analyst noted at the time, the exceptional degree of international involvement in the country, combined with the lack of regime change, presented the TRC’s advocates with a paradox: to be legitimate, the Bosnian truth commission needed to be perceived locally as an authentic national institution, yet the country’s nationalist politicians (many of whom had been in power during the war) could not be relied upon to drive the process forward.[[28]](#footnote-28) As a result, the TRC’s international backers initially adopted a different approach: they first tried to gain broad support for the project within Bosnian civil society. So, after exploratory discussions with Bosnian political, religious and civil society representatives in 1997, USIP funded Bosnia’s largest NGOs to promote the initiative.[[29]](#footnote-29) More quietly, USIP’s Neil Kritz and William Stuebner met with representatives of the ICTY and Bosnian political and religious leaders to gain their endorsement of the project.[[30]](#footnote-30) In February 2000, over one hundred Bosnian and regional NGOs participated at a round table in Sarajevo, along with representatives of the ICTY and the United Nations and distinguished international guests (including Richard Goldstone, Paul Van Zyl and Alex Boraine from South Africa).[[31]](#footnote-31) The Bosnian NGOs signed a petition endorsing the TRC, leading to the creation of a ‘National Association for the Establishment of a Truth and Reconciliation Commission’.[[32]](#footnote-32) The civil society phase of the project ended in 2001, when this Association presented a draft law for a national TRC to Bosnia’s minister for human rights and the country’s collective presidency.[[33]](#footnote-33)

The statute of the Bosnian TRC was drafted by USIP’s Neil Kritz, while the draft law was co-authored by Kritz and Jakob Finci.[[34]](#footnote-34) The draft law defined the Bosnian TRC’s five-year mandate as being to examine events in Bosnia and the former Yugoslavia between 19 November 1990 (Bosnia’s first multi-party election) and 14 December 1995 (the conclusion of the Dayton Peace Agreement) to shed light on the ‘nature, causes and extent of human rights violations committed’.[[35]](#footnote-35) Its investigation was to include not just the ‘circumstances that produced ethnic mistrust’ and the ‘political and moral responsibility of individuals, organizations and institutions for abuse of human rights’, but also ‘whether activities or inactivity of actors outside of Bosnia and Herzegovina contributed to the violations’. The TRC’s mandate also encompassed fact-finding about the ‘number of people who died, who were killed, wounded, missing, tortured, raped, imprisoned without a just cause and forcefully displaced; [the] number of damaged and destroyed religious objects and similar apparent attacks at different religion; [and the] location of mass graves’. Finally, as noted earlier, the TRC was to document the ‘existence of acts of individuals who refused to take part in the oppression and abuse of their neighbours thus preserving, at high risk, human dignity by trying to protect their neighbours of different ethnic and religious groups from abuse’.[[36]](#footnote-36) This last point, to include an account of the acts of ‘good people’ was a self-conscious innovation of the Bosnian TRC. It would distinguish this commission from other such bodies in the world, while at the same time helping ‘break down collective blame’ and fostering national reconciliation.[[37]](#footnote-37)

Importantly, the draft law and statute sought to define the role of the TRC in regard to the ICTY. They both stipulated that the TRC would cooperate and maintain regular contact with the ICTY, including providing the court with any information or documentation requested. Above all, these documents noted:

The function of the TRC is revelation of truth, it is not a judiciary body. It is to complement the juridical processes undertaken or those that will be undertaken and not to interfere with them. Since the primary role of the ICTY is establishment of criminal accountability of individuals, the TRC will not grant amnesties nor carry out investigations for the purpose criminal prosecution and the final report of the TRC will not determine the criminal responsibility of individuals.[[38]](#footnote-38)

The Bosnian commission’s lack of amnesty powers would have undoubtedly represented a handicap in achieving the cooperation and testimony from those institutions and individuals that had been implicated in the war crimes.[[39]](#footnote-39) However, this was clearly a necessary provision, recognizing the existence of the ICTY and aimed at persuading its officials that the work of the TRC would not conflict with that of the court.[[40]](#footnote-40) At the same time, the TRC was given powers by the draft law to collect information, conduct hearings, make unannounced visits to any individuals or institutions for investigative purposes, and seize documents and other material from political organizations, as well as from sources abroad.[[41]](#footnote-41) How these powers would have been applied in practice remains open, as the draft law and statute were never approved by the relevant political authorities. By 2002, it was clear that the initiative had stalled at the political level and for several years nothing happened.[[42]](#footnote-42)

The revival of the Bosnian TRC project in 2005—this time within the Bosnian Parliament—showed a revision of the international strategy to get the commission off the ground. Once again, the process was led by USIP, in cooperation with a cognate NGO called Dayton Project led by the then Deputy High Commissioner for Bosnia, the American Donald Hays. Now the TRC unofficially became linked to the broader process of Bosnian constitutional reform that Hays was negotiating with Bosnia’s main political parties since April 2005—sidelining the NGOs of the first phase, who were not informed of the new initiative.[[43]](#footnote-43) The decision to focus on political parties rather than civil society undoubtedly reflected a recognition that an official TRC had to achieve political backing if it was ever to come into existence. Hays thus negotiated with the leaders of the eight main political parties to create a parliamentary group devoted to the drafting of a law on the TRC.[[44]](#footnote-44) The financing was provided by USIP, in cooperation with the United Nations Development Programme (UNDP), both of which nominated their own advisors to the working group—Neil Kritz for USIP and Gordon Bacon for UNDP. The working group was set up in October 2005, with meetings held behind closed doors until January 2006, when it first publicly presented its work at a regional NGO conference in Sarajevo.[[45]](#footnote-45) Its draft law did not significantly differ from the one elaborated previously by Kritz and Finci, and the discussions in the working group were based on that earlier draft.[[46]](#footnote-46)

The main change to the draft concerned the appointment of commissioners, and the evolution of this single point illustrates the continuous dilemma faced by the TRC’s advocates: how to make the commission an authentic national institution while preventing nationalist political leaders from appropriating it. In order to guarantee domestic legitimacy, there was general agreement that commissioners needed to be Bosnian citizens and, initially, the plan was to have Bosnia’s collective presidency make the appointments. However, as Kritz and Finci later noted, this view was revised due to the demands made by the Serb member of the Bosnian state presidency, Momčilo Krajišnik, to personally select the Serb commissioners and have veto power over the commission’s report.[[47]](#footnote-47) In the project’s civil society phase, the concern over legitimacy thus came second to the desire to limit the power of nationalist politicians, and the 2001 draft gave the UN Secretary General the power to appoint the commissioners.[[48]](#footnote-48) However, by 2006, this changed again, making the commissioners’ selection the remit of a hybrid parliamentary ‘Nomination Committee’ comprised of delegates of the political parties, civil society and the Bosnian High Court, along with representatives of international organizations.[[49]](#footnote-49) Broadening the process of selecting commissioners sought to ensure local legitimacy while maintaining international oversight.

However, ultimately none of these solutions ever materialised. The parliamentary working group’s first press release in March 2006—informing the public that it had begun consultations with Bosnia’s NGOs , the state prosecutor and relevant ministries and that it would shortly make the draft law available to the public for further debate—was also its last communication.[[50]](#footnote-50) A few weeks later, the Bosnian parliament narrowly rejected the constitutional reform package that Hays had negotiated with the party leaders, which resulted in the withdrawal of external support, along with the end of the discussions about the TRC.[[51]](#footnote-51) Although there was no formal link between constitutional reform and the commission project, it was nevertheless clear that the lack of political agreement on the nature of the Bosnian state also implied the end of the TRC initiative as that state’s nation-building project. Without international support, the truth commission idea simply did not have enough traction within Bosnia’s political establishment to continue.

Having recounted the many steps taken over several years to try to establish a national TRC that would achieve both local legitimacy and international support, in the remainder of the article I examine this experience further in order to reveal the underlying tensions and the social and political conflicts of interest which ultimately confounded these efforts and which are central to actual processes of dealing with the legacies of conflict.

***Poles of Resistance: international and domestic***

The attempts to create a national TRC generated resistance both internationally and domestically. The first major opposition to the TRC initiative came from the ICTY, whose resistance to the idea of a Bosnian TRC was unsurprising—particularly considering that a truth commission was initially envisaged as an alternative to the Tribunal. The ICTY’s resistance to a Bosnian TRC continued through both the project’s phases. In its annual report for 1998, the ICTY expressed ‘a number of concerns about the potential effects of the Commission... [including] access to witnesses, availability and admissibility of evidence and potential amnesty’.[[52]](#footnote-52) At the 2000 civil society conference launching the Bosnian TRC process, Gavin Ruxton, the ICTY representative, outlined the Tribunal’s skepticism that one, definitive truth could be obtained, or that the political context was ripe for such an endeavour. Implicitly criticizing USIP, he also noted that the TRC proposal ‘contained elements’ of ‘imposition from outside’.[[53]](#footnote-53) Most importantly, the ICTY officials feared that the TRC could undermine the Tribunal’s own investigations and decisions, witness protection programme and secret indictments.[[54]](#footnote-54) Despite the remonstrations of the Bosnian participants, the ICTY officials maintained that neither the Tribunal’s president nor its chief prosecutor could support the initiative.[[55]](#footnote-55)

A year later, in May 2001, the Tribunal’s new president, Claude Jorda, tentatively accepted the idea of a truth commission, but only with a restricted mandate that would not challenge the primacy of the ICTY. Although Jorda recognized that this was ‘a national initiative and, as such, falls within your sovereign province’, he urged his Bosnian interlocutors not to ‘ignore the international context’ and make sure that the initiative ‘be consonant with the powers conferred on the Tribunal by the Security Council’.[[56]](#footnote-56) He warned that a commission could not have autonomous investigative or amnesty powers and could only deal with those aspects that were not a priority for the ICTY, such as reparations or ‘the pedagogical and historical perspective of reconstructing the national identity’.[[57]](#footnote-57) In other words, from the ICTY’s perspective, a Bosnian truth commission could only ‘supplement and, if necessary, reinforce the International Tribunal in its mission of reconciliation’ but not in any way represent a parallel and potentially rival institution that would compete with the ICTY’s work or ‘absorb scarce Western financial aid’, diverting it from the Tribunal.[[58]](#footnote-58) Despite the TRC advocates’ attempts to reassure the ICTY, the latter’s misgivings did not subside even after its own financial position was more secure. When the TRC initiative was revived in 2005—concurrently with the inauguration of Bosnia’s new domestic war crimes court—the spokesperson of the ICTY Office of the Prosecutor, Florence Hartmann, publicly stated that ‘first we need to satisfy justice and no commission can do that’ and that no commission should begin its work until at least one hundred cases had been processed by Bosnia’s new court. [[59]](#footnote-59)

The ICTY’s opposition proved to be one of the most important obstacles to the establishment of a truth commission. Advocates of the commission perceived the Tribunal’s stance as unjustified, particularly as they had made every effort to carefully define the commission’s mandate in ways that did not jeopardize the judicial process. As Alex Boraine, the deputy chair of the South African Truth and Reconciliation Commission and a participant in some of the discussions to create a Bosnian TRC, put it: ‘I was astonished at the arrogance shown by these representatives [of the ICTY] and I think the very long delay in reaching any kind of conclusion was largely the result of opposition by the tribunal’.[[60]](#footnote-60) However—despite all arguments concerning the complementarity of the ‘justice’ and the ‘truth’ processes—it was clear that governments and donors saw them as alternative approaches, both of which required significant funding. As the US Embassy in Sarajevo noted in 2006:

Donor support for a truth and reconciliation process, likely to be a multi-million dollar project, will almost certainly compete with the US G[overnment] priority of ensuring adequate international assistance for the BiH War Crimes Chamber and State Court. [...] Although the truth commission is envisioned as a parallel and not competing process with ongoing war crimes trials, it appears that the State Court’s War Crimes Chamber and the truth commission would likely be competing for funding from the same shrinking donor pool.[[61]](#footnote-61)

For Western governments and donors, funding for a truth commission had to be based on the fulfilment of certain criteria, notably the presence of domestic demand for such a mechanism and the prospect of genuine public legitimacy. And, as the US Embassy’s dispatch noted, ‘although proponents of the truth commission argue that it will provide a catharsis that will help Bosnians move forward, it is not clear that a commission is what people really want’.[[62]](#footnote-62) This statement highlights the second, domestic, pole of opposition to the TRC project that had emerged in the process.

Domestically, the idea of a national TRC encountered resistance on both the political and societal levels. In the Bosnian Serb entity (Republika Srpska or RS), there was particular misgiving about the project of a national truth commission, aimed as it was at producing a nation-building narrative for a united Bosnian state—a state to which most Bosnian Serbs had no allegiance.[[63]](#footnote-63) Bosnian Serb politicians saw any all-Bosnian initiative as a threat to the survival and autonomy of the RS and as an attempt to promote the perception that the entity is a ‘genocidal creation, with no historical antecedents, based on ethnic cleansing’.[[64]](#footnote-64) Public opinion in the RS also generally reflected little enthusiasm for a national truth and reconciliation commission. A 2010 poll showed that only 18% of respondents believed in the necessity of ‘a confrontation with the past and an acceptance of our own responsibility for the sake of a better future’. Another 19% who were in favour thought such a confrontation was necessary only ‘to prove that we are not guilty’, while 39% rejected the idea and 24% had no opinion. The same survey showed that only 26% in RS were in favour of a commission to investigate the crimes committed during the war, compared to 75% in Federation BiH, Bosnia’s other entity.[[65]](#footnote-65)

The RS authorities’ refusal to back a national TRC was the most open. However, the reluctance of political parties to embrace ‘truth-telling’ projects about the war was not limited to the Serb entity. The fact that every TRC initiative stalled when it reached the political level was testimony to a broader problem. The parliamentary truth commission phase of 2005-6 shows that—although no political party openly refused to participate in the group’s work on the draft law—this commitment was clearly not sustained when international involvement and support was withdrawn. Indeed, as one member of the parliamentary group explained afterwards, there was much skepticism about the project even within the working group itself, but no party wished to appear obstructionist.[[66]](#footnote-66) While no official documentation or transcripts exist to corroborate this, it supports the point made in the literature that the largest parties and their leaders had little to gain and possibly much to lose from the disclosure of evidence of their own actions during the 1990s and continued to prefer simple narratives of collective victimhood of their own group.[[67]](#footnote-67)

Whereas the political stumbling blocks were predictable, more surprising was the resistance to the TRC project emanating from Bosnian victim associations—precisely those groups that, according to much of the transitional justice literature, should have been its greatest beneficiaries and supporters.[[68]](#footnote-68) Yet, as was reported in the Bosnian media in 2001, victim associations belonging to all three of Bosnia’s national groups ‘had a unanimous position... they rejected the idea of creating a commission’.[[69]](#footnote-69) One explanation proposed by Bosnian NGO activists for this stance was the dependence of many victim associations on political parties—which distrusted the NGO-led project for a truth commission.[[70]](#footnote-70) While such relations of dependence have indeed been a problem in Bosnia,[[71]](#footnote-71) the reluctance on the part of victim associations became even more pronounced during the second phase of the initiative, despite the involvement of political parties this time round, thus testifying to the presence of other reasons.[[72]](#footnote-72)

One important grievance of victim organizations was that they had been inadequately included in the process.[[73]](#footnote-73) When the project originated in Bosnian civil society in the late 1990s, it was spearheaded by urban, ‘professionalised’ and more cosmopolitan NGOs with strong links to international actors and donors. This led to smaller, more remote grassroots groups, which did not have the know-how to attract foreign support, to view the TRC initiative as an elitist, lucrative project pushed by large NGOs and wealthy individuals.[[74]](#footnote-74) These misgivings were reflected in the questions raised by representatives of victim associations about material compensation of the commissioners and in their outraged reaction when told that salaries were likely to be equivalent to those of High Court judges.[[75]](#footnote-75) The sense of exclusion became particularly acute in the second—parliamentary—phase of the initiative, when the working group’s deliberations were not made public until they were leaked to journalists. The initiative encountered strong criticism despite the assurances of some party representatives that widespread public consultations would follow the agreement of the draft statute at the political level.[[76]](#footnote-76) These problems were compounded by errors of judgment by insufficiently informed foreign sponsors, such as the initial inclusion in the parliamentary working group of an alleged war criminal nominated by his political party. Although this individual was subsequently removed, the incident caused irreversible damage to the project.[[77]](#footnote-77)

In addition, victim associations demonstrated considerable skepticism towards both the ‘truth’ and ‘reconciliation’ aspects of these TRC initiatives. Their statements at the time showed that they were afraid of anything resembling a ‘compromise truth’—in other words, any narrative that sought to create a symmetry between their suffering and the suffering of others.[[78]](#footnote-78) For Bosniaks, this was a particularly acute problem because their very identity as a national group was tied up with the experience of having had by far the greatest number of civilian casualties in the conflict[[79]](#footnote-79)—a conflict they viewed as an aggressive war masterminded by Serbia, in which they were victims of genocide.[[80]](#footnote-80) Many feared that a national truth commission would negate that uniqueness in its efforts to foster inter-ethnic reconciliation. As Kada Hotić of the Association of Mothers of Srebrenica and Žepa explained: ‘What is really the truth and what do we really want here; who are victims and what is a crime?... Are all killings crimes, considering that some people were armed and committed aggression and others were defending themselves?’[[81]](#footnote-81) A related concern was voiced about the TRC’s ‘nationally balanced’ composition, which according to some victim associations would inevitably render it a political body instead of an expert one.[[82]](#footnote-82) Finally, there were also serious objections to ‘reconciliation’ aspect of the TRC project. As Emir Suljagić, a survivor of the Srebrenica genocide, put it:

At a time when mass murderers walk the streets of this country quite freely, when thousands of them work in state services and make important decisions about the everyday existence of their victims, offering the [victims] reconciliation as a solution is nothing but bloody cynicism...’[[83]](#footnote-83)

Many representatives of victim associations emphasized that reconciliation could not be a national project but an individual act, voluntarily given.

Women’s associations had their own concerns about the TRC project—a stance in which they were supported by the Head of the UN High Commission for Human Rights in Bosnia, Madeleine Rees.[[84]](#footnote-84) They were critical of the proposal to hold hearings without proper consideration of the implications for victims of wartime sexual violence—both because of the potential stigma and re-traumatization that they might experience and because of personal security concerns, considering that many former perpetrators of sexual crimes were still working for local institutions.[[85]](#footnote-85) Furthermore, as Marita Eastmond notes, some ‘victims of sexual abuse may resort to silence as both a personal and a cultural strategy of maintaining family relationships and public respect.’[[86]](#footnote-86) Others, who believed in the necessity of testifying in trials, did not appear to see any benefit in doing so for the sake of national ‘reconciliation’; their purpose was the achievement of accountability for perpetrators first and foremost.[[87]](#footnote-87)

This preference for judicial processes over truth and reconciliation projects was broadly shared among victims’ associations, who viewed the latter as a potential distraction from the former. As one representative noted, it was not necessary to create new institutions, but to ensure that the existing ones carried out their work ‘professionally and properly’.[[88]](#footnote-88) Many victim associations called for changes that would improve their everyday life: the purging of known war criminals from official institutions, access to social security, improved medical and psychological counselling services, the achievement of legal status for survivors or families of victims (enabling the unblocking of pensions or inheritance), and the securing of reparations and financial aid to alleviate difficult socio-economic conditions, particularly for minority returnees.[[89]](#footnote-89) As Eastmond notes, ‘external reconciliation initiatives seem to be curiously at odds with the primary concerns of most Bosnians, as they struggle to find their bearings in a profoundly changing socio-political reality’.[[90]](#footnote-90) Instead of efforts to produce a grand narrative of the war and promote national reconciliation, many preferred the strengthening of local initiatives aimed at securing their civil and economic rights.[[91]](#footnote-91)

***Conclusion: creating truth commissions in post-conflict settings***

As truth commissions have proliferated around the world, scholars and practitioners have increasingly warned about their growing complexity and excessively expanding mandates, which are hampering their chances of success.[[92]](#footnote-92) This evolution in the literature demonstrates a growing awareness of the potential problems and setbacks in attempts to refine what is one of the key mechanisms of transitional justice. The history of the attempts to create a Bosnian TRC contributes to this literature by highlighting a different problem. By analysing the rationale for a Bosnian TRC, the processes by which it was pursued over nearly a decade, and the obstacles it faced both on the international and domestic levels, this article sought to show how even the very first step of creating a truth commission can fail despite the considerable efforts of its proponents. As truth commissions are increasingly being envisaged in a variety of conflict and post-conflict settings, Bosnia’s experience may offer some broader lessons for other countries embarking on similar projects, as well as avenues for further research in transitional justice.

Several conclusions emerge from this analysis of the failed attempts to create a Bosnian TRC. First, the development of the TRC initiative—from its initial conception to its implementation—was characterized by an extremely high degree of external intervention. Its trajectory shows how international involvement in divided societies has complex and at times paradoxical outcomes: it stimulates and drives processes of transitional justice which might otherwise not take place, yet, at the same time, it also has the counterproductive consequence of limiting the legitimacy of such projects and creating situations of dependence. In Bosnia, international actors sought to solve this problem by involving local actors while preventing nationalist politicians from ‘hijacking’ the TRC project.[[93]](#footnote-93) However, this dilemma was never resolved and the TRC project continued to rely on its international promoters throughout.

A second, related, conclusion is that the failure of the Bosnian TRC initiative confirms the broader point made by some transitional justice scholars that national truth commissions are inherently political projects—related, both ideologically and practically, to promoting the legitimacy of new political regimes and their broader state- and nation-building goals.[[94]](#footnote-94) When, as in Bosnia, the state on whose behalf the truth commission is being created is itself contested, and the most powerful political actors lack commitment to the values of a multi-ethnic society, the chances of success for such an initiative are low regardless of international engagement. In divided states, a national truth commission can materialize as a legitimate force for change only as part of a wider agenda pursued by leaders who genuinely embrace social and political reconstruction. External actors can support such individuals, but they cannot replace them.

Third, this history of the failed Bosnian TRC highlights the importance of the politics of civil society in transitional justice projects—the internal divisions and rivalries, as well as the different and often unreconciled agendas and priorities of domestic NGOs and victim associations. Externally funded and driven initiatives can produce mistrust and resistance among domestic social actors if these projects’ local promoters do not enjoy a recognized integrity and legitimacy, or if they are viewed as having self-serving motives. Detailed local knowledge and an understanding of civil society politics can help external donors define viable projects. However, there may also be inherent constraints present when discourses of ‘truth and reconciliation’ are at odds with their social and political environment. In the case of the Bosnian TRC, the underlying problem concerned the construction of an official state-legitimising narrative of ‘national reconciliation’ that did not correspond with the reality of the Bosnian state, its institutions or political leaders, and also did not resonate with the population more widely. The failure of the national TRC project uncovered the fear and mistrust held by many Bosnians in regard to such large-scale official projects that threatened to dilute the specificity of individual experience, promote a narrative of reconciliation at the expense of justice and institutional reform, and make political use of personal tragedy.

Finally, the history of Bosnia’s failed truth commission initiatives highlights a phenomenon that deserves greater emphasis in the literature, namely the politics of transitional justice institutions themselves—in this case of the ICTY and the TRC project. The ICTY’s successful resistance to the creation of another transitional justice mechanism exposed the logic of self-interest and self-preservation inevitably faced by ad hoc institutions dependent on external funding, regardless of their technically and officially mandated complementarity. This is not unique to the Bosnian case, as the examples of Sierra Leone and Timor-Leste have also shown.[[95]](#footnote-95) While this form of institutional rivalry may be mitigated if all transitional justice mechanisms are created concurrently with a clear attribution of resources and tasks, [[96]](#footnote-96) it is illusory to believe that politics can be completely eliminated from the process. These experiences indicate that transitional justice would benefit from being understood partly as a form of institutional politics, created and fueled by the precarious nature of external funding and the interests and preferences of powerful international actors.

In sum, the failure to create a national truth commission for Bosnia is testimony to the inherently political and contested character of addressing the legacy of past conflict at all levels of society—the local, the national and the international. Far from being a technical exercise, creating a truth commission raises questions about legitimate authority in defining that past, the purpose of the reckoning, and the thorny dilemmas of practical viability and sources of support. In this context, international actors are often not ‘external’ but integral to the process, seeking to create preferences and determine outcomes in line with their own interests and ideas. Their emphasis on the state and its institutions, on promoting nation-building and an internationally brokered political compromise, as was the case in Bosnia, may not always represent the most productive way of confronting a difficult and contested past or addressing the needs of those who suffered the most. In deeply divided countries where official truth and reconciliation initiatives may not be viewed as legitimate or able to succeed, ‘unofficial truth projects’ and civil society networks operating both on the sub-state level and across state boundaries may provide a better—or indeed the only—alternative.[[97]](#footnote-97)

1. Pablo de Greiff, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’, UN Human Rights Council, A/HRC/”4/42, 28 Aug. 2013. See also *Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?* (New York: International Center for Transitional Justice and Koffi Annan Foundation, 2014). [↑](#footnote-ref-1)
2. Juan E. Mendez, ‘National Reconciliation, Transnational Justice, and the International Criminal Court’*, Ethics and International Affairs*, 15(1), 2001: 29. See also Kofi Annan, Foreword, *Challenging the Conventional*, supra note 1: v. [↑](#footnote-ref-2)
3. Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions,* (Routledge, 2nd ed, 2011). [↑](#footnote-ref-3)
4. Erin Daly, ‘Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition’, *International Journal of Transitional Justice*, 2, 2008, pp. 23-41. See also David Mendeloff, ‘Truth-Seeking, Truth-Telling, and Post-Conflict Peacebuilding: Curb the Enthusiasm?’ International Studies Review, 6, 2004, pp. 355-380. Useful overviews can be found in: Hayner (supra n 3); Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (Abingdon: Routledge, 2010); Tricia Olsen, Leigh Payne and Andrew Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, USIP, 2010); and Mark Freeman, *Truth Commissions and Procedural Fairness* (New York Cambridge University Press, 2006). The 2013 symposium on *Challenging the Conventional* (supra n 1) specifically focused on the reasons why truth commissions may fail to fulfil their mandates. [↑](#footnote-ref-4)
5. Henceforth ‘Bosnia’ will be used as short-hand for ‘Bosnia and Herzegovina’. [↑](#footnote-ref-5)
6. While a national truth commission remains part of Bosnia’s official transitional justice strategy, it is unlikely to materialize in the foreseeable future. The process is indefinitely on hold since 2012. (‘Strategija tranzicijske pravde u Bosni i Hercegovini, 2012-2016. Radni tekst’, document in possession of the author and author’s interviews with members of the Bosnian Council of Ministers working group on the national transitional justice strategy, Sarajevo, 20 May 2013.) [↑](#footnote-ref-6)
7. This work thus belongs methodologically to what is known as ‘contemporary history’, relying on a multiplicity of sources rather than on archival work. See Timothy Garton Ash, *History of the Present: Essays, Sketches and Despatches from Europe in the 1990s* (Allen Layne, 1999). On the historiographical debates produced by the expansion and diversification of the discipline of history, see *New Perspectives on Historical Writing*, ed. Peter Burke (Polity Press 2001). Some social scientists also recognise the value of this type of work. As the sociologist Bent Flyvbjerg notes: ‘Case studies often contain a substantial element of narrative. Good narratives typically approach the complexities and contradictions of real life. Accordingly, such narratives may be difficult or impossible to summarize into neat scientific formulae, general propositions, and theories.’ (Bent Flyvbjerg, ‘Five misunderstandings about Case-Study Research’, *Qualitative Inquiry* 12/2, Apr. 2006: 237) [↑](#footnote-ref-7)
8. These include unpublished drafts of the proposed Bosnian TRC Statutes and laws, press releases about the project by various local and external institutions, and dispatches from the US Embassy in Sarajevo to the State Department (as published by Wikileaks). [↑](#footnote-ref-8)
9. On the evolution of thinking among transitional justice scholars and practitioners, see Naomi Roht-Arriaza, ‘The New Landscape of Transitional Justice’ in *Transitional Justice in the Twenty-First Century*, eds Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge University Press, 2006): 1-16. On the broader debate, see notably *Truth v. Justice: The Morality of Truth Commissions*, eds Robert I. Rotberg and Dennis Thompson (Princeton University Press, 2000). [↑](#footnote-ref-9)
10. The 1992-1995 Bosnian War led to some 100,000 direct war deaths, 40% of which were civilian. (Figures generated by the Research and Documentation Centre in Sarajevo. <http:///www.idc.org>) [↑](#footnote-ref-10)
11. Herman Schwartz, ‘What can we do about Balkan atrocities?’ *The New York Times*, Apr. 9, 1993. [↑](#footnote-ref-11)
12. Aryeh Neier, ‘Rethinking Truth, Justice, and Guilt after Bosnia and Rwanda’, in *Human Rights in Political Transitions: Gettysburg to Bosnia* ed. Carla Hesse and Robert Post, (New York; Zone Books, 1999): 42-43. A summary of the Neier-Schwartz debate can be found in, *Human Rights Brief*, 1(1) 1994, Washington College of Law, American University. [↑](#footnote-ref-12)
13. Side letters of 13 Dec. 1995 to the General Framework of Agreement for Peace in Bosnia and Herzegovina. <http://www1.umn.edu/humanrts/icty/dayton/daytonsidelet.html> [↑](#footnote-ref-13)
14. This was noted by all the author’s interviewees, Sarajevo, May-June 2009. On the global impact of the South African TRC see Alex Boraine, ‘South Africa’s Truth and Reconciliation Commission from a Global Perspective’, in *Peace versus Justice: The Dilemma of Transitional Justice in Africa,* ed. Chandra Lekha Sriram and Suren Pillay (Scottsville: University of KwaZulu-Natal Press, 2009): 137-52. [↑](#footnote-ref-14)
15. Goldstone and Boraine took part in an international conference dedicated to the creation of a truth and reconciliation commission for Bosnia in Sarajevo in February 2000. (‘Okrugli sto: Istina i pomirenje – imperativ bosanskohercegovačke budućnosti’, Sarajevo, 4 Feb. 2000. (hereafter ‘Okrugli sto: Istina i pomirenje..’) <http:///www.angelfire.com.bc2/kip>. Boraine also acted as an advisor to the Yugoslav (Serbia and Montenegro) TRC set up in 2001 and tried to establish cooperation between it and Bosnian civil society representatives. (Alex Boraine, *A Life in Transition*, Zebra Press, 2008: 234-38) [↑](#footnote-ref-15)
16. Richard J. Goldstone, ‘Ethnic Reconciliation Needs the Help of a Truth Commission’, *International Herald Tribune*, Oct. 24, 1998. [↑](#footnote-ref-16)
17. Roht-Arriaza, supra n 9:8. [↑](#footnote-ref-17)
18. This initiative, aimed at fostering dialogue and the promotion of justice in Bosnia, was later broadened to other parts of the Balkans. See <http://www.usip.org/publications/balkans-initiative> [↑](#footnote-ref-18)
19. ‘Cooperation Agreements in Bosnia’, *PeaceWatch*, USIP, August 1997. <http://www.usip.org/peacewatch/1997/897/bosnia.html> [↑](#footnote-ref-19)
20. Neil J. Kritz and Jakob Finci, ‘A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time Has Come’, *International Law Forum*, 3 (2001): 50-58. On the contributions of truth commissions, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998). [↑](#footnote-ref-20)
21. Ibid, 52. For Jaspers’ definitions of guilt see his *The Question of German Guilt* (New York: Fordham University Press, 2001). [↑](#footnote-ref-21)
22. Ibid, 53. [↑](#footnote-ref-22)
23. Jakob Finci, ‘Zašto nam treba Komisija za istinu i pomirenje?’ <http://www.angelfire.com/bc2/kip/bosanski/files/stockholmbh.htm> [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. Vehid Šehić’s intervention. (‘Okrugli sto: Istina i pomirenje..’, supra n 15) [↑](#footnote-ref-25)
26. US Embassy in Sarajevo to Secretary of State, Washington, Cable of April 7, 2006, para 5. [www.wikileaks.ch/cable/2006/04/06SARAJEVO738.html](http://www.wikileaks.ch/cable/2006/04/06SARAJEVO738.html) [↑](#footnote-ref-26)
27. On the constitutional amendments process, see e.g. Sofia Sebastian, *Leaving Dayton Behind: Constitutional Reform in Bosnia and Herzegovina*, Fundacion para las relaciones internacionales y el dialogo exterior (FRIDE), Working Paper 46, Nov. 2007. [↑](#footnote-ref-27)
28. Gregory Gisvold, ‘A Truth Commission for Bosnia and Herzegovina? Anticipating the Debate’, in *Post-War Protection of Human Rights in Bosnia and Herzegovina*, ed. Michael O’Flaherty and Gregory Gisvold (Kluwer Law International, 1998: 241-261). [↑](#footnote-ref-28)
29. The NGOs involved were: Circle 99, Tuzla Citizens’ Forum, the Citizens’ Alternative Parliament, the Helsinki Committee for Bosnia-Herzegovina in Sarajevo and its counterpart in Bosnia’s other entity, the Republika Srpska (RS). They received funding of some $40,000 for the TRC project. (Author’s correspondence with Jakob Finci, 8. Sept. 2009.) [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. For the speakers, see ‘Okrugli sto: Istina i pomirenje..’ supra n 15. [↑](#footnote-ref-31)
32. Author’s interviews with NGO representatives, Sarajevo, September 2009. [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. Kritz’s authorship of the statute after the 1997 Strasbourg meeting was openly acknowledged. See USIP, ‘Bosnia to Form a Single Truth Commission’, *PeaceWatch*, February 1998 <http://www.usip.org/peacewatch/1998/298/truth.html> [↑](#footnote-ref-34)
35. ‘Draft of the Law on TRC in BH’. Document in possession of author. [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. ‘Bosnia to Form a Single Truth Commission’, USIP *PeaceWatch*, supra n 36. See also, Kritz and Finci, supra n 20 at 53. [↑](#footnote-ref-37)
38. ‘Draft of the Law on TRC in BH’, supra n 35 and ‘Nacrt Statuta Komisije za Istinu i Pomirenje Bosne i Hercegovine (22/1/98)’. Document in possession of author. Emphasis added. [↑](#footnote-ref-38)
39. Janine Natalya Clark, ‘Does Bosnia Need a Truth and Reconciliation Commission? Some Reflections on its Possible Design’, *Ethnopolitics*, 12/3 (2013): 233-234. As has been noted, however, the amnesty powers of the South African TRC were exceptional. Eduardo Gonzàlez, ‘Set to Fail? Assessing Tendencies in Truth Commissions Created After Violent Conflict’, in *Challenging the Conventional*, supra n 1: 4. [↑](#footnote-ref-39)
40. Kritz and Finci, supra n 20 at 56. [↑](#footnote-ref-40)
41. ‘Draft of the Law on TRC in BH’, supra n 35. [↑](#footnote-ref-41)
42. Author’s interviews with NGO representatives, Sarajevo, September 2009. [↑](#footnote-ref-42)
43. Author’s interviews with NGO representatives, Sarajevo, September 2009. [↑](#footnote-ref-43)
44. Author’s interviews with members of the parliamentary working group, Sarajevo, Sept. 2009. [↑](#footnote-ref-44)
45. ‘Utvrdjivanje istine u post-konfliktnom period: inicijative i perspective na zapadnom Balkanu’, international conference organized by Documenta (Zagreb), Humanitarian Law Center (Belgrade) and Research and documentation Centre (Sarajevo), Sarajevo, 5-6 May 2006. (Hereafter ‘Utvrdjivanje istine...) [http://korekom.org/public/fck\_files/file/Reg\_%20forum%20%za%20tran\_pravdu-Sarajevo-5\_i%206\_maj%202006-transkripti.pdf](http://korekom.org/public/fck_files/file/Reg_%20forum%20%25za%20tran_pravdu-Sarajevo-5_i%206_maj%202006-transkripti.pdf) [↑](#footnote-ref-45)
46. There were only two additions to the commission’s original mandate, namely investigations into the ‘number and identity of military personnel that was killed, injured or disappeared’ and the ‘destruction and unlawful appropriation of others’ property’. (‘Radni material: Prijedlog nacrta Zakona o Komisiji za istinu’. Document in possession of author.) [↑](#footnote-ref-46)
47. Kritz and Finci, supra n 20 at 56. [↑](#footnote-ref-47)
48. ‘Draft of the Law on TRC in BH’, supra n 35. [↑](#footnote-ref-48)
49. ‘Radni material: Prijedlog nacrta Zakona o Komisiji za istinu’, supra n 46. [↑](#footnote-ref-49)
50. ‘Saopštenje za javnost’. Document in possession of author. [↑](#footnote-ref-50)
51. Author’s interviews with members of the parliamentary working group, Sarajevo, Sept. 2009. The constitutional amendments were agreed upon by party leaders in March 2006, but did not pass in the House of Representatives in April. [↑](#footnote-ref-51)
52. ‘Fifth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991’, July 27, 1998, UN Doc. A/5.3/219-S/1998/737 at 50-51. [↑](#footnote-ref-52)
53. Transcript of ‘Okrugli sto: Istina i pomirenje..’, supra n 15. [↑](#footnote-ref-53)
54. Ibid. [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. Claude Jorda, ‘The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina’, Speech made on 12 May 2001 in Sarajevo. Press Release, ICTY, The Hague, 17 May 2001. <http://www.un.org/icty/pressreal/p591-e.htm> [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. Ibid and R. J. Smith, ‘Probes of Atrocities Divide the Bosnians’, *Washington Post*, 28 Dec. 2000. [↑](#footnote-ref-58)
59. ‘Kredibilitet Suda BiH je važan za građane BiH’, Centar za istraživačko novinarstvo, 1 July 2005. <http://www.cin.ba/stories/P3_Reconciliation/?cid=199,2,1> [↑](#footnote-ref-59)
60. Boraine, *A Life in Transition*, supra n 15 at 235. [↑](#footnote-ref-60)
61. US Embassy in Sarajevo to Secretary of State, Washington, Cable of April 7, 2006, paras 2 and 8, [www.wikileaks.ch/cable/2006/04/06SARAJEVO738.html](http://www.wikileaks.ch/cable/2006/04/06SARAJEVO738.html) [↑](#footnote-ref-61)
62. Ibid, para 10. [↑](#footnote-ref-62)
63. Public opinion polls show that only 13% of RS Serbs have tended to identify with Bosnia as a state. See International Crisis Group, ‘Bosnia: What does Republika Srpska want?’ 214, 6 Oct. 2011: 11. [↑](#footnote-ref-63)
64. Ibid: 11. The prevailing perception of the conflict in the RS has consistently been that of a defensive war imposed on the Bosnian Serbs, in which all sides committed some war crimes and for which Serbs were being disproportionately and unfairly blamed. See also, Diane Orentlicher, *That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia*, Open Society Justice Initiative and International Center for Transitional Justice, 2010: 91-96. [↑](#footnote-ref-64)
65. Ipsos Strategic Marketing, Dec. 2010. [↑](#footnote-ref-65)
66. Author’s interview, Sarajevo, Sept. 2009. Some other members of the parliamentary group were more committed to the idea, although they admitted that this was possibly not shared by their parties. [↑](#footnote-ref-66)
67. This was clear, for example, in the Bosnian parliament’s debate on the role of the SDA in the events leading up to the 1995 Srebrenica genocide. (See Xavier Bougarel, ‘Reopening the Wounds? The Parliament of Bosnia-Herzegovina and the Question of Bosniak Responsibilities’, in *Investigating Srebrenica: Institutions, Facts Responsibilities*, eds Isabelle Delpla, Xavier Bougarel and Jean-Louis Fournel, Berghahn, 2012: 104-130) [↑](#footnote-ref-67)
68. Truth commissions are viewed as being more victim-centric than criminal trials because they give survivors and family members the opportunity to tell their stories in a non-adversarial setting, uncover information about specific events and the fate of missing persons, and propose reparations. See e.g. Minow, supra n 20, Hayner, supra n 3. [↑](#footnote-ref-68)
69. ‘Kredibilitiet suda BiH je važan za gradjane BiH’, Centar za istraživačko novinarstvo, 1 July 2005, <http://www.cin.ba>. The lack of support for these TRC initiatives by victim associations has also been noted in the scholarly literature. See Cécile Jouheanneau, ‘Les mésaventures de projets de Commission Vérité et Réconciliation pour la Bosnie Herzégovine (1997-2006). Une étude de la circulation des modèles internationaux de résolution des conflits mémoriels’ in Le passé au présent: gisements mémoriels et politiques publiques en Europe centrale et orientale, eds Pascal Bonnard and Georges Mink (Michel Houdiard Editeur, 2010: 143-156) and Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press, 2009: 146-149). [↑](#footnote-ref-69)
70. Author’s interviews with NGO representatives, Sarajevo, Sept. 2009. [↑](#footnote-ref-70)
71. See e.g. Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press, 2013). The dependence of victims on political parties for pensions, disability assistance, social services and other public goods is noted by Isabelle Delpla, ‘In the Midst of Injustice: The ICTY from the perspective of some victim associations’ in *The New Bosnian Mosaic: Memories and Moral Claims in a Post-War Society*, eds Xavier Bougarel, Elissa Helms and Ger Duijzings (Aldershot: Ashgate, 2007): 211-34. [↑](#footnote-ref-71)
72. The complex and at times contradictory views of Bosnian victim associations towards transitional justice processes go beyond the scope of this article. Here the focus is only on the TRC initiatives discussed. [↑](#footnote-ref-72)
73. This is also noted in Edin Hodžić and Louis Bickford, ‘Looking Back, Looking Forward: Promoting Dialogue through Truth-Seeking in Bosnia and Herzegovina’. UNDP, 26 June 2012: 66, available at <http://www.undp.ba/index.aspx?PID=36&RID=141>) and in Orentlicher, supra n 64: 106. [↑](#footnote-ref-73)
74. Jouhanneau, supra n 69. See also Roberto Belloni, ‘Civil Society and Peacebuilding in Bosnia and Herzegovina’, *Journal of Peace Research*, 28/2, 2001: 163-180. [↑](#footnote-ref-74)
75. Author’s interviews with NGO representatives, Sarajevo, Sept. 2009. See also the statement of Kada Hotić of the Mothers of Srebrenica Association in Nerma Jelačić and Nidžara Ahmetašević, ‘Truth Commission Divides Bosnia’, *Balkan Insight*, 31 March 2006. [↑](#footnote-ref-75)
76. Nidžara Ahmetašević, ‘Komisije izmedju istine i politike’, H-Alter, 1 July 2006. <http://www.h-alter.org/vijesti/vijesti/komisije-izmedju-istine-i-politike> and Eldin Hadžović, ’20 miliona dolara za dogovorenu istinu’, *BH-Dani* (Sarajevo), (456), 10 March 2006. <http://www.bhdani.com/default.asp?kat=txt&broj_id=456&tekst_rb=8> [↑](#footnote-ref-76)
77. This was Mile Mutić, nominated by the Socialist Party of Republika Srpska, who was removed when victim groups from Prijedor protested. Ibid and the intervention by Edin Ramulić of Izvor, the Prijedor association of former camp detainees, in transcript of ‘ Utvrdjivanje istine...’, supra n 45 at 62 and 97. [↑](#footnote-ref-77)
78. Transcript of ‘ Utvrdjivanje istine...’, supra n 45 and declarations of victim association representatives in Jelačić and Ahmetašević, supra n 75. See also Orentlicher, supra n 64: 97. [↑](#footnote-ref-78)
79. Of the 39,684 civilians killed and missing in the conflict, 33,070 (83.33%) were Bosniaks, 4075 (10.27%) were Serbs, 2163 (5.45%) were Croats and 376 (0.95%) belonged to other national groups. (Research and Documentation Center, Sarajevo, supra n 10) [↑](#footnote-ref-79)
80. ICG report, supra n 63 at 11. [↑](#footnote-ref-80)
81. Transcript of ‘Utvrdjivanje istine’ supra n 45 at 65. [↑](#footnote-ref-81)
82. Hadžović, supra n 76. [↑](#footnote-ref-82)
83. Emir Suljagić, ‘Pomirenje kao krvavi cinizam’, *Puls demokratije*, 1 Sept. 2006, <http://pulsdemokratije.ba/index.php?a=detail&1=bs&id=189> [↑](#footnote-ref-83)
84. Author’s interviews with Gordon Bacon, the UNDP representative in the 2005-6 initiative, and Madeleine Rees, Head of the Bosnia Office of the UN High Commissioner for Human Rights at the time, both May 2010. [↑](#footnote-ref-84)
85. Author’s telephone interview with Rees, May 2010. [↑](#footnote-ref-85)
86. Marita Eastmond, ‘Reconciliation, reconstruction, and everyday life in war-torn societies’, *Focaal—Journal of Global and Historical Anthropology*, 57 (2010): 8. [↑](#footnote-ref-86)
87. Author’s interviews with members of women’s organisations, Sarajevo, June 2011. [↑](#footnote-ref-87)
88. Adisa Tihić in transcipt of ‘Utvrdjivanje istine, supra n 45 at 47-48. [↑](#footnote-ref-88)
89. Delpla, supra n 71. See also, Johanna Mannegren Selimović, ‘Perpetrators and Victims: Local responses to the International Criminal Tribunal for the former Yugoslavia’, *Focaal—Journal of Global and Historical Anthropology*, 57 (2010): 50-61. On minority returnees, see Paula M. Pickering, *Peacebuilding in the Balkans: The View from the Ground Floor* (Cornell University Press, 2007). These concerns were also noted by the US Embassy in Sarajevo, supra n 61 at para 11. [↑](#footnote-ref-89)
90. Eastmond, supra n 86: 8. [↑](#footnote-ref-90)
91. This position also dominated at the UN conference on ‘Support to improving the women survivors of the wartime SGBV in BiH’’, Sarajevo, 28-29 May 2011, which brought together representatives of Bosnian women’s NGOs and UNFPA, UNDP, UNHCR and WILPF. [↑](#footnote-ref-91)
92. See de Greiff, Report of the Special Rapporteur, and *Challenging the Conventional*, supra n 1. [↑](#footnote-ref-92)
93. On this problem in the post-Yugoslav space more generally, see Subotić, supra n 69. [↑](#footnote-ref-93)
94. For the articulation of this argument, arising from analyses of the South African TRC, see Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge University Press: 2001) and Claire Moon, *Narrating Political Reconciliation* (Lexington Books, 2008). A broader statement of this point can be found in Leslie Vinjamuri and Jack Snyder, ‘Law and Politics in transitional Justice’, *Annual Review of Political Science*, 2015, 18: 303-27. [↑](#footnote-ref-94)
95. These two cases show that the cohabitation of a tribunal and a truth commission is rarely harmonious, with the judicial mechanism tending to be better endowed and have more powers than the truth commission, which assumes the role of a ‘junior partner’. (See e.g. William Schabas, ‘The Sierra Leone Truth and Reconciliation Commission’, Caitlin Reiger, ‘Hybrid Attempts at Accountability in Timor Leste’, and Patrick Burgess, ‘A New Approach to Restorative Justice – East Timor’s Community Reconciliation Processes’, in *Transitional Justice in the Twenty-First Century*, supra n 9 at 21-42, 143-170 and 176-205.) [↑](#footnote-ref-95)
96. Indeed, in Sierra Leone, had the truth commission not been agreed prior to the establishment of the court, it is possible that it may have not have been created at all. (I thank Leslie Vinjamuri for this point.) [↑](#footnote-ref-96)
97. Louis Bickford, ‘Unofficial Truth Projects’, *Human Rights Quarterly*, 29 (2007): 994-1035. On Bosnia, see Hodžić and Bickford, supra n 73. A good example of productive civil society collaboration on a ‘truth project’ in the post-Yugoslav region is the ‘Kosovo Memory Book’, documenting the human losses in that conflict. (See the press release of the Humanitarian Law Centre, 6 Feb. 2015 at <http://www.hlc-rdc.org/?p=28185&lang=de>) [↑](#footnote-ref-97)