

Money as Justice: The Case of Bosnia and Herzegovina

ALMA BEGICEVIC*

Begicevic, A., 2016. Money as Justice: The Case of Bosnia and Herzegovina. *Oñati Socio-legal Series* [online], 6 (3), 396-425. Available from: <http://ssrn.com/abstract=2831415>



Abstract

If reparations are universally accepted as a victims' right to remedy, included in numerous international law instruments, why is it then that victims are unable to access it? By taking a socio-legal approach to the problem of post-war monetary reparation, the study examines the nexus between money, justice and recognition. At a normative level the study examines how reparations are conceptualized and their meaning in post-conflict transition. At a procedural level it identifies obstacles and gaps in the national, regional and international legal architecture and at an empirical level it investigates people's experiences in regards to accessing monetary reparations. The study considers the meaning of money in post-war reparation and state transformative processes and significance of civil law in addressing serious violations of human rights and gross violations of humanitarian law.

Key words

Justice; Restorative Justice; International Law; Europe; Armed conflict in Bosnia and Herzegovina

Resumen

Si universalmente se acepta que las reparaciones son un derecho de las víctimas a obtener una compensación, recogido en numerosos instrumentos de derecho internacional, ¿por qué las víctimas no son capaces de acceder a él? Este artículo analiza la relación entre dinero, justicia y reconocimiento a partir de un enfoque sociojurídico de la reparación económica de posguerra. A nivel normativo, el estudio examina cómo se conceptualizan las reparaciones y cuál es su significado en la transición post-conflicto. En nivel procesal, identifica obstáculos y lagunas en la arquitectura legal nacional, regional e internacional, y a nivel empírico, investiga las experiencias de las personas en el acceso a reparaciones económicas. El estudio tiene en cuenta el significado del dinero en las reparaciones de posguerra y los procesos de transformación del estado y el significado del derecho civil al abordar

This article is a part a larger study towards PhD financed and supported by the University of Melbourne, Australia. The author wishes to thank Dr. Balint for her continuous encouragement and to the anonymous reviewers who helped improve quality of the paper. I wish to thank Grace Stevens from Loyola University Chicago for proofreading this paper.

* Alma Begicevic is a part-time faculty at Loyola University of Chicago Department of Sociology, the former Senior Human Rights Advisor with the Organization for Security and Co-operation in Europe (OSCE) and the PhD candidate at the University of Melbourne, Australia. Loyola University Chicago, 1032 W Sheridan Road: Coffey Hall, Chicago, Illinois 60660. abegicevic@luc.edu



violaciones serias de los derechos humanos y graves violaciones del derecho humanitario.

Palabras clave

Justicia; justicia restaurativa; derecho internacional; Europa; conflicto armado en Bosnia y Herzegovina

Table of contents

1. Introduction	399
1.1. Methodology.....	400
1.2. Data selection and analysis	401
2. Law and reparation for victims of crime	401
2.1. Criminal Law	401
2.2. Civil Law	403
2.3. International Human Rights Law	404
2.4. International law and the principle of State responsibility	406
2.5. Ad hoc Claims Commissions	407
2.6. Domestic Law and Foreign National Courts	408
3. International transitional Justice programs for BH	409
3.1. International Criminal Tribunal for Former Yugoslavia and lack of victims' reparation	410
3.2. Transition mechanism as political compromise: the Dayton Peace Agreement.....	412
3.3. Foreign courts as venues to address human rights abuses in BH	413
3.4. Hybrid Court and individuals right to remedy	414
3.5. Civil Law and personal injury as a way to seek remedies for human rights abuses	414
4. Money as justice	415
4.1. Bottom up views on money as justice from Bosnia and Herzegovina	415
5. Conclusion	418
References.....	420

1. Introduction

Between 1991 and 1996, from 100,000 to 200,000 persons were killed or went missing in Bosnia and Herzegovina. About 2 million were displaced, 200,000 civilians suffered torture and around 30,000 detainees were either killed or went missing. There were 652 registered torture camps and detention centers including the notorious Manjača camp, Omarska, Luka Brčko, Batković, Dretelj, Heliodrom, Gabela, Drmaljevo, KPD Foča, Sušica-Vlasenica, Kula-Sarajevo, Žepče, and others.¹ Most of these sites were Serb run torture camps where civilians were held in captivity illegally. Many were subjected to inhuman conditions, starved and brutally abused.

Sexual violence and sodomy were common. It is estimated that between 25, 000 to 50,000 mostly Bosniac (Bosnian Muslim) women were victims of systematic rape as a war crime and crime against humanity.² As has been demonstrated through judgments at the International Criminal Tribunal for the former Yugoslavia (ICTY), Serbs committed most of the crimes, and the conflict had both international and internal character.³

Even though the conflict had an international character to it, Bosnia and Herzegovina has been unable to pursue reparation on behalf of its citizens from states involved in the conflict: Serbia and Croatia. This is mostly for political reasons. Constitutional arrangement established by the Dayton Peace Agreement (DPA) makes it impossible for Bosnia to treat the concept of state justice and individual justice outside of the restrictive ethno-territorial legal framework.

Two decades since the armed conflict ended in Bosnia and Herzegovina (BH), thousands of *survivors* would organize through war victims' associations to seek civil liability for human rights violations independently. They allege illegal deprivation of liberty, torture, murder, or injury inflicted upon a close family member as the foundation for their civil liability claims.⁴ What we witness is a mass litigation movement using national and foreign national courts to claim compensation for personal injuries independently.

Since 2005, civil courts in BH have received thirty to fifty thousand personal injury claims filed individually or in concert through victims' associations. Victims join associations across BH and discuss personal experiences and injuries suffered in the armed conflict regardless of ethnicity. There are five key groups accessing civil courts in pursuit of reparation money: civilian victims of war, survivors of torture, parents who lost their children in the war, mothers who lost their family members

¹ This information is available at the Association for survivors of torture BH. See also: <http://www.logorasibih.ba/en/mapa-logora/>

² See ICTY case Kunarac *et al.* (IT-96-23 & 23/1) "Foča".

³ Human Rights Watch provides a case analysis where the international character of the conflict is established in the following cases: Croatian involvement in the conflict in Bosnia and Herzegovina was defined in following cases: a) *Prosecutor v. Rajic*, Case No. IT-95-12 (Trial Chamber), Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, September 13, 1996, para. 13, 26, 32. b) *Blaskic*, (Trial Chamber), March 3, 2000, para. 83-123. c) *Kordic and Cerkez*, (Trial Chamber), February 26, 2001, para. 108-146. The armed-conflict between Bosnia and Herzegovina and the Federal Republic of Yugoslavia (FRY) or what is not Serbia was defined in *Tadic*, (Appeals Chamber), July 15, 1999, para. 156, 162. See full listing of cases available here: <http://www.hrw.org/reports/2004/ij/icty/2.htm>

⁴ Throughout this paper, I use the terms "victim" and "survivor" interchangeably. Following the definition from the *Declaration of Basic Principles of Justice for Victims*, the term here means "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power." In addition to that, "A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization." The United Nations General Assembly Declaration A/RES/40/34, 29 November 1985.

in Srebrenica genocide and rape victims. Survivors of torture are the largest group per number of submitted claims to date.

Even though civil courts in Bosnia and Herzegovina have been overwhelmed by a large number of individual civil claims, this process has had a positive, equalizing effect on antagonistic victims' groups coming from different ethnic sides. Procedural requirements that law presents before individuals, regardless of their background, have put them in equal position in their pursuit of civil justice. Most victims' groups due to shared experience of victimization during the war have perceived the possibility of launching a civil suit as a form of remedy in equal terms. What Bosnian pursuit of litigation shows is how money can become a part of the reparation narrative and drive political negotiation processes between the state and victims' groups.

This paper will examine the Bosnian case to show how the pursuit of money through litigation communicates the question of the function and meaning of money, the relationship between money and justice and how compensation being an ordinary outcome of civil procedure can recognize war related injuries and act as reparation. It will be suggested that there is value in utilizing human lived experience to examine what money as an outcome of legal procedure means, how money as a bargaining tool drives political processes from the courtrooms into the wider public space and how money can negotiate social justice in Bosnia and Herzegovina.

The paper is organized into four sections. Section one introduces the concept of money as remedy in law, explains the methodology and data selection of the study. Section two goes over different bodies of law, showing the normative framework and how individuals who have experienced gross violations of human rights and serious violations of humanitarian law can seek remedies. Section three examines the Bosnian post-war and post-socialist transition, showing the absence of a victims reparation program under the internationally managed transitional justice programs. Section four shows how money is used to fill the gap for justice and suggests that money works across different spheres of justice simultaneously and different times and spaces. Money operates as a redistribution measure, and it is expected to lift victims' groups out of poverty. It is a restorative measure and an instrument to address the loss of reputation and reinstate victims' innocence and honor. Money shows that apologies backed by tangible support are real. Money is also a corrective justice measure; it provides a sense of fairness. Finally, it works as a retribution measure: through civil law decision, state, institutional and individual responsibility, a sense of vengeance achieved. Courts order that the liable person, or a legal entity, would pay. Money connects past to present and the location of the crimes to the location of the court hearings.

1.1. Methodology

Reparation money as an outcome of legal processes rationalizes and quantifies injuries valued in currency, but such money also offers closure and restores justice, since someone who was responsible would pay. Individuals hold liable political leadership, foreign states and local state and institutions under the administration of State entities: Republika Srpska (RS) and Federation of Bosnia and Herzegovina (FB) established under the Dayton Peace Agreement.⁵ Civil courts are utilized

⁵ Bosnia and Herzegovina consists of two entities. Republika Srpska is mostly populated by Serbs and ethnically cleansed of non-Serb population who lived there before the 1992. This particular entity is more interested in maintaining ties with Orthodox Christian countries and has particular bond with Serbia and Russia. Federation of Bosnia and Herzegovina is the entity populated by non-Serbs, and the largest population is Bosnian Muslims or Bosniacs and the second is Croats. This entity is more interested in becoming part of Europe and joining European Union. There are frictions within Bosnia and Herzegovina in regards to state foreign policy and key political and economic interests. Indeed, the 1992-1996 armed conflict resulted in the legitimization of territories divided by force. The Constitution recognizes only three constituent people: Bosniacs, Croats and Serbs. Other groups have lesser rights

nationally and transnationally in the United States, France, the Netherlands, Serbia and Montenegro and also before the *European Court of Human Rights (ECtHR)*.

This organized pursuit of money as a form of remedy raises three key questions: what money can do to compensate for terrible human rights abuses suffered in the period between 1991-1996, how civil law can respond to gross violations of human rights and serious violations of humanitarian law and what do Bosnians expect from civil law and compensation awarded for personal injuries resulting from war time human rights abuses?

Using empirical data and secondary sources that include scholarly work in law, reparation theory and transitional justice, the study will show how Bosnian victims' marginalized socio-economic position and the lack of recognition for injuries as consequence of past crimes has resulted in money being understood as a primary means to obtain legal remedy for violation of primary rights. This paper is only a fraction of a much larger study that utilizes semi-structured interviews conducted from May to September 2013 with thirty individuals. Eight narratives will be presented here.

1.2. Data selection and analysis

The respondents have been selected using the snowballing method to examine top-down and bottom-up views on the role of money as a reparation instrument in post-war Bosnia and Herzegovina. Audio recorded, semi-structured interviews have been transcribed and translated from Bosnian to English and organized in one take that is about an hour in length. The interviews were conducted in Bosnia and Herzegovina, Sarajevo the capital of BH, Banjaluka, the BH entity called Republika Srpska and The Hague, the Netherlands. Research participants include judges, Bosnian state officials, legal advisors, victim associations' representatives and individuals who personally seek monetary reparation through litigation.

I will reflect upon eight individual very personal and subjective narratives of what functions money as an instrument of reparation is expected to serve and the interpretative processes behind this reparation quest through the courts. It is hoped that the paper will initiate scholarly discussion about victims' right to remedy and how civil litigation can be instrumental in addressing human rights abuses. The aim of this paper is to open discussion about the meaning of money as a remedy and as an instrument to negotiate past crimes, rights violations, current status injuries and victims' socio-economic marginalization.

2. Law and reparation for victims of crime

2.1. Criminal Law

The concept of reparation in criminal justice was originally victim centered. For victims' injuries, law subscribed remedies consisting of punitive measures similar to those that the perpetrator inflicted upon his victim: physical injuries would be remedied by blood revenge or blood feud and with the economic progress and change of social structure; individuals' physical injuries would be repaired either in goods or in money. There was little negotiation in this process; the payments would be assessed and paid through composition combining punishment with damages (Jackob 1970, p. 155). As Jackob explains referring to the early American criminologist Schafer 's work, reparation was considered a punitive measure to punish crime and as such has been used by ancient Babylonians (the code of Hammurabi, required payment of damaged property thirty times of the value, but it did not provide for reparation in case of personal injuries), Hebrews (Mosaic law

and are unable to hold high-level political positions such as House of Peoples of Bosnia and Herzegovina as well as the Presidency of BH. See also "Case of Sejdic and Finci v. Bosnia and Herzegovina (Applications nos. 27996/06 and 34836/06) Judgment. Strasbourg 22 December 2009.

ordered offenders pay victim for his/her loss of time when s/he was victim of hitting and injuring), ancient Greeks (offered reparation for loss of life, where in the ninth book of Iliad, Agamemnon offers reparation for the death of Ajax's brother reminding Ajaxes that after he pays for his brother's life, Agamemnon will be free) Romans (law ordered that thief would pay two times the value of stolen property) and Germans (1 A.D, law subscribed that manslaughter is compensated with the cattle or arms and the whole household needs to accept satisfaction). (Jackob 1970, p. 155)⁶

In the twelfth century, law would prescribe reparation as a fine against a convicted offender during criminal procedures. This link between civil and criminal law remains in the civil law system that applies to much of Europe where liability can be addressed in criminal procedure and compensation sought from the accused after the conviction is issued. With rise of modern state, criminal justice would completely reject the idea of reparation as a punitive measure, instead considering it as a reformative, rehabilitative and conciliatory state tool to uphold norms. Schafer in his 1977 work titled "The Victim and His Criminal" writes:

It is rather absurd that the state undertakes to protect the public against crime and then when a loss occurs, takes the entire payment and offers no effective remedy to individual victim. (Schafer 1977, p. 20)

Merlene Reynolds (2014) makes reference to Schafer's work, to explain how with change in societal attitudes towards victims, law would continue to reflect the "nature of societal interrelationships and the ideology of the ruling power structure." (Reynolds, 2014, p. 2) What we see in BH is exactly what Schafer has described; with large number of victims marginalized in the new post-socialist structural systems, we see the political organizing of groups who seek "justice, emotional closure, financial restitution, and personal vindication." (Reynolds, 2014, p. 1) The process shows victims' struggling for justice. Yet, finding a balance in justice for the state and justice for individuals presents a key challenge. Reparation, instead of being in the hands of victims who suffered a crime, is in the hands of the state.

In 1885, the International Penal Congress in Rome would propose that law should reconsider the position of victims in regards to reparation as they are injured parties, but the topic was eventually neglected. To put it in Fletcher's (1999, p. 51) words, it seems that the entire modern "theory of criminal law has developed without paying much attention to the place of victims in the analysis of responsibility or in the rationale of punishment." Contemporary criminal justice considers victims' primary role to serve as a witness, to assist the state by aiding the public prosecutor with information. The public prosecutor as a custodian of law presents a case for protecting public order and morality where the role of criminal justice is to ensure deterrence through prosecution.

As some Bosnian victims argue, in the criminal justice process there is very limited concern about victims' wellbeing and whether the outcome of the process would provide victims' personal satisfaction.⁷ The United Nations Centre for International Crime Prevention has only recently recaptured the focus on victims' reparation by creating the non-binding international guidelines that define the victim of crime, right to reparation and types of reparation. (United Nations General Assembly 1985) By these guidelines, reparation is envisioned to compensate persons who suffered "significant bodily injury or impairment or physical or mental health as a result of serious crimes", or persons whose dependents died or "became physically or mentally incapacitated as a result such victimization." (United Nations General Assembly 1985)

⁶ See also Schafer (1977, p. 11-15).

⁷ Alma Begicevic, Audio *Interview 7*, July 1, 2013.

When it concerns victims of gross violations of human rights and serious violations of humanitarian law, the problem of victims' redress has been somewhat addressed by the establishment of a permanent International Criminal Court (ICC).⁸ Under Article 75 of the Rome Statute, the ICC enables victims of gross violations of human rights such as genocide, crimes against humanity and war crimes to get direct access to reparation, meaning payments from convicted defendants and Trust funds. The Trust Fund for Victims is financed through voluntary states contributions, fines and forfeitures ordered by the court. Despite this, the statute does not specify how procedurally the individuals' access to reparation might work. (Schwager 2005, p. 434) Under the international law, the individuals are bearers of rights, but who would qualify for reparation, how would victims be selected and amounts of reparation determined? Should there be a separate hearing to access eligibility? Bosnian victims do not have access to this court as its jurisdiction applies only to addressing reparation in relation to crimes that occurred after 2002. Prior to the establishment of the ICC statute, most reparation requests have been handled by the states and through the states.

2.2. Civil Law

Mark Osiel (1997) wrote about the significance of individuals' participation in trials. Through narratives told in the courtrooms, individuals can experience catharsis. Courts offer a platform through which collective memory of administrative massacre is debated, and with the judgment, there is a certain sense of acknowledgment that the law was broken, and harms were indeed committed. With the offer of money, civil judgments grant state validation for personal narratives.

Borrowing from Comaroff and Comaroff, Merry (1990) explains that individuals approach courts as they develop legal consciousness. This consciousness is expressed in discrete and symbolic forms of communication and action and "embodied in the practical constitution of everyday life, part and parcel of the process whereby the subject is constituted by external sociocultural forms." (Merry 1990) Merry finds that class and gender "contribute to the sense of powerlessness and draw individuals towards courts": therefore, women, being more vulnerable, are also more likely to seek justice through courts than men. Women hope "courts would provide powerful ally." (Merry 1990) Accessing courts to seek justice is much like accessing political power; it is dependent on "strength, willingness to use violence, and economic resources." (Merry 1990, p. 4)

Unlike criminal law, civil law procedures permit that individuals who file a civil claim argue for their own interests and seek remedies in proportion to damages they suffered. Reparation is to be paid by an offender (whose criminal responsibility has been established), or if he or she is not able to pay and no other sources of reparation are available, states are expected to provide financial compensation to the victims of crime. The United Nations Principles of Justice for Victims of Crime and Abuse of Power serve as a way for establishing common structures and mechanisms to protect rights of victims through internationally envisioned mechanisms such as the National Compensation Funds for Victims.⁹ The UN principles are not legally binding; henceforth states might not be fully committed to comply, and implementation largely depends on the will of the states. Whereas the United States, Australia and many other economically stable countries do have such a fund, Bosnia and Herzegovina has allocated very limited resources for such a program.¹⁰

⁸ See also on the limited impact victims' rights have on the outcomes of the Court in Moffett (2015)

⁹ United Nations General Assembly A/RES/40/34. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 29 November 1985.

¹⁰ Even though there is limited evidence of a state fund for victims' reparation, there were some attempts to ensure reparation in the form of the rehabilitation of victims who suffered bodily injuries and disability as the result of armed conflict. For example, in 1996 the World Bank approved the \$10 million

2.3. International Human Rights Law

Under the United Nations' guiding principles, states are expected to make available remedies to "victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law." The United Nations Guidelines on Reparation specify the responsibility of states to ensure reparation for victims of gross violations of international human rights and serious violations of humanitarian law.¹¹ This is to be done through domestic legislation. (Office of the United Nations High Commissioner for Human Rights 2005) The guidelines outline that states should:

Endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations. States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavor to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments. (Office of the United Nations High Commissioner for Human Rights 2005)

International Human rights instruments also grant rights to reparation as remedy in the event of the violation of individuals' rights. (Office of the United Nations High Commissioner for Human Rights 2008) Some of those instruments include The Universal Declaration for Human Rights (Article 8),¹² The Convention on the Elimination of Racial Discrimination (Article 6),¹³ Convention against Torture (Article 14),¹⁴ the International Covenant on Civil and Political Rights (ICCPR), Article 2

fund for rehabilitation and medical services (including prosthetics) to war victims who suffered disabilities, but as of today there are no programs to systematically recognise individuals' personal injuries and address liability charges whether in symbolic or monetary ways.

¹¹ Commonly referred to as Bassioni/Boven guidelines. United Nations General Assembly. 2006 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)] 60/147. The principles provide useful definitions regarding victims' eligibility and circumstances under which monetary payment should be paid. It states that: "In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim." Furthermore, "In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. [...] *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. "

¹² The UDHR, Article 8 stipulates: Everyone "has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws."

¹³ The UN CERD in Article 6 states: "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." A/RES/60/147.

¹⁴ U.N International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. ICCPR, Article 2 substantiates that: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. Nothing in this article shall affect any right of the victim or other person to compensation, which may exist under national law."

etc.¹⁵ Yet, in the event that a state would not comply with these obligations deriving from conventions and treaties, the UN Committees do not exercise enforcement power over states. They can only issue non-binding decisions against that states. The Committees have been criticized for issuing an unusually small number of reparations on the basis of merits issued in the form of 'final views'. (Nowak 2007)

In international human rights discourse, there is an understanding that litigation processes are driven by victims' desire for recognition and acknowledgment for past harms.¹⁶ Unfortunately, only stable and economically viable countries are likely to pay for reparation to a small and easily identifiable number of victims, and thousands of survivors of different types of harms are expected to seek justice independently. (Arriaza, 2004) Bosnian victims have been unable to pursue such reparation collectively. Due to the current political limitations that in BH divide citizens' rights across ethnic lines or on the basis of territory where they live, war-survivors are forced to pursue reparation independently, through national civil courts and regional human rights court such as the European Court of Human Rights.

The European Court of Human Rights (ECtHR), Inter-American Court of Human Rights (IACHR), or the African Court on Human and Peoples Rights (ACHPR) offer individuals access to remedies for violation of rights, accessed through regional judicial institutions. Asia is missing a human rights body that would correspond to these three. The precondition is that all available domestic remedies have been exhausted prior to approaching regional institutions, and there is also a condition of nationality—that the applicant's member state is a party to the treaty.

The ECtHR currently enjoys high level of trust amongst Bosnian war survivors. In the case of *Esma Palić v. Bosnia and Herzegovina*, the court ordered Republika Srpska to investigate the disappearance of Mr. *Palić* and find his remains. She also received reparation for the death of her husband. In the case of *Čolić and Others v. Bosnia and Herzegovina*, the ECtHR also prescribed monetary reparation for personal injuries.

Most recently, in the case of *Cyprus v. Turkey*, the ECtHR examined reparation in the context of state responsibility towards individuals and ordered just satisfaction utilizing Article 41 of the European Convention of Human Rights. In relation to military operations, Turkey has been found responsible to pay for reparation on the behalf of individuals who suffered personal injuries in Cyprus. This is a significant, yet unusual case where the human rights court has ordered a state to repair another state for injuries that individuals suffered. Traditional practice of the court has been ordering state to pay reparation for its own nationals for violation of rights, or remedy violations by other appropriate means.

Even though Article 46 of the ECHR establishes states' duty to implement the ECtHR decisions, due to the lack of an enforcement mechanism it is up to the states whether they would comply with the decision or not. Despite some limited success, accessing reparation before this court has proved difficult for Bosnian nationals, particularly considering the large number of cases. Over 10,000 persons are still

¹⁵ More specifically Article 2, para. 3 (a) specifies that State parties to the Covenant would ensure that "[A]ny person whose rights or freedoms as herein recognized are violated shall have an effective right to remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."

¹⁶ There has been more discussion about use of ordinary courts in addressing human rights abuses and money as a way to remedy injuries. Miller, N. (2016, p. 563) examines how advocates in the United States are increasingly translating international human rights abuses into tort claims to obtain access to state courts, showing that courts are now more willing to recognize public torts and that such claims should instead be filed as international human rights cases, preserving their specific normativity. Hensler (2004, p. 419) examines how Americans think about relationship between losses, compensation and justice in the ordinary tort procedure and proposes that when pursuing damages, plaintiffs are after "subjective valuations for their losses" where money works as acknowledgment that grants meaning to injuries.

unaccounted for in Bosnia and Herzegovina.¹⁷ The number of torture victims is much larger, and only a small fraction of these cases may end up before the ECtHR.¹⁸ Legal scholars such as Manfred Nowak (2007) have written about limitations of regional human rights instruments, such as the ECtHR, IACHR or ACHPR, arguing that their practice is not harmonized and that they lack enforcement. There is a suggestion that establishing a World Court of Human Rights might help remedy the problem.¹⁹

2.4. *International law and the principle of State responsibility*

The World Court, the *International Court of Justice* (ICJ), established a custom that the states would seek reparation from those states that caused them damages. In the *Chorzow* case, the ICJ maintained that damages caused by another party are to be repaid by the responsible side. (International Court of Justice 1927) Diplomatic protection, seen in the ICJ's *Corfu Channel* case of 1949, made it possible for Albania to pay compensation to the UK of Great Britain and Northern Ireland for the 1946 explosion in the water that caused damage and loss of human life (International Court of Justice 1949). Cases like this are rare, and legal scholars have argued that the ICJ judges try to stay away from the business of calculating damages.²⁰

It is possible to obtain reparation through a discretionary right of a State as a consular action, negotiations with the other State, political and economic pressure, judicial or arbitrage proceedings or other forms of peaceful dispute settlement, but all these measures are rare and procedurally difficult to access. International law permits that states pursue reparation from another state on behalf of their nation, but the practice is also seldom used. The ECtHR case of *Cyprus versus Turkey* is such an example where the human rights court made a move in this direction.

In the *Ahmadou Sadio Diallo* case, the Republic of Guinea attempted to "exercise diplomatic protection over Mr. Diallo's rights" which made it possible for the Republic of Guinea to sue the Democratic Republic of Congo for illegal deprivation of liberty, bringing Mr. Diallo's injury as if it was incurred upon the State itself.²¹ There is no evidence of Bosnian diplomatic espousal on behalf of its citizens against either Serbia or Croatia. Diplomatic espousal is highly unlikely in the current political climate considering the composition of the BH government where Serbs, Croats and Bosniacs have to reach consensus in such matters. In Bosnia and Herzegovina, Serbs are unlikely to consent to accountability or liability charges

¹⁷ Reports from the International Missing Persons Association indicate that 35,000 were missing in Bosnia and Herzegovina and that 10,000 are still unaccounted for.

¹⁸ The ECtHR considered the case of *Samka Zuban* and 17 other applicants against Bosnia and Herzegovina, dismissed in 2014. The plaintiffs required reparation from the state, alleging violations of Articles 3, 5, 8, 13, 14 of the European Convention of Human Rights. The plaintiffs are in search of missing family members and have accused BH of not taking all appropriate measures to determine the faith of disappeared people. See also *Esma Palić v. Bosnia and Herzegovina*, no. 4704/04, §§ 63-71 and 79. The cases raise the questions of who qualifies for reparation, on what grounds and whether family of victims are to be considered as victims, due to suffering caused to them as consequence of their family members forced disappearance. Bosnia and Herzegovina, despite of its obligation, has not established the fund to provide assistance to families of disappeared, (the Missing Persons Fund) but despite of this, the ECtHR found that the plaintiffs failed to demonstrate that they would qualify for such fund, particularly considering that in 2004 Zuban received compensation for non-pecuniary damages from the Human Rights Commission.

¹⁹ Nowak (2007, p. 245) has proposed that the effective implementation of the bearers' right to a remedy on the international level would require direct access to a fully independent international human rights court that would have power to render binding judgments and to grant adequate reparation to the victims of human rights violations.

²⁰ Zybery, G. (2011, p. 209) writes: "Obviously, it is not easy to economically assess concepts such as 'pain and suffering' and the Court has not engaged in the exercise of economically quantifying moral damages suffered by the victims of human rights and humanitarian law violations, even by awarding a symbolic amount of compensation."

²¹ See the International Court of Justice Case Concerning *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo) 30 November 2010.

against Serbia or Serbs, considering that their collective loyalty stands with Serbia rather than Bosnia and Herzegovina.²² The same can be said for Croats who might consider Croatia as their motherland, but continue to reside as equal citizens in BH.

Serbia was found responsible for not preventing genocide in Bosnia and Herzegovina, but the ICJ neglected the opportunity to address the issue of reparation. Instead, it only ordered Serbia to ensure non-compliance. (International Court of Justice 2007)²³ In the judgment on BH genocide charges against Serbia, Serbia was ordered to provide "the form of satisfaction, and this may take the most appropriate form, as the Applicant itself suggested, of a declaration in the present Judgment that the Respondent has failed to comply with the obligation imposed by the Convention to prevent the crime of genocide." (International Court of Justice 2007) In practical terms, this resulted in the Serbian parliament adopting a resolution acknowledging the Srebrenica genocide.²⁴ However, this resolution did not resonate as sincere in Bosnia and Herzegovina as it was perceived to be a result of international pressure.²⁵ Some legal scholars in BH suggest that subsequent to ICJ judgment, Bosnia should have promulgated the law prohibiting genocide denial and making it a criminal offence. Instead, in absence of such a law, past crimes are still disputed.²⁶ Legal scholars, such as Andrea Gattini (2007) have discussed in more depth the ICJ ruling, considering it as a failed opportunity to think through the importance of state reparation for Bosnia.

2.5. Ad hoc Claims Commissions

In the case of the Iraq-Kuwait conflict, states have ventured into utilizing a transnational administrative mechanism to repair damages caused by Iraq. This is a rare example where an international administrative body would organize and distribute reparation to states, corporations and also individuals. The United Nations Compensation Commission (UNCC) was established in 1991 to settle claims resulting from Saddam Hussein's invasion of Kuwait in 1990. It administered payments of \$37.7 billion from the Iraqi oil exports, processing more than 1.5 million claims for different categories: individuals, private corporations, governments and many international organizations.²⁷

In the aftermath of mass violence, reparation is particularly important, and it differs from other types of transitional justice mechanisms. As a process, reparation includes discussion about the past and provides societal recognition of individuals' injuries. It also allows for examining the position of individuals in the community and groups that suffered injuries. In Arriaza's (2004, p. 200) words, reparations "may be the most tangible and visible expression of both acknowledgment and change, and in that sense an important contributor to reconciliation and social reconstruction." It bridges between political, moral and economic life of individuals.

De Greiff (2006, p, 10) adds that reparation processes reflect the relationship between individuals and the political community; it is indeed "both a condition and

²² Term Serb refers to members of the ethnic group, regardless of their nationality whereas "Serbian" refers to nationals of Serbia. The Republika Srpska former president, Milodrag Dodik has recently been awarded Serbian citizenship, and he says in one of the local newspapers how revolted he feels as a Bosnian Serb, each time he needs to travel with a BH passport, suggesting that all Serbs in Republika Srpska should also apply for Serbian citizenships. BN Television, 2014. *Troubles with BH citizenship*. In addition, the president of RS has been threatening for years that the RS would issue a referendum to split from BH.

²³ Consequence of Serbia's lack of direct responsibility will be discussed in more details later on page 419.

²⁴ Parliament of Serbia: Declaration of the National Assembly of the Republic of Serbia condemning the Crime in Srebrenica. Belgrade, 31 March, 2010.

²⁵ Numerous sources cited lack of sincerity in regards to Serbian apology (BBC News 2013).

²⁶ Alma Begicevic, Audio Interview 10, 17 July 2013.

²⁷ As Andrea Gattini (2002, p. 165) explains, the UNCC was established on the basis of the UN Security Council Resolution 692, and as such it was not meant to represent the interest of Kuwait alone as the injured state but the whole international community.

consequence of justice." Recognizing victims' demands for reparation means to acknowledge "the person is not just a *subject* of his or her own actions but *object* of the actions of others." (De Greiff 2006) Recognizing such demands is particularly meaningful in cases where individuals and communities both suffered mass harms in armed-conflict. With a decision to order reparation, victims receive money as a redemptive act, as proof that personal injuries have been acknowledged and recognized by the state.

2.6. Domestic Law and Foreign National Courts

There are many examples of how civilian victims of war were repaired for their personal injuries after an armed-conflict. There are different types of mechanisms that range from legal, quasi-legal or administrative bodies that have been utilized, but very few address personal injuries.²⁸ For instance, we recently saw the significance of reparation for individuals' personal injuries in the case of Kenyans who were alleged to be a part of the Mau-Mau movement under British colonial rule between 1952 and 1960. (Foreign & Commonwealth Office and The Rt Hon William Hague 2013) A group of survivors used civil litigation to remedy historic injustice, establish facts and get societal recognition for terrible crimes they endured. With the award of reparations, this recognition of injuries has resonated in Kenya, Britain and throughout the international community. The British government paid £19.9m as "full and final settlement" of action brought by five victims of torture." (The Guardian 2013) Included in this was an apology by Britain and also the erection of a memorial in Kenya. While acknowledging these injuries, Britain distanced itself from a possibility of paying for other similar reparation claims; it declared itself *guilty*, but not *liable*, for the Mau-Mau repression of the uprising. Since the first reparation case, more than forty thousand Kenyans who suffered torture during the uprising also came to seek monetary reparation as a remedy for past crimes through a group litigation order.

The American Japanese sent to internment camps during World War II also sought redress through the courts. (Hohri 1988) They demanded remedy for historic injustice, that loss of time, freedom, dignity, privacy and equality be recognized. By utilizing the U.S. Civil Liberties Act, they obtained reparation in the total of \$1.2 billion (a lump sum of \$20,000 per person). This civil justice process helped achieve an important political end, negotiate the past and obtain present status recognition.

Another example where civil redress was used to remedy historic injustice is that of Native Americans who sought reparation from the U.S. government for royalties owed to them for more than a century of development on land parcels they owned. Similarly American black farmers' sued the government for refusing to provide them with federally subsidized farm loans for the period 1981-1996. These two reparation suits settled for the amount of \$4.5 billion, but the process was significant as it acknowledged past injuries that were not officially recognized prior to that.

Finally, the case of Korean women sexually violated during the War World II by the Japanese military shows another side of litigation and how limited the process can also be. Instead of acknowledgment from the Japanese government, they were simply offered money to finance the Asian Woman's fund to combat poverty amongst women in general. The money was offered as a result of discussions between South Korea and Japan. This case illustrates Arriaza's (2004, p. 185) point that money as a matter of socio-economic need, with no moral restitution results in an enduring sense of injustice.

²⁸ The list of the types of reparation available for civilian victims of armed-conflicts is catalogued in Amsterdam International Law Clinic (2013a). Brooks (1999) provides comprehensive overview of reparation measures.

3. International transitional Justice programs for BH

Transitional justice discourse concerned about the ways in which post-authoritarian and post-conflict societies move towards liberal democracy has been peripherally concerned about money as a way of responding to individuals' non-pecuniary injuries. Money has been discussed mostly in relation to redistribution, development, humanitarian rebuilding, charity and physical recoveries of properties in destroyed areas, but not in relation to compensating individuals' injuries as a matter of rights.

The best-known internationally stimulated and nationally adopted reparation models where individuals received monetary recompense for human rights abuses include transitions in Germany,²⁹ South America, Chile, Argentina, Brazil³⁰, the Eastern European countries,³¹ South Africa³² and the Central American model utilized in El Salvador and Guatemala. In post-Nazi Germany, reparation programs included both compensation and restitution programs organized through the Jewish Claims Conference to recognize individuals' injuries suffered from the state, corporations and individuals. The process resulted in the law that would allow for individual compensation of victims (Protocol No. 1), relief funds, rehabilitation and resettlement of Jewish victims of Nazi persecution, (Protocol No.2), where more than 4 million people submitted claims between 1953 and 1987 under different categories: loss of property, loss of freedom, and injuries to health, amongst others. There was also a hardship fund of 5,000 DM per person for those who immigrated from Soviet Union and behind the Iron Curtain.³³

Jon Elster (2006) has asked whether victims' demands for reparation are money driven, motivated by interest, or are they instead justice driven? He suggests that interest in money has been historically the same for individuals and their lawyers, but what has changed is that "legislators or judges who have no personal interest at stake are willing to listen to demands." (Elster 2006, p. 320) With the growing influence of international human rights on domestic legal-systems, we observe changes in victims' attitude towards reparation money.

International Human Rights standards subscribe that the statute of limitation does not apply to cases of war crimes. (Office of the United Nations High Commissioner for Human Rights 2005, art. 7) Yet those seeking reparations for harm perpetrated in the Bosnian war would face further obstacles and challenges: law treats them as ordinary domestic civil claimants, but what makes these claims different is that

²⁹ The model involves individual and lump sum payments for deprivation of liberty, loss of life, damage to health and also collective reparation consisting of coordinating body of Jewish associations and settlement of Jewish living in Israel.

³⁰ In Argentina 136 family members disappeared, and over 10,000 people were killed and thousands more tortured. Commission responsible to investigate these crimes formally acknowledged the disappeared. Under the domestic law, the government provided a lump sum payment in the amount of \$24, 411 to the families of disappeared and survivors of detention camps and those who were detained and killed in the amount of \$224, 000. The fund created in 1999 by the Argentinian Congress, facilitated "identification and reunification with their families of children kidnapped or born while their mothers were captive during the years of dictatorship." (172) In Chile, 3, 000 people were killed by security forces and about 1, 000 had disappeared. In Brazil military dictatorship lasting from 1964-1985 led to the death of over 400 people and thousands tortured, and under the Accountability act, the death of those persons has been acknowledged. In 1995 the mechanisms to compensate victims was established under the 1995 law, setting a foundation for a Special Commission on Deaths and Disappearances.

³¹ The fall of Communism in Czechoslovakia resulted in lost wages to ex-political prisoners, and in Hungary there was unlawful deprivation of liberty, forced labor or forced resettlement that affected one million people who applied for compensation in the amount of HF 2,109,174,689 (about US \$9,153,450.00); a monthly life annuity had been awarded in 190 cases, with additional compensation paid for claims arising from unlawful deprivations of liberty reaching HF 18,117,000 (approximately US \$78,625.00). See also Palmer and Carrillo (2010).

³² Truth and Reconciliation Commission has primarily focused on reconciliation, but it also recommended S Africa to pay \$7.6 million to 18 thousand people; for 6 years to pay \$3,500 per person. This money has not been paid yet.

³³ For more comprehensive list of monetary reparation programs that benefited civilians see the report written by the Amsterdam International Law Clinic (2013b).

they are not submitted against the individually responsible convicted perpetrators, but state institutions.

These claimants, unlike the ordinary domestic civil claimants, would face denial of the harm by Serbia and Republika Srpska, and following the promise of reparation under the international law, victims would find that no international mechanism allows easy independent access to judicial institution and obtain reparation, as a secondary right, resulting from violation of primary human rights. Finally, these victims as claimants face obstacles before a court system in BH that is not set up to specifically deal with war injuries. As they attempt to provide evidence, linking injuries in relation to war, war survivors face enormous pressures that civil law presents before them.

3.1. International Criminal Tribunal for Former Yugoslavia and lack of victims' reparation

In 1993, when the war was still going on in Bosnia and Herzegovina, the United Nations Security Council would under the Resolution 827 establish the ad hoc tribunal to process individuals charged with crimes against humanity, war crimes and genocide.³⁴ Under the ICTY statute, the provision of post-war reparation for individuals through the International Criminal Tribunal for Former Yugoslavia's statute (ICTY) has been missing.

Even though this tribunal has served as the key transitional justice mechanism for BH, its main focus has been to handle criminal prosecution, rather than to ensure victim redress. In 2000, Public Prosecutor Carla Del Ponte warned the U.N. Security Council that the victims' voices are "not sufficiently heard." (Del Ponte 2000) She explained that even though the judges of the Tribunal might not like the idea of calculating compensation for victims, they would agree that the court could benefit from some type of Claims Commission. (Del Ponte 2000) Del Ponte's requests did not reach understanding at the U.N. Security Council, and she further tried to justify her approach by explaining that her office would be able to collect funds. She said that the Office of the Prosecutor:

is having considerable success in tracing and freezing large amounts of money in the personal accounts of the accused. Money that could very properly be applied by the courts to the compensation of the citizens who deserve it. We should therefore give victims the right to express themselves, and allow their voice to be heard during the proceedings. In the event of a conviction, that would then create a legal basis for the Judges to decide upon the confiscation of monies sequestered from the accused. The money might also go towards defraying the costs of the prosecution. I would therefore respectfully suggest to the Council that present system falls short of delivering justice to the people of Rwanda and the former Yugoslavia, and I would invite you to give serious and urgent consideration to any change that would remove this lacuna in our process.

This plea fell on deaf ears, but the awareness that Bosnian victims were deprived of redress through reparation was there. The idea would be revisited again after the International Criminal Court (ICC) was established.

The ICTY Judge Robinson (2011) held the view that reparation should offer "tangible support" to Bosnian victims, similar to that available to victims before the International Criminal Court. The late Judge Cassese was also very vocal about the ICTY taking a "capitalist approach to justice" as it deprived victims of recognition for personal injuries they suffered, but instead recognized material damages. (Randelzhofer and Tomuschat 1999) The ICTY's 1994 *Rules of Procedure and Evidence* stipulate that under Rule 105 the trial chamber may hold a special hearing to determine the matter of property restitution, but Rule 106 grants no authority to the tribunal to address issues of victims' compensation. It only authorizes the

³⁴ UNSCR S/RES/827 (1993).

tribunal to transmit judgments to Bosnia and Herzegovina (BH) authorities, in the hope of encouraging victims to approach national courts for reparations.³⁵

The court, however, did not consider what this encouragement might do and what BH domestic courts may be able to deliver to the victims in pursuit of reparation. The ICTY and the national legislative structures indeed have very little communication in regards to judgments; it may take up to a year and a half for a judgment to be translated into the local language. There is little understanding in ICTY in regards to what happens with reparation in BH as it is considered a matter of national legislation.³⁶ The ICTY has recently reconsidered reparation, proposing that there should be established a regional fund for victims' reparation based on a similar principle of 'human solidarity' as seen in ICC's Trust Fund for Victims. This proposal is currently being evaluated. (Auweraert and Cvetovski 2013).

The ICTY attempted to establish institutional responsibility by utilizing the joint criminal enterprise doctrine, but it failed to create links in a way that would resonate locally. Indeed, the letter of Danish judge Harhoff emailed privately to fifty-six contacts on June 6, 2013, that was later made publically available contends political pressures that the president of the tribunal was making on the judges, alleging the ICTY administration of justice bias. (Andersen 2013)³⁷ Acquittals of General Perišić and Gotovina made victims groups in Bosnia and Herzegovina disillusioned with the administration of justice. In BH, there were no domestic purges or lustration programs to address the criminal responsibility of such structures. On the contrary, the political leadership involved in masterminding Republika Srpska continues to be celebrated. Many convicted war criminals are seen as Serb national heroes. (BIRN 2014)³⁸ Despite the many undisputable facts established by ICTY, Republika Srpska to date continues to deny genocide. Local media reports show that Serbs still celebrate war criminals charged with gruesome crimes such as General Mladić, currently standing charges before the ICTY.³⁹ For example, Biljana Plavšić, former president of RS who was convicted by the ICTY for ethnic cleansing and sentenced to eleven years in prison, returned to Belgrade as a dignitary after serving two thirds of her sentence.⁴⁰ Plavšić admitted her guilt and

³⁵ The ICTY Rules and Procedures Article 106 in regards to Compensation to Victims (Adopted 11 Feb 1994) states:

(A) The Registrar shall transmit to the competent authorities of the States concerned the judgment finding the accused guilty of a crime, which has caused injury to a victim.

(B) Pursuant to the relevant national legislation, a victim or persons claiming through the victim may bring an action in a national court or other competent body to obtain compensation. (Revised 12 Nov 1997)

(C) For the purposes of a claim made under paragraph (B) the judgment of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury. (Amended 12 Apr 2001)

³⁶ Similar argument has been made by Ferstman and Rosenberg (2009, p. 484).

³⁷ See also the ICTY (2003) Press release where the ICTY states the reasons for the Judge's dismissal in Seselj case: "Judge Frederick Harhoff circulated a private letter to 56 people on 6 June 2013. The letter then became publicly available through the media and the Internet. In the letter, the Judge criticised a number of recent Appeals Chamber and Trial Chamber Judgements of the Tribunal and claimed that the President of the Tribunal was exerting pressure on his colleagues in deliberations."

³⁸ For example the Association of War Veterans of East Sarajevo (administered by Republika Srpska) had placed a memorial commemorating General Ratko Mladic, currently responding to charges before the ICTY. Unknown persons have tried to cover the inscription on the stone placing thick tar substance over it, but the police came to the site to investigate misdemeanour. This memorial has meanwhile been cleaned.

³⁹ ICTY Mladic case: IT-09-92. 15 October 2009. The charges include six counts of violations of the laws or customs of war, seven counts of crimes against humanity and two counts of genocide.

⁴⁰ The exact charges include Count 3, "a crime against humanity. The Trial Chamber, being satisfied that the plea was voluntary, informed and unequivocal, and that there was a sufficient factual basis for the crime and the accused's participation in it, then entered a finding of guilt.⁴ The accused's plea was entered pursuant to a Plea Agreement made between the parties dated 30 September 2002. In the agreement, paragraphs 3 and 9(a), the Prosecutor agreed to move to dismiss the remaining counts of the Indictment following the accused's plea of guilty, and they were dismissed by a decision by the trial

served her sentence in Sweden. She was released and scheduled to travel back to Belgrade where the RS president, Milorad Dodik, had organized the BH government-airplane to take Plavšić from Stockholm to Belgrade, while he personally waited for her arrival. In Belgrade he transported her home using a Bosnian government vehicle. (Radio Free Europe, Radio Liberty 2009) They were photographed holding hands. Vojislav Šešelj, recently released on the medical grounds by the ICTY, is politically active in Serbia as the president of the Radical Serbian party.

3.2. Transition mechanism as political compromise: the Dayton Peace Agreement

The 1995 Dayton Peace Agreement (DPA) brokered by the Americans ended the armed conflict in Bosnia and Herzegovina, but the agreement has not included the discussion on inter-state reparation between Serbia and Bosnia-Herzegovina or Croatia and Bosnia-Herzegovina. Indeed, the DPA gave formal recognition to territories 'ethnically cleansed' and taken by force.⁴¹ The country of Bosnia and Herzegovina was subsequently split into two entities: one is the territory 'ethnically cleansed' from non-Serbs, Republika Srpska, and the other the territory where non-Serbs were expelled to, Federation of Bosnia and Herzegovina.

There is both political and legal fluidity that occurs in transitional times: normative frameworks and social values change, individuals' understanding of what law can do changes and individuals' perceptions of how justice can be achieved transform as well.⁴² The ways in which people understand and use law as habitual action and practice historically changes together with social and political change. (Merry 1990, p. 5) As the Bosnian post-war and post-socialist state transitions towards liberal democracy and global neoliberal order, we see the fragmentation of state institutions resulting in the shrinking of social justice programs that fell into private, non-governmental and charity hands. The state is now unable to guarantee entitlements and equal social protection benefits to its citizens, and money claimed through the courts would initiate discussion about past crimes and present status injuries as a matter of justice.

Lack of victims' centered reparations has hampered post-conflict recovery in BH. The United Nations organizations, European Union 'mission' structures and the Office of the High Representative mandated to aid Bosnian recovery and state building process all failed to consider the importance of civil redress for individuals who suffered the most terrible personal physical and emotional harms.

Under the Dayton Peace Agreement, post-conflict recovery program took a material turn; it included property restitution, refugee return, search for missing persons and other measures.⁴³ Emotional and physical injuries caused by grave human rights violations and the serious violation of humanitarian law including torture, systematic rape, illegal deprivation of individuals' liberty, murder of family members, forced disappearances and impact of similar crimes had on society went, to a large extent, unacknowledged. Crimes were so massive that nearly every

chamber on 20 December 2002. Hearing on the 2 October 2002; the accused pleaded guilty to The ICTY Judgment in *Prosecutor v. Biljana Plavsic*.

⁴¹ More information on the Dayton Peace Agreement negotiations is available in Chollet and Freeman (2005).

⁴² The term transitional justice was first defined by Kritz (1995) in a study that mapped political mechanisms to guide transformation of post-communist Europe. Teitel (2000) subsequently considered transitions as a moments in time where law is caught between past and future to guide regime changes. Bell (2009) provides compressive genealogy of the discipline showing how it evolved from legalistic to multidisciplinary method as a way to examine and guide democratic processes.

⁴³ Of particular significance was the establishment of the property commission known as "Commission for Real Property Claims of Displaced Persons and Refugees." However, this commission considered repairing material damages in particular, and it was not authorised to deal with personal injuries.

person surviving the war in Bosnia and Herzegovina had experienced some type of harm resulting in personal losses and trauma.

3.3. Foreign courts as venues to address human rights abuses in BH

Foreign courts have addressed individuals' civil liability in relation to human rights violation and personal injuries caused by Bosnian Serb political leadership by utilizing the U.S. Alien Torts Claim Act, in cases *Kadić versus Karadžić, Doe v. Karadžić* ordering \$4.5 billion and \$745 million in compensation.⁴⁴ A similar suit followed years later, in the *Kemal Mehinović v. Nikola Vučković aka Nikola Nikolac* case, where the United States District Court of Northern District of Georgia, Atlanta Division, awarded \$100,000 in punitive damages to four claimants and an additional \$4,000 for compensatory damages.

In addition, French civil court, the *Tribunale de Grande Instance* similarly charged Serb political leadership for human rights violations, committed during armed conflict in Bosnia and Herzegovina. In *Kovać v. Radovan Karadžić and Biljana Plavšić* cases the French court recognized personal injuries and awarded compensation in the amount of €1 million to be paid to the *Kovać* family for their suffering. Yet transnational civil judgments lack the mechanisms necessary for the collection of payments, so they are unlikely to be executed. Even though the above plaintiffs knew they would probably never receive the money awarded in these decisions, they speak of the symbolic significance these judgments have for them. (Irwin 2011)

We have recently witnessed a groundbreaking human rights litigation case in the Netherlands. In this case Hasan Nuhanović, his cousin Rizo Mustafić and later three hundred more persons from Srebrenica claimed liability from the state of the Netherlands for handing over the claimants' family members to Bosnian Serbs, who subsequently murdered them. (Supreme Court of the Netherlands 2013) Conclusively, in Hasan Nuhanović and Rizo Mustafić case, the conduct of Dutch soldiers was attributed to the state, and their behavior was ascribed to the Dutch ministries of Defense and Foreign Affairs, not to the United Nations. This is an important case where international human rights law translated into domestic civil law, or essentially tort law established state responsibility ordering monetary reparation to address damages caused to individuals.⁴⁵ The victims have not asked for monetary reparation initially, but through civil claims they sought acknowledgment of responsibility. Nuhanović states that he has not received any monetary reparation from the Netherlands yet.⁴⁶

The Podgorica Court in neighboring Montenegro has also recently received civil claims from Bosnian nationals illegally captured and tortured in camp Moringj during the 1992-1996 armed conflict in Bosnia. In the case of *Aličić Enver v. the State of Montenegro* on the basis of settlement, the claimant was awarded €36,000 for emotional injuries caused by illegal deprivation of liberty, physical and emotional pain suffered during captivity, torture, inhuman treatment, humiliation and fear suffered during captivity.

On the basis of international human rights law, specifically Article 5.5 of the *European Convention for Human Rights*, Aličić sought reparation from Montenegro and demonstrated that the European case law applies the rate of €9,000 per month for similar violations. Facts established in the Aličić case show that he was initially captured by Serbs (Yugoslav National Army-JNA) and detained in camp Bileće.

⁴⁴ The U.S. Alien Torts Claim Act is utilized on the basis of the U.S. Torture Victim Prevention Act, 28 U.S.C. §1350 the Opinion of the Court of Appeals for the 2nd Circuit Court, Docket Nos 94-9035, -9069, Decision issued on October 13, 1995 (The U.S. Court of Appeals for the Second Circuit 1995).

⁴⁵ See also Zegveld (2010).

⁴⁶ Nuhanovic has not received any reparation from the Netherlands for death of father and brother: <http://novovrijeme.ba/hasan-nuhanovic-jos-uvijek-nije-dobio-odstetu-od-holandije-za-smrti-oca-i-brata/>

Subsequently when JNA was pulling out of BH territory, Aličić was transferred to camp Morinj in Montenegro where he was captured and tortured. Similar liability suits were sent to Serbia, but they have not been successful yet. Most claims have been rejected on the basis of the statute of limitations and only one case has been accepted, but it is currently under appeal.⁴⁷

3.4. Hybrid Court and individuals right to remedy

The *Human Rights Chamber* (HRC) established to enforce the European Human Rights Convention in Bosnia has done enormous work in ensuring symbolic reparation to victims as a collective.⁴⁸ By establishing the Potočari Foundation in Srebrenica, it officially recognized the deaths of 8,000 victims of genocide who were murdered for the sake of the establishment of Republika Srpska. In the absence of a transitional justice strategy and state law on post-war reparation, civil courts offer a venue to discuss individuals' injuries, pursue justice and obtain recognition for individuals' collective wounds.⁴⁹

3.5. Civil Law and personal injury as a way to seek remedies for human rights abuses

Fletcher (1999, p. 58) writes that establishing liability and damages under the civil law system and distributary justice involves "geometric equality of distributing the goods and evils of society proportionately among potential recipients." Distributive principle in retributory justice follows legal imperative that similar offences are punished similarly. War victims have charged the state of Bosnia and Herzegovina with massive liability. To protect its own financial and political interests, the state has attempted to amend civil *Law on Contractual Obligation Relations* to prevent future claims. Those hundreds of favorable first instance decisions already issued now face second instance appeals or revisions, and it is expected by war victims that the state would put political pressure on judiciary to avoid paying these claims. Appeals and judicial revisions are legal processes and prolonged procedures that some fear would be intentionally extended until either the amendments to the *Law on Contractual Obligation Relations* are promulgated or other types of political decisions are made to make reparation pursuits by civil law very difficult, or impossible.

The national civil law "*Law on Contractual Obligation Relations*" in Bosnia and Herzegovina, Section 6, Article 180, stipulates that in the case of violence, terror, public demonstrations or public manifestations, the state is liable for damages including death, bodily injuries, and damage to property or injuries to persons. This law makes BH liable for its citizens, but it makes no differentiation between war-victims and ordinary persons who suffered injuries or damages in every day circumstances. Indeed, following the principles of international law, states can declare derogation from the human rights responsibilities towards their citizens and shy away from this responsibility.

To date, there were only two claims awarded for war-related personal injuries in Bosnia and Herzegovina; one in Republika Srpska awarded to Zijahudin Smailagić and the other one in Federation awarded to Samir Pojskić.⁵⁰ Both are for emotional injuries caused by illegal deprivation of liberty. In the first case a Bosniac man was illegally detained by Serbs, and in the second a Bosniac male was illegally detained

⁴⁷ Email communication with the association of camp survivors in Bosnia and Herzegovina, August 15, 2014

⁴⁸ The Human Rights Chamber closed on December 31, 2003. The link with explanation of its mandate and decisions is available in Human Right Chamber for Bosnia and Herzegovina (s.d.)

⁴⁹ The UNDP led initiative to create transitional justice strategy for BH has been blocked in the political negotiations process and currently still pending government approval.

⁵⁰ Zijahudin Spajlagic v. Republika Srpska. 2005. Okruzni Sud Banjaluka Br. GZ-1247/03; Samir Pojskić. 2011. Canton court Travnik. Br: 51 0 P 011634 10 Gž

by Croats.⁵¹ Whereas one judgment awarded reparation payment of 9 Bosnian marks (equals to €5), per day the other order is on 200 Bosnian marks (about €100). However, both claimants said to be content with the decisions.⁵²

In utilizing civil law for post-war reparation, war victims as prospective claimants face substantive legal and procedural challenges, similar to those that any other 'ordinary' clients would face. There are obstacles such as statute of limitation, producing and presenting appropriate evidence to the judge, covering expenses for legal representation, court fees and related expenses. After the human rights lawyers in Bosnia and Herzegovina have established links between liability and criminal responsibility deriving from war crimes, thousands of claims were resubmitted to courts that originally rejected them. Hundreds of reparation cases were subsequently litigated on behalf of plaintiffs in BH.

4. Money as justice

In the newly emerging culture of globalization and the rise of free markets all around the world, money carries different meanings from the meaning it had in socialist times where money was principally understood as an instrument of labour relations. (Brodie, 2007) How people see themselves in relation to a new dominate set of norms, how they understand and use law, procedures and state institutions and what justice means to them would change. Social position and class standing of victim groups in a fragmented post-socialist state makes them particularly vulnerable to marginalization, as due to post-socialist economic restructuring social justice is no longer state priority. Courts become venues to address past crimes and to reinstate current socio-economic standing in the new political communities. In the emerging Bosnian capitalist society, money means power. It gives this sense of agency and, to borrow the title of Arthur Edwards's (2009) article, money 'means not money.'

4.1. Bottom up views on money as justice from Bosnia and Herzegovina

Civil suits are a way to combat the reductionism and denial of war crimes, crimes against humanity and genocide that deprive victims of wider societal acknowledgment for their injuries. In light of genocide denial, courts in Bosnia and Herzegovina offer a platform to present personal narratives and establish an official historic record, centered on individuals' own narratives.⁵³ Through civil suits, victims can reinstate agency as through civic participation they exercise equal rights. The Bosnian political system and constitutional framework limits both.

One of the correspondents I spoke to, who is also a victim of the siege of Sarajevo, explains in his words why civil suits present a good post-conflict tool to obtain justice:

[R]egardless of how and how little, this [process] represents an opportunity to provide an honest testimony of these citizens. Considering what they survived, it is only right that they should expect something in return.⁵⁴

Initially, 20,000 to 30,000 civil claims coming from the BH association of camp survivors alone have been directed against the Bosnian Serb entity, Republika Srpska. They charged the RS organs (military or police) with violation of rights and grave injuries resulting with different types of disabilities and damages that

⁵¹ RS Law on reparation for material and non-material damages caused during armed activities from 20 May 1992-19 June 1996 (translation is mine). *Zakon o ostvarivanju prava na naknadu materijalne i nematerijalne štete nastale u periodu ratnih dejstava od 20. maja 1992. do 19. juna 1996. godine*, published in Official Gazette of the Republika Srpska no. 103/05 of 21 November 2005, amendments published in Official Gazette nos. 1/09 of 5 January 2009 and 49/09 of 3 July 2009.

⁵² Alma Begicevic, Audio *Interview 20*, (2013), and Alma Begicevic, Audio *Interview 19*, (2013).

⁵³ Local journalists have reported about genocide denial in Bosnia and Herzegovina. See for example Halimovic (2010).

⁵⁴ Alma Begicevic, Audio *Interview 8.a*, (2013), July 2, 2013

individuals suffered as a result. The first obstacle they encountered was in RS where civil courts rejected claims on the basis of statute of limitation. Political leadership in RS offered their own response to victims who filed civil suits, proclaiming that charging Republika Srpska with liability for past crimes would "represent a political attack on Republika Srpska." (Bjelajac 2011) As Milorad Dodik, the president of RS explains, civil law suits would sabotage "stability and political processes" in the RS. (Bjelajac 2011) In his view, victims present an inconvenience and a threat to RS political stability.

When I spoke to torture survivors' representatives, they told me that they understand far reaching financial implications of these civil suits. Litigation organized in such a massive number can cost the state billions of taxpayer dollars.⁵⁵ However, there is also a general understanding amongst victims that the process of launching claims exerts political pressure on the state that this may result in a settlement, a sort of deal with the state that would promulgate new law that would recognize individuals' injuries and define their social status as a group of victims.

Torture survivors in particular anticipate that such a law would offer recognition, status protection, entitlements and services. Should the state agree to this requirement, torture survivors believe that litigation would not even be needed. One of the respondents who is a member of a torture victims' association further explains how current social marginalization has led torture survivors into organizing and pressuring the state through courts as they seek money for personal injuries and non-pecuniary damages:

There are claims from the RS, Croat Association etc. If all these claims come forward, they will certainly overwhelm the state of BH budget, and it is unfortunate that the government representatives of both the State and entities do not have sensibility to assess how much more advantage a law would offer both to the State and also to the Entities when compared to civil, mass tort litigation. The law would be much more economical. It would not cost much, but they do not want it for political reasons. There are certain entity political parties that do not wish to adopt it [the law]. And the only category born out of war that do not have protection under the law, are the camp survivors. All other categories, war related categories, are... I should say, more or less... in general... all have been addressed. Camp survivors do not have anything. That means absolutely nothing, not even a letter in the law.⁵⁶

Money works as a bargaining tool to restore a power balance between victims' associations and the state, and this power struggle has been going on for some time. No political agreement has been reached.

The state took some consideration of victims' marginalized social position by including some war victim categories under the entity Law on Social Protection. As a result, Bosnia and Herzegovina offers some type of entitlements to civilian victims of war including torture victims, but the problem with such a law is that about eighty percent of torture survivors do not meet the requirement for benefits, as their injuries are often emotional, caused by trauma, rather than physical injuries resulting in physical disability.⁵⁷ In addition to that, the two entities have different understandings of who constitutes a "victim group." Therefore, the Federation of Bosnia and Herzegovina under its social protection law recognizes rape victims as beneficiaries, and Republika Srpska does not.

Torture victims experience procedural problems to establish rights and eligibilities as they cannot easily produce evidence in the form of medical certificates to show

⁵⁵ See also: The Association of BH Inmates: Law suits could push the entities into the bankruptcy (In Bosnian language) Available from: <http://www.klix.ba/vijesti/bih/savez-logorasa-bih-tuzbama-bi-mogli-gurnuti-entitete-u-bankrot/131129041> [Accessed 25 July 2016]

⁵⁶ Alma Begicevic, Audio *Interview* 3. 17, June 2013

⁵⁷ Alma Begicevic, Audio *Interview*, 11a; 24 July, 2013.

that their injuries occurred in the armed conflict within a required time frame; law requires that such a proof is obtained at the maximum of one year after the injuries occurred and in relation to a specific crime. Subsequently, most torture victims live on the verge of poverty ineligible for any benefits.

As the largest war-victims category, torture victims have also submitted the largest number of claims, but the other victims' groups have been following the suit. For example, residents of Sarajevo who survived the siege from 1992-1996 have also submitted 1,400 civil claims to date.⁵⁸ More than 600 families have already registered liability charges in the amount of €470 million charging liability of state institutions for 44 months of terror they suffered during the siege of Sarajevo.⁵⁹ Life during the siege included constant shelling, sniping, terrorizing and starvation where more than 12,000 people died.⁶⁰ Eight first instance decisions have been already issued by the civil courts awarding individuals with 239, 000 Bosnian marks (€119,000) in reparation, but most of these first instance decisions are now in the appeals stage. (Kamenica 2013)

One survivor of the siege of Sarajevo says that these civil suits allow residents to get money as a proof of state recognition for past injuries. This recognition will result wider societal acknowledgment for injustice they suffered:

They were trying to protect Serbia from that [liability]. So, if it is not Serbia, it is you... 'you' should pay now... for us it is all the same who will pay...⁶¹

In addition to Republika Srpska's leadership that denies responsibility in past crimes and protecting Serbia from any form of responsibility, it would be Bosnia and Herzegovina that would have to pay.

Individuals' pursuit of civil litigation could cost Bosnia and Herzegovina more than twenty billion Bosnian marks (equivalent to ten billion Euros), compromising an already fragile economy.⁶² Bosnian public debt has been 5 billion Euros in 2011 and external debt to IMF, 5 billion Euros. (Bosnia and Herzegovina Ministry of Finance and Treasury 2012) Even so, one of the respondents believes that the process is important, regardless of financial implications, as the question of money would initiate much more important discussion over responsibility for the past crimes: who should pay for what and why:

[there is a] hope that one who pays will atone, sincerely regret...this is not just about money, but admittance that he is guilty, responsible and money that somebody pays is based on that admission of responsibility. When ordinary folks realize that reparation money is taken from their pensions, salaries, taxes, it would raise consciousness of common people. So this is not only about money, it is more than that. If one has to pay, [that means] he or she is responsible, but if others are paying they will begin to question the basis of that: 'why would I have to pay? my family did not do anything wrong, but such and such did. Why do I pay for their crimes?'... and this would start a public dialog over who did what...⁶³

Civil law encourages discussion in regards to responsibility and institutional liability for organizing or overseeing these crimes.

⁵⁸ Alma Begicevic, Audio *Interview 8a*, July 1, 2013.

⁵⁹ ICTY IT-04-81 Prosecutor v. Momcilo Perisic, the chief of staff of the Yugoslav National Army (JNA) was also held responsible for the siege of Sarajevo and sentenced to 27 years in prison. However, in February 28, 2013, he was acquitted, and the decision was received with a major sense of disappointment in Bosnia and Herzegovina.

⁶⁰ See ICTY IT-98-29-A Prosecutor v. Stanislav Galic. Galic got life sentence for the siege of Sarajevo that lasted for 44 months. Constant sniping and shelling of civilians was a way of terrorising residents of Sarajevo

⁶¹ Alma Begicevic, *Interview 8.a*, July 2, 2013.

⁶² This estimate is made by considering 200 Bosnian marks per day (that the civil judges currently subscribe for war-related personal injuries multiplied by average number of days stayed in a camp (minimum of 2 months) and the estimated number of claims.

⁶³ Alma, Begicevic. Audio *Interview 9*, July 12, 2013.

The newly recognized ability of civil law to address liability for human rights abuses is explained by one representative from a victims' association who adds:

Normally, what results from this project of litigation, through eventual judgments... is that we show that individuals could not have done this...individually... and independently. The system created individuals...so the system...they were doing something... in somebodies' name... so whether it is in the name of Chinese, Japanese, in the name of extraterrestrial, or in the name of Republika Srpska, or... whoever... So, in somebodies' name, they were allowed to do this... Listen, to form a camp, to have 100, 200, 500 or a thousand people, to systematically murder, rape take out dead, organize forced labor, murder people during forced labor... these things cannot be done by an individual, nor by a group of individuals. This had to be approved, I should say from above...⁶⁴

In civil hearings, victims as claimants are obliged to prove the defendants' liability. This requires confidence, evidence, patience, skills and clarity that many victims of brutal abuse and torture may not have. Unless they have quality legal representation, this process can be very uncomfortable and procedurally and emotionally difficult to manage. This represents a particular challenge to those who served as protected witnesses in high profile criminal cases. One of the respondents who is also a survivor of war imprisonment explains that some procedural complications are expected:

Lawyers did warn us that there are certain provocations: State Attorney uses all means possible to make access to reparation impossible. But it all depends; in RS there are such things happening where courts summon claimants, but do not inform the legal council, even though procedure is very much clear: there should be no contact with the claimant first of all, second of all, the lawyer is authorized to act on behalf of claimants, but these cases have happened. This occurred on purpose, so that claimant would be summoned without his/her lawyer; sometimes we [Association] would get summoned, all with the purpose to obstruct access to the court. There are major problems with the RS courts in this regard, but it all gets resolved slowly.⁶⁵

Pursuit of reparation through civil courts also brings multiple procedural complications. For example, civil courts accustomed to hearing 'ordinary' liability claims and breaches of contract are not equipped to accommodate the sensitive needs of victims who act as claimants. This problem is particularly in cases of those vulnerable individuals who have security concerns, as civil hearings are public. Indeed, there are no special procedures to accommodate high-risk victims who testified before the ICTY or domestic criminal courts under special protection measures.

Despite the multiple obstacles that war survivors experience during civil legal processes, they also speak of a sense of satisfaction and relief when a decision is rendered. When a judge orders compensation, the link between past and present is established, and money echoes this link outside of courtroom.

5. Conclusion

Money alone is limited in adequately responding to atrocities and cases of emotional harms or physical injuries. (Minow 1998) Without a moral component attached to money, monetary reparation does not mean much. For instance, South Korean women could access the Asian Woman's fund, but with no acknowledgment for the historic injustice suffered, money offered no moral restitution. The examples of Kenyans seeking reparation from Britain, American-Japanese from the U.S. government, Koreans and African-Americans from Japan and the international community from Iraq and Cyprus from Turkey all demonstrate the significance of such processes where civil courts can play a new, yet very significant role in the

⁶⁴ Alma Begicevic, Audio *Interview 3*, June 17, 2013.

⁶⁵ Alma Begicevic, Audio *Interview 3*, June 17, 2013.

provision of monetary reparations – and hence recognition – for serious human rights violations and gross violations of human rights, recognizing personal injuries through reparation.

Other examples include Jewish Holocaust victims who sought redress from both the German state and business, Chileans and Argentinians who sought redress from their own government and South African victims of apartheid who sought redress regime utilizing the truth commission process. Whether redress was sought through courtrooms or through quasi-legal or administrative bodies, what all these cases have in common is the renewed individuals' demand for reparation as recognition for violation of rights.

This paper has presented that in the recent years Bosnia and Herzegovina saw a massive utilization of judicial institutions transnationally, internationally and domestically. The quest started in the United States, France and the Netherlands, but it quickly spread throughout Bosnia and Herzegovina. While there are many obstacles and procedural limitations presented before victims of armed conflict seeking monetary reparation for non-pecuniary damages before civil courts, these obstacles are the same for all, regardless of their personal circumstances or ethnic background; in an ethnically divided Bosnia, civil law has had equalizing effects. Members of all ethnic groups file civil claims, while state, ethnically divided from within, presents multiple legal and political obstacles to preserve its own interests and avoid responsibility to pay. The process raises a number of underlining questions for victims, lawyers and the state: who can submit an application and for what type of injuries, who will pay, how much and whose responsibility is this?

International human rights lawyers have played a part in educating and encouraging claimants to seek remedies for violation of their rights. Law operates as an inherent part of the social system protecting morality and public order has become a system expected to safeguard individuals' rights to remedies by ensuring redress. Accessing courts to seek compensation stands for parity of participation, and civil judgments means state acknowledgment of personal harms that brings social validation of injuries. Behind these legal battles, there is also a political negotiation process, a struggle between associations —representing individual survivors and the state— attempting to preserve their own interests where in pursuing monetary reparation independently and in such large numbers, individuals pressure the legal system, where financial consequences of litigation serve as a bargaining power to communicate need for status recognition and class changes.

This relationship between personal injuries, justice and money is particularly important as crimes are denied. The Serbian political leadership recently expressed the view that in the region of former Yugoslavia, "all nations have committed crimes" equalizing its responsibility with other nations of the region.⁶⁶ This political rhetoric releases Serbia from any form of responsibility that other nations such as Bosnian, for example, would not be able to accept. While Bosnian victims attempt to heal their wounds, Serb entity in Bosnia and Herzegovina reinvents its own narratives of victimhood, going back to World War II. Instead of offering acknowledgment for crimes suffered in the recent past, Serbs denial and demand for their own recognition causes double injury to Bosnian survivors.

War victims in Bosnia and Herzegovina, armed by the knowledge in international human rights principles and legal consciousness, show how in the absence of effective criminal justice and a political climate that fails to recognize their injuries as a result of historic injustice, money fills the gap. Administered by civil courts, money can initiate a discussion over the past crimes and present socio-economic marginalization. Using law to seek remedies, individuals are subjects of their own

⁶⁶ In the regional initiative to find thousands of missing persons, the President of Serbia said: "There were people from every nation who committed crimes, Serbian people as well. Let's finally solve that, and bury [the victims]," he added.

actions. They are also objects of collective, state actions and the civil law. In the hands of war survivors and human rights lawyers who lead the process, money has undoubtedly created an opportunity to re-examine the idea of reparation and consider a victim-centered transitional justice approach to revisit the question of individuals' right to remedies. Looking at it from a bottom up perspective, we should consider that money in this rights driven process has gained another dimension and means more than 'just' money.⁶⁷

References

- Aličić Enver protiv tuzene Crne Gore P. br. 3214/09, 18.02.2011
- Amsterdam International Law Clinic, 2013b. *Monetary Payments for Civilian Harm in International and National Practice* [online]. Washington: Center for Civilians in Conflict. Available from: http://civiliansinconflict.org/uploads/files/publications/Valuation_Final_Oct_2013pdf.pdf [Accessed 21 July 2016].
- Andersen, S., 2013. English version: Murderers are being allowed to go free. *BT* [online], 13 June. Available from: <http://www.bt.dk/udland/english-version-murderers-are-being-allowed-to-go-free>. [Accessed 28 July 2016].
- Arriaza, N.R., 2004. Reparations Decisions and Dilemmas. *Hastings International and Comparative Law Review* [online], 27 (2), 157-219. Available from: http://repository.uchastings.edu/faculty_scholarship/691/ [Accessed 19 July 2016].
- Auwersaert, P., and Cvetovski, I., 2013. *Reparations for Wartime Victims in the Former Yugoslavia* [online]. Geneva: International Organization for Migration. Available from: <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/Reparations-for-Wartime-Victimes-in-the-Former-Yugoslavia-In-Search-of-the-Way-Forward.pdf> [Accessed 26 July 2016].
- BBC News, 2013. Serbian president apologises for Srebrenica 'crime'. *BBC News* [online], 25 April. Available from: <http://www.bbc.com/news/world-europe-22297089> [Accessed 21 July 2016].
- Bell, C., 2009. Transitional Justice, Interdisciplinary and the State of the 'Field' or 'Non-Field.' *The International Journal of Transitional Justice*, 3 (1), 5-27.
- BIRN, 2014. Mladic Memorial Erected near Sarajevo. *Balkan Insight* [online], 5 Jun. Available from: <http://www.balkaninsight.com/en/article/mladic-memorial-plaque-placed-in-sarajevo> [Accessed 28 July 2016].
- Bjelajac, M., 2011. Bosnia War Compensation Dispute. *International Justice-ICTY, Institute for War and Peace Reporting* [online], 675. Available from: <http://iwpr.net/report-news/bosnia-war-compensation-dispute> [Accessed 20 July 2016].
- BN Television, 2014. Muke sa pasošem BiH! [Troubles with BH citizenship]. *BN Television* [online], 30 July. Available from: <http://www.rtvbn.com/313519/Muke-sa-pasosem-BiH> [Accessed 27 July 2016].
- Boračić, S., 2016. *Bosnia War Victims' Compensation Struggle* [online]. London: Institute for War and Peace Reporting. Available from: <https://iwpr.net/global-voices/bosnia-war-victims-compensation-struggle> [Accessed 25 July 2016].
- Bosnia and Herzegovina Ministry of Finance and Treasury, 2012. *Informacije O Stanju Javne Zaduzenosti Bosne I Hercegovine Na Dan 31.12.2011. Godine*.
- Brodie, J., 2007. Reforming Social Justice in Neoliberal Times. *Studies in Social Justice*, 1 (2), 93-105.

⁶⁷ Zelizer (1989, p. 344) argues that money is more than just "objective means of objective calculation." It is shaped by how it is obtained, used and what purpose it serves.

- Brooks, L.R., ed., 1999. *When Sorry Isn't Enough; The Controversy over Apologies and Reparations for Human Injustice*. New York University Press.
- Case of Cyprus v. Turkey (Application no. 25781/94)* European Court of Human Rights Judgment (Just satisfaction). Strasbourg 12 May 2014 [online]. Available from: <http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2225781/94%22%5D%7D> [Accessed 21 July 2016].
- Case of Sejdic and Finci v. Bosnia and Herzegovina* (Applications nos. 27996/06 and 34836/06) European Court of Human Rights Judgment. Strasbourg 22 December 2009. Available from: <http://demo.eurocases.eu/Doc/CourtAct/4537146/11> [Accessed 26 July 2016].
- Case of Zuban and Hamidovic v. Bosnia and Herzegovina*. European Court of Human Rights; Fourth Section, (Application no 7175/06). Strasbourg, 2 September 2014. Available from: <http://demo.eurocases.eu/Doc/CourtAct/4526083/12> [Accessed 26 July 2016].
- Chollet, D., and Freeman, B., 2005. *The Secret History of Dayton: U.S. Diplomacy and the Bosnia Peace Process 1995* [online]. Washington: National Security Archive. Available from: <http://nsarchive.gwu.edu/NSAEBB/NSAEBB171/index.htm> [Accessed 21 July 2016].
- Čolic and Others v. Bosnia and Herzegovina*. (Applications nos. 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07, 3424/07, 3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07 and 7211/07) ECtHR Judgment 10 November 2009 FINAL 28/06/2010 [online]. Available from: <http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%221218/07%22%2C%22itemid%22:%5B%22001-95680%22%5D%7D> [Accessed 21 July 2016].
- De Greiff, P., ed., 2006. *The Handbook of Reparations*. Oxford University Press.
- Del Ponte, C., 2000. *Address to the Security Council by Carla Del Ponte, prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to the UN Security Council, The Hague 24 November* [online]. The Hague: International Criminal Tribunal for the former Yugoslavia (ICTY). Available from: <http://www.icty.org/sid/7803> [Accessed 24 July 2016].
- Edwards, A., 2009. 'money means not money'--reflections on the meaning of money 1909-2009. *Economic affairs*, 29 (2), 78-81.
- Elster, J., ed., 2006. *Redistribution and Reparation in the Transition to Democracy*. Cambridge: Columbia University.
- Esma Palić v. Bosnia and Herzegovina application*. European Court of Human Rights. 4701/04, 15/09/2011 [online]. Available from: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103526> [Accessed 21 July 2016].
- European Court of Human Rights, 2014. *Case of Zornic V. Bosnia and Herzegovina. Strasbourg* [online]. Available from: <http://demo.eurocases.eu/Doc/CourtAct/4529512/13> [Accessed 25 July 2016].
- Ferstman, C., and Rosenberg, P.S., 2009. Reparations in Dayton's Bosnia and Herzegovina. In: C. Ferstman, M. Goetz and A. Stephens, eds. *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*. Leiden; Boston: Martinus Nijhoff Publishers, 483-515.
- Fletcher, P.G., 1999. The Place of Victims in the Theory of Retribution. *Buffalo Criminal Law Review*, 3 (1), 51-63.
- Foreign & Commonwealth Office and The Rt Hon William Hague, 2013. *Statement to Parliament on settlement of Mau Mau claims* 6 June [online]. Available

- here: <https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims> [Accessed 1 May 2016].
- Fraser, N., 2010. *Scales of Justice; Reimagining Political Space in a Globalizing World*. New York: Columbia University Press.
- Gattini, A., 2002. The U.N. Compensation: Old Rules, New Procedures on War Reparations. *EJIL*, 13 (1), 161-181.
- Gattini, A., 2003. To what extent are State Immunity and Non-Justiciability Major Hurdles to Individuals' Claims for War Damages? *Journal of International Criminal Justice*, 1 (2), 348-367.
- Gattini, A., 2007. Breach of the Obligation to Prevent and Reparation Thereof in the ICJ's Genocide Judgment. *European Journal of International Law*, 18 (4), 695-713.
- Halimovic, D., 2010. *Genocide Denial Concern in Bosnia* [online]. London: Institute for War and Peace Reporting. Available from: <http://iwpr.net/report-news/genocide-denial-concern-bosnia> [Accessed 20 July 2016].
- Hensler, D., 2003. Money Talks: Searching for Justice Through Compensation for Personal Injury and Death. *DePaul Law Review* [online], 53 (2), 417-456. Available from: <http://via.library.depaul.edu/law-review/vol53/iss2/9> [Accessed 29 August 2016].
- Hohri, W.M., 1988. *Repairing America : An Account of the Movement for Japanese-American Redress*. Pullman: Washington State University Press.
- Human Right Chamber for Bosnia and Herzegovina, s.d. *What is the Human Rights Chamber?* [online]. Sarajevo: Human Right Chamber for Bosnia and Herzegovina. Available from: <http://www.hrc.ba/ENGLISH/DEFAULT.HTM> [Accessed 24 July 2016].
- ICTY, 2013. *Judge Harhoff disqualified from Šešelj case: press release 29 August* [online]. Available from: <http://www.icty.org/en/press/judge-harhoff-disqualified-%C5%A1e%C5%A1elj-case> [Accessed 29 August 2016].
- ICTY IT-00-39&40/1 Prosecutor v. Biljana Plavsic [online]. Available from: <http://www.icty.org/x/cases/plavsic/tjug/en/> [Accessed 24 July 2016].
- ICTY IT-04-81 Prosecutor v. Momcilo Perisic.
- ICTY IT-09-92. Prosecutor v Mladic case.
- ICTY IT-96-23 & 23/1 Prosecutor v Kunarac *et al.* "Foča" case.
- ICTY IT-98-29-A Prosecutor v. Stanislav Galic.
- International Court of Justice, 1927. *ICJ Collection of Judgments: Case Concerning the Factory at Chorzow (Claim for Indemnity Jurisdiction)*, July 26th [online]. Available from: http://www.icj-cij.org/pcij/serie/A/A_09/28_Usine_de_Chorzow_Compentence_Arret.pdf [Accessed 25 July 2016].
- International Court of Justice, 1949. *Affaire du Détroit de Corfou (fixation du riontant des réparations dues par la République Populaire d'Albanie au Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, 1st Décembre* [online]. Available from: <http://www.icj-cij.org/docket/files/1/1663.pdf> [Accessed 22 July 2016].
- International Court of Justice, 2007. *Reports of Judgements, Advisory Opinions and Orders: Case Concerning Application of the Convention and Punishment of Crime of Genocide Bosnia and Herzegovina V. Serbia and Montenegro*. [online]. Available from: <http://www.icj-cij.org/docket/files/91/13685.pdf> [Accessed 20 July 2016].

- International Court of Justice, 2012. *Affaire Ahmadou Sadio Diallo: (République de Guinée c. République Démocratique du Congo)* [online]. Available from: <http://www.icj-cij.org/docket/files/103/17044.pdf> [Accessed 24 July 2016].
- Irwin, R., 2011. *Civil Actions Offer Some Closure for Bosnia Victims* [online]. London: Institute for War and Peace Reporting [online]. Available from: <https://iwpr.net/global-voices/civil-actions-offer-some-closure-bosnia-victims> [Accessed 29 August 2016].
- Jackob, R.B., 1970. Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process. *The Journal of Criminal Law, Criminology and Police Science*, 61 (2), 152-167.
- Kamenica, E., 2013. Osma Presuda U Korist Civilnih Zrtava Rata Sarajeva; Odšteta Od 239.000 KM. *Oslobodjenje* [online], 7 January. Available from: <http://www.radiosarajevo.ba/metromahala/teme/osma-presuda-u-korist-civilnih-zrtava-239000-km/99260> [Accessed 25 July, 2016].
- Kemal Mehinović v. Nikola Vučković aka Nikola Nikolac* case, the United States District Court of Northern District of Georgia, Atlanta Division 29 Jul 2009.
- Kovac *et al.* v. Karadžić *et al.*, 2011. Judgment of March 14, 2011. In *No. 05/10617*. Paris: Tribunal de Grande Instance de Paris.
- Kritz, J.N., 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington: United States Institute of Peace.
- Merry, S.E., 1990. *Getting Justice And Getting Even; Legal Consciousness Among Working-Class Americans*. University of Chicago Press.
- Miller, J.N., 2016. Human Rights Abuses as Tort Harms: Losses in Translation. *Seton Hall Law Review*, 46. 506-563.
- Minow, M., 1998. *Between Vengeance and Forgiveness*. Boston, Massachusetts: Beacon Press Boston.
- Moffett, L., 2015. Meaningful and effective? Considering Victims' Interests Through Participation at the International Criminal Court. *Criminal Law Forum*, 26 (2), 255-289.
- Nowak, M., 2007. The Need for a World Court of Human Rights. *Human Rights Law Review*, 7 (1), 251-259.
- Office of the United Nations High Commissioner for Human Rights, 2005. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. United Nations: General Assembly.
- Office of the United Nations High Commissioner for Human Rights, 2008. *Rule-of-Law Tools for Post-Conflict States. Reparations programmes* [online]. New York and Geneva: United Nations. Available from: <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf> [Accessed 21 July 2016].
- Osiel, M., 1997. *Mass Atrocity, Collective Memory, and the Law*. New Brunswick, N.J.: Transaction.
- Palmer, J., and Carrillo, A.J., 2010. Transnational Mass Claim Processes (TMCPs) in International Law and Practice. *Berkeley Journal of International Law*, 28 (2), 343-430. Available from: <http://ssrn.com/abstract=1652203> [Accessed 21 July 2016].
- Parliament of Serbia, 2010. *Declaration of the National Assembly of the Republic of Serbia condemning the Crime in Srebrenica* [online]. Available from:

- <http://www.parlament.gov.rs/upload/archive/files/eng/pdf/2010/deklaracija%20o%20srebrenici%20ENG.pdf> [Accessed 28 July, 2016].
- Radio Free Europe, Radio Liberty, 2009. Dodik sam odlučio o ustupanju aviona [Dodik independently decided about using the plane], *Radio Free Europe, Radio Liberty* [online], 28 October. Available from: http://www.slobodnaevropa.org/content/dodik_plavsic/1862998.html [Accessed July 28, 2016].
- Randelzhofer, A., and Tomuschat, C., 1999. *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights*. The Hague; Boston: M. Nijhoff.
- Reynolds, M., 2014. *Victimology Then and Now* [online]. Available from: <http://ezinearticles.com/?Victimology:-Then-and-Now&id=8568305> [Accessed 29 July, 2016].
- Robinson, P., 2011. *Letter Dated 12 May 2011 from the President 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, Addressed to the President of the Security Council. UN Security Council 2/2011/316* [online]. Available from: http://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_18may2011_en.pdf [Accessed on 29 July 2016].
- Samir Pojskić v. Federation of Bosnia and Herzegovina*. 2011. Kantonalni sud N.Travnik. Br: 51 0 P 011634 10 Gž.
- Samka Zuban and Hamindovic v. Bosnia and Herzegovina*. 2014. The European Court of Human Rights; Fourth Section, Application no 7175/06. Available from: <http://demo.eurocases.eu/Doc/CourtAct/4526083/11> [Accessed 28 July 2016].
- Schafer, S., 1970. *Compensation and Restitution to Victims of Crime*. 2nd ed. Montclair, N.J.: Patterson Smith.
- Schaffer, S., 1977. *Victimology; The Victims and His Criminal*. Reston, Virginia: Reston Publishing Company.
- Schwager, E., 2005. The Right to Compensation for Victims of an Armed Conflict. *Chinese Journal of International Law*, 4 (2), 417–439.
- Supreme Court of the Netherlands, 2013. *Judgment in the Case of the State of the Netherlands (Ministry of Defence and Ministry of Foreign Affairs), v. Hasan Nuhanovic. In 12/03324 LZ/TT, edited by First Chamber*.
- Teitel, R., 2000. *Transitional Justice*. Oxford, New York: Oxford University Press.
- The Guardian, 2013. UK to compensate Kenya's Mau Mau torture victims. *The Guardian* [online], 6 June. Available from: <https://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture> [Accessed 21 July 2016].
- The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly Res.2200A (XXI) for signature, ratification and accession of 16 December 1966, entry into force 23 March 1976, in Accordance with article 49* [online]. Available from: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [Accessed 29 July 2016].
- U.S. Court of Appeals for the Second Circuit, 1995. *Kadic V. Karadzic. In 70 F.3d 232 (2d Cir. 1995)*.
- United Nations General Assembly, 1985. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A/RES/40/34* [online]. Available

from: <http://www.un.org/documents/ga/res/40/a40r034.htm> [Accessed 25 July 2016].

Zegveld, L., 2010. Victims' reparations Claims and International Criminal Courts Incompatible Values? *Journal of International Criminal Justice*, 8 (5) 79-111.

Zelizer, A.V., 1989. Social Meaning Of Money: "Special Monies". *The American Journal Of Sociology*, 95 (2), 342-377.

Zijahudin Smajlagic v. Republika Srpska. 2005. Br. GZ-1247/03. District Court Banja Luka.

Zybery, G., 2011. The International Court of Justice and applied forms of reparation for international human rights and humanitarian law violations. *Utrecht Law Review* [online], 7 (1), 204-215. Available from: <https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.155/> [Accessed 29 August 2016].