

THE BOSNIAN WAR CRIMES CHAMBER: A SUCCESSFULLY DOMESTIC HYBRID TRIBUNAL

Matteo Godi

The Bosnian War Crimes Chamber (BWCC), a locally owned tribunal, holds promise to facilitate reconciliation in Bosnia-Herzegovina (BiH) through the individualization of guilt. The establishment of the BWCC in January 2005 marked a significant step toward establishing rule of law principles in BiH. While Bosnian courts were trying cases immediately after the Dayton Agreement had been signed, international and national concerns arose over the trials' fairness and effectiveness. The BWCC, an offspring of the International Criminal Court for the former Yugoslavia (ICTY), was aimed at addressing these concerns, but has not been free from criticisms. This paper will challenge two of the main critiques advanced against the BWCC—namely, that of being Serb-biased and that of being counterproductive to reconciliation. While the Chamber's poor outreach efforts have thus far proven counterproductive in making this process effective, targeting individual wrongdoers rather than ethnic groups can potentially avoid the dangerous generalization of guilt that inexorably fuels ethnic division, which was the cause of the Bosnian war in the first place.

INTRODUCTION

Ten years after the signing of the Dayton Agreement, following international criminal trials by the International Criminal Court for the former Yugoslavia (ICTY) and ineffective domestic prosecutions, the Bosnian War Crimes Chamber (BWCC) was created by a joint effort of the Office of the High Representative (OHR) of Bosnia-Herzegovina (BiH) and the ICTY. The BWCC, a hybrid court, was meant to address some of the problems of the domestic judiciary in prosecuting war crimes—among them, its partiality and inability to protect itself from political influence. At the end of 2012, the Chamber reached its goal of becoming a fully domestic court, employing *de facto* only nationals.

This essay is divided into three macro-sections. The first main section, composed of Parts 1 and 2, will lay down the foundation for my further analytical discussion. In order to better understand the political players and the roots of the conflict in BiH, a summary of the 1992-1995 Bosnian War is first provided. I will then outline the peace proposals—focusing on the Dayton Agreement—and the role played by the international community in this process. The remaining two macro-sections will focus on the BWCC. In the first (Parts 3 and 3a), a descriptive account of the Chamber, its jurisdiction, and its relations with the ICTY will be presented. In the third and final main section (Parts 4, 4a-c, and 5), I challenge two of the main critiques advanced against the BWCC—namely, of being Serb-biased and counterproductive

Matteo Godi is a senior at Yale College originally from Parma (Italy), double-majoring in (i) Ethics, Politics, Economics and (ii) Philosophy. He is interested in political philosophy, legal theory, and international law, and plans on attending law school upon graduation. This essay was originally written for a seminar on "Transitional Justice" taught by Professor Pablo Kalmanovitz, whom the author thanks for his comments on earlier drafts. Any and all errors and mistakes remain the author's.

to reconciliation. While the Chamber's poor outreach efforts have thus far proven counterproductive in making this process effective, targeting individual wrongdoers rather than ethnic groups can potentially avoid the dangerous *generalization* of guilt that inexorably fuels ethnic division, which was the cause of the Bosnian war in the first place. I will argue that the BWCC, a locally owned tribunal, holds promise to facilitate reconciliation in BiH through the *individualization of guilt*.

1. THE WAR IN THE TWO-PART STATE KNOWN AS BOSNIA-HERZEGOVINA

In the 1990s, BiH was severely ethnically fragmented. According to the 1991 census, 92.06% of a total population of 4,364,574 was composed of three major and historically divided groups: 43.47% were Muslims by nationality (also known as Bosniaks),¹ 31.21% were Serbs, and 17.38% were Croats.² Religious identification in BiH closely reflected national affiliation. Usually, allowing for the necessary exceptions, Bosniaks were Sunni Muslims, Serbs were Orthodox, and Croats were Catholics. Since Bosnia was under the rule of the Ottoman Empire until 1878, when it was conquered by the Hapsburgs of Austria, the 1992 official recognition by the EC and the UN marked the first time BiH was recognized as an independent state since 1463. As Noel Malcolm points out, many reacted to this international recognition of BiH with skepticism: they claimed that "Bosnia could never be a state [...] because it contained three different nationalities; history showed that it could exist only as part of a larger whole."³ However, history merely shows that BiH has been for centuries at the mercy of ambitious neighboring powers.

After the 1990 multi-party elections, due to external pressures by Serbia and Croatia, Bosnia's secular internal fragmentation became apparent, leading to a political and geographical division of the country. Once Yugoslavia started to lose its power following the fall of communism in the rest of Eastern Europe, each Yugoslav republic held multi-party elections one after the other. Citizens of BiH, even if they were unable to identify themselves as "Bosnians," nonetheless used to share the appellation of "Yugoslavs;" the dissolution of the union, however, made it even harder to maintain this sense of national unity in BiH. The Bosnian elections had a high voter turnout,⁴ and three nationalist parties emerged as winners.

Each one of them, unsurprisingly, won a proportion of seats in the assembly that closely reflected the three major ethnic groups that they represented (see figure⁵ above for the 1990 Parliamentary Election results). While the Party of Democratic Actions (PDA), supported by Muslims, represented the only true supporter of a united BiH, the Serbian Democratic Party (SDP) and the Croatian Democratic Party (CDP) were both drawn—respectively—toward Serbia and Croatia. As Malcolm explains, "a long process of nationalist competition between Serbia and Croatia had [...] made Bosnia's internal politics much more intractable than they would otherwise have been, by persuading the Orthodox and Catholic Bosnians that they should think of themselves as Serbs and Croats."⁶

Seats in Parliament per Party, 1990.

Party Name	(1)	(2)	(3)
Party of Democratic Action (SDA)	43 (33.00)	43 (39.09)	86 (35.85)
Serb Democratic Party (SDS) + Serbian Movement for Renewal (SPO)	34 (26.15)	38 (34.64)	72+1(30.41)
Croatian Democratic Union (HDZ)	21 (16.15)	23 (20.93)	44 (18.35)
League of Communists-Social Democratic Party (SK-SDP) + Democratic Socialist Alliance (DSS)	11 (8.50)	3 (2.72)	20 (8.32)
Alliance of Reformist Forces of Yugoslavia (SRSJ)	11 (8.50)	1 (0.90)	13 (5.41)
Alliance of Socialist Youth-Democratic Alliance (SSO-DS)	---	---	2 (0.83)
Muslim Bosniak Organization (MBO)	---	2 (1.80)	2 (0.83)
Others	10 (7.50)	---	---
Total	130 (100)	110 (100)	240 (100)

Notes: (1) House of Citizens (%). (2) House of Municipalities (%).
(3) Total Number of Seats (%)

The conflict was sparked and fueled by external influences, as the secret Karadjordjevo agreement of March 25, 1991 between Presidents Milosevic of Serbia and Tudjman of Croatia clearly testifies.⁷ The pressures coming from outside and the hegemonic dreams of, in particular, Milosevic's Serbia primed and fueled Bosnia's already apparent internal fragmentation.

In the spring of 1992, even though it was officially recognized as a sovereign state by the EC on April 6 and the UN on May 22, BiH was more fragmented than ever. Between October 1991 and March 1992, tensions increased exponentially. In October 1991, as President Izetbegovic (PDA) strongly supported a united BiH and rejected any idea of secession, the Bosnian Serbs declared regions of BiH "Serbian autonomous regions," even creating a separate assembly for the newly-born Bosnian Serb nation. A few months later, in March 1992, Bosnian Serbs declared a Serbian Republic of Bosnia-Herzegovina (Republika Srpska) in the southwestern part of the country. Bosnia was *de facto* waging a war.

As a war tactic, "ethnic cleansing" was exported by Serb nationals into Bosnia, and "taught" to the local Bosnian Serbs. It was clear that Serbia, driven by Milosevic's imperialistic and hegemonic dreams, had a vested interest in the outcome of the newly sparked conflict in BiH. For this reason, Serbs started to travel to BiH and "liberate" areas and cities close to the Bosnian-Serbian border. In what became an attempt to both terrify the Muslim population at large and radicalize the local Bosnian Serb youth, the Serbs first cut water and electricity supplies, harassing the Muslims in the hope that they would voluntarily leave. Those who did not flee, were tortured, raped, and eventually murdered; their bodies were left lying in the streets.⁸ As Mal-

colm points out, “a good number of random killings in cold blood would suffice” in order to achieve the Serb goals.⁹ In fact, the refugees and the many murdered “were not the tragic by-product of a civil war; their expulsion [and death] was the whole point of the war.”¹⁰ In spite of the UN sanctions imposed in 1992, reports of concentration camps and crimes against humanity—in particular by Serbs, against Muslims and Croats—became the subject of both national and international newspapers. Fifty years after the end of WWII, Europe was once again lacerated by a new genocide, and the international community was paralyzed to the point of almost complete inaction by the cruelty of this conflict.

While all of the fingers were pointed at Milosevic, the international community failed to understand the Bosnian conflict as a political rather than merely a military problem. On April 27, 1992 Milosevic declared the creation of the Federal Republic of Yugoslavia, consisting of Serbia and Montenegro. By formally withdrawing Serbian and Montenegrin soldiers from Bosnia and handing the command of the Bosnian Serbs soldiers to General Ratko Mladic, Milosevic successfully framed the conflict as just another civil war. And the international community did indeed start to address the conflict as a civil war: a military problem, rather than a larger, Balkan political power game.¹¹ In fact, as Silber and Little write, Western politicians “looked only at the symptoms of the war, not at its causes.”¹² They failed to understand the nature of Milosevic’s project, and therefore did not militarily intervene but merely tried to reduce the conflict’s violence.

2. TOWARD A SOLUTION TO THE CONFLICT: DAYTON AND THE BOSNIAN INTERNATIONAL PROTECTORATE

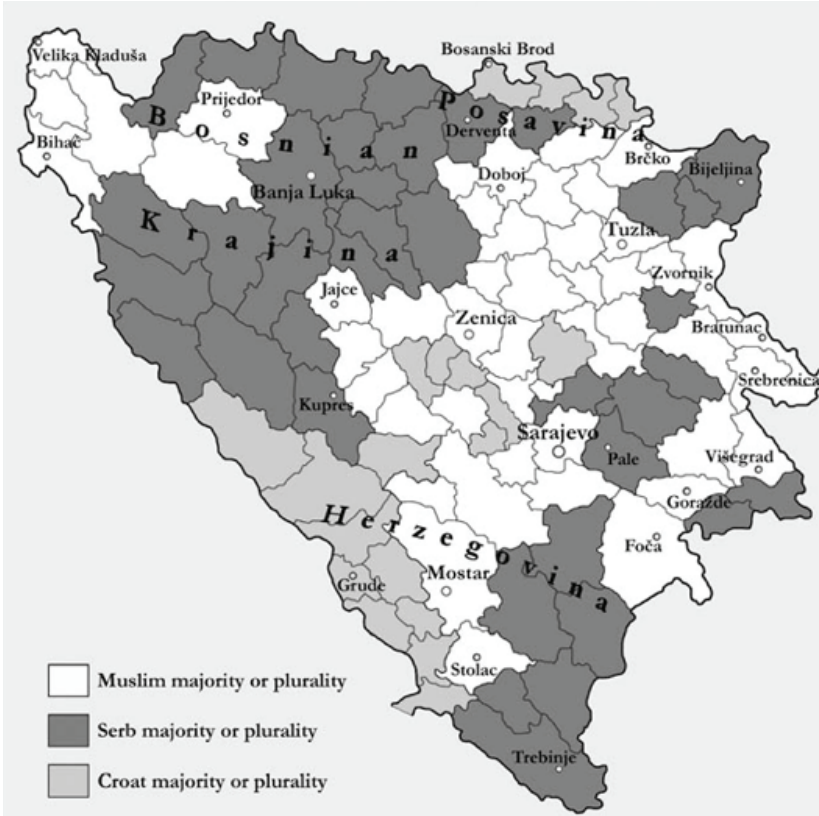
Without denying their importance and the necessity to remember these facts, more details of the Bosnian war will not be provided. The discussion so far conducted will suffice for the forthcoming analysis of BiH’s attempts of reconciliation through the BWCC.¹³ Before moving on to the analysis, after providing a brief description of the first three peace drafts by the EU/EC and the UN, I will outline the basic structure of the Dayton Agreement—the peace plan that shaped, and continues to shape, BiH.

Secretary of NATO, Lord Peter Carrington, and the Portuguese ambassador José Cutileiro crafted the first peace proposal, eventually rejected by the PDA. The Carrington-Cutileiro peace plan (March 1992) proposed a division of BiH, suggesting that “the territory of the constituent (units) would be defined, on the basis of the [1991] census [...], in such a way that communes where one particular nation is clearly in a majority [or in a plurality] are grouped together into the appropriate constituent (unit).”^{14,15} The Republika Srpska rejected this proposal and put forward a map which made it clear that the Bosnian Serbs simply wanted nearly two-thirds of BiH territory.^{16,17} This plan was scorned by Cutileiro, who counter-proposed the creation of three constituent units, “based on national principles...taking into account economic, geographic, and other criteria.”¹⁸ While initially all three factions (PDA, SDP and

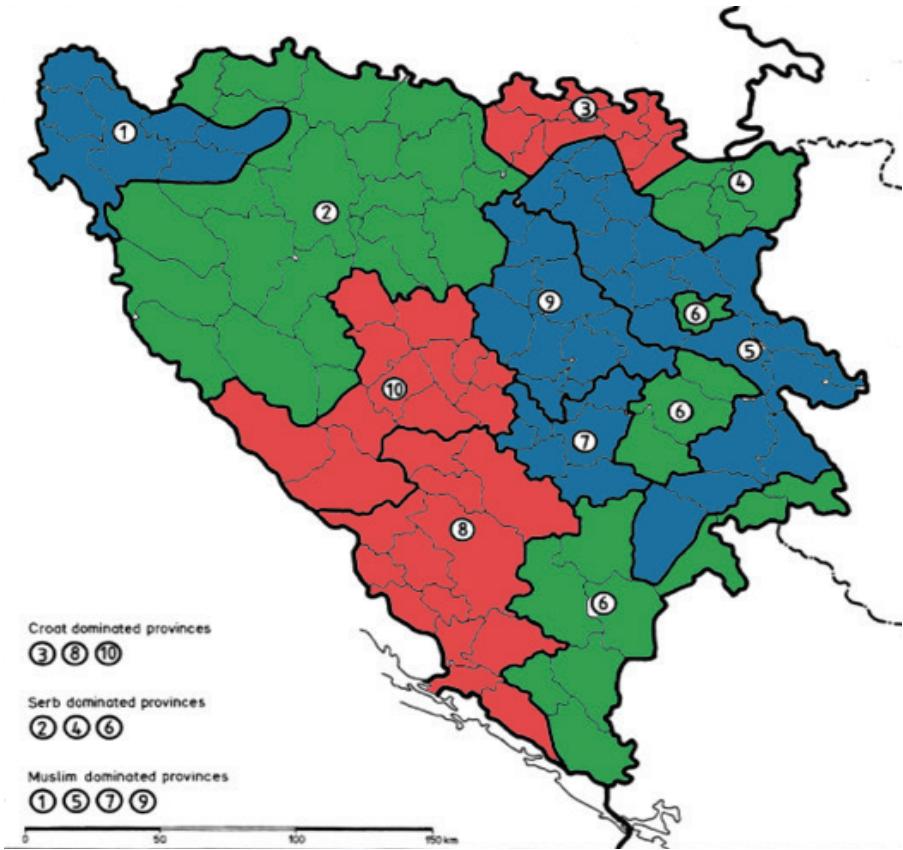
CDP) signed the draft, ten days later President Izetbegovic withdrew his signature, and declared once again his opposition to any division of BiH.

Neither the second peace agreement, drafted by Cyrus Vance (UN) and Lord David Owen (EU), nor the third, proposed by Thorvald Stoltenberg (UN) and Owen (EU), had any success. The so-called Vance-Owen peace plan proposed the division of BiH in 10 semi-autonomous provinces—three for each national ethnicity, plus the UN-supervised province of Sarajevo.¹⁹ The plan was however rejected by the Bosnian Serb National Assembly on May 6, 1993. After Vance's resignation, Stoltenberg replaced him, and along with Owen, drafted a new accord. The new plan, based on a June 1993 Geneva proposal by Presidents Tudjman and Milosevic, outlined a reconfiguration of Bosnia into three ethnic-based units.²⁰ Even though Serbia and Croatia supported the peace plan, "Bosnia's Izetbegovic, still hoping to maintain a united multinational state (one which the UN [and the EC], after all, had recognized [in 1992]), boycotted the plan talks."²¹ Moreover, in 1993, the military expansion of the Croat state Herzeg-Bosnia, which was created in July 1992 and initially allied with the Muslims, further impaired the peace negotiations. In 1994, peace looked like an unreachable dream, with all parties still engaging in mass atrocities and ethnic cleansing.

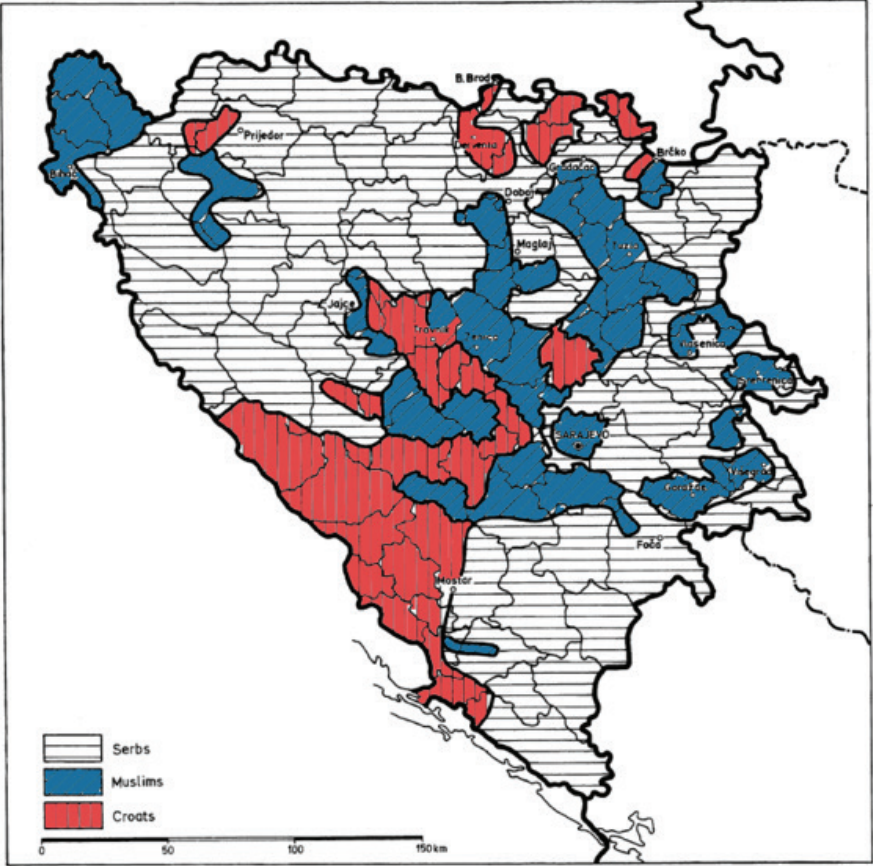
The creation of the Federation of BiH and the divorce between Serbia and Bosnian Serbs eased the 1995 talks. On March 18, 1994, the Croatian Republic of Herzeg-Bosnia and the Republic of BiH signed, first, a ceasefire agreement, and subsequently, the Washington Framework Agreement, which laid the foundation for a creation of a loose federation between the Bosnian Croat and the Muslim Republic, the Federation of BiH.²² Moreover, Serbia was offered and accepted the easing of the UN sanctions in exchange for a Serbian embargo against the Republika Srpska.²³ Now alone and surrounded by the Federation of BiH, the Bosnian Serb state ramped up repression by escalating its ethnic cleansing tactics, guided by Radovan Karadzic, President of the Republika Srpska, and Ratko Madlic, Commander of the Main Staff of the Army. As the necessity of a peace agreement became even more pressing, the parties finally entered peace talks on September 8, 1995.



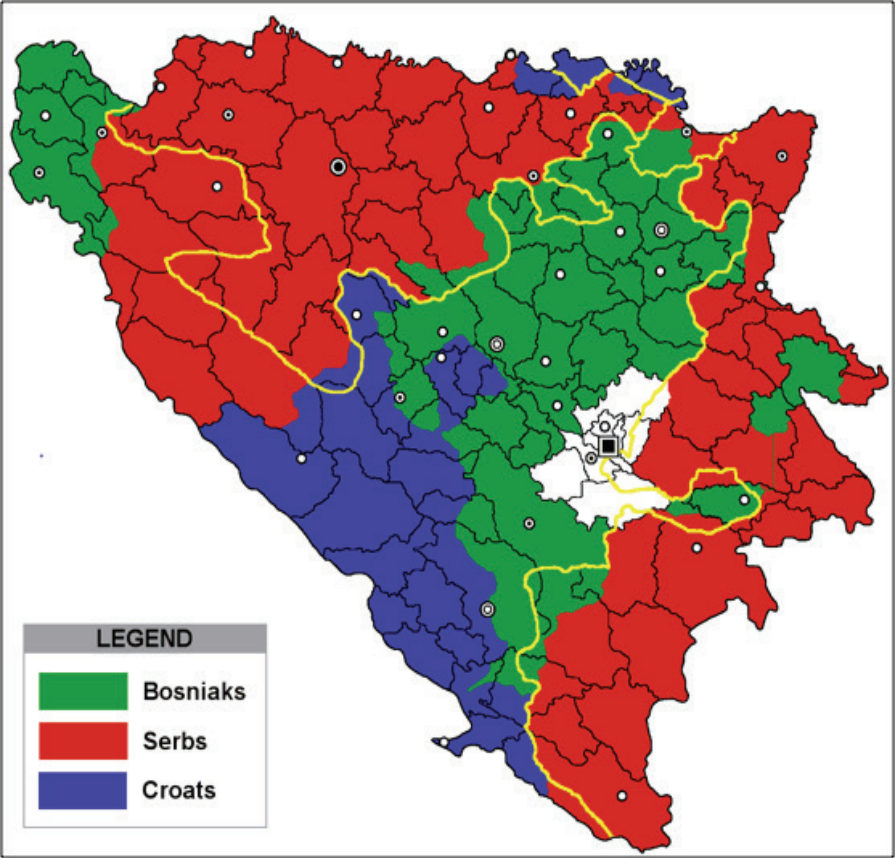
Carrington-Cutileiro Peace Plan



Division Proposed by Republika Srpska



Vance-Owen Peace Plan



Stoltenberg-Owen Peace Plan

On November 21, 1995, a peace accord was finally reached in Dayton, Ohio, which laid down the basis for the transition process and the reconstruction of BiH. The two fundamental premises on which the Dayton Agreement was founded were that BiH would keep existing as a legal entity within its current borders and that it would be divided into two units, the Muslim-Croat confederation established in 1994 and the Republika Srpska created in 1992.²⁴ Moreover, the Office of the High Representative (OHR)—an ad hoc international institution which was granted special powers in 1997 and is responsible for overseeing the implementation of civilian aspects of the Agreement—was created, making BiH a de facto international protectorate.²⁵ Since then, the High Representative has been working with the people and institutions of BiH and the international community to ensure that the nation becomes a “peaceful and viable democracy on course for integration in Euro-Atlantic institutions.”²⁶ However, as Rogel points out, “the Muslims were unhappy that Bosnia was divided; the Serbs were extremely upset with the loss of certain territories, in particular Sarajevo.”²⁷ Nevertheless, Izetbegovic, Milosevic and Tudjman were all contented with this imperfect peace.

After 18 years, due to the political situation and the lack of necessary reforms, the OHR continues to use its executive powers to facilitate reform and governance, which will not be diminished until BiH has accomplished some economic and political objectives.^{28,29} The international community has reiterated its full support for an independent, efficient, and impartial judicial system throughout BiH³⁰ and “welcomed the EU-BiH Structured Dialogue on the Judiciary as an essential tool to strengthen the rule of law,” while nonetheless urging parties to fully cooperate with the process to improve the functioning of the judiciary.³¹

3. THE BOSNIAN WAR CRIMES CHAMBER: A CHILD OF OHR AND ICTY

The establishment of the Bosnian War Crimes Chamber (BWCC) marked a significant step toward establishing rule of law principles in BiH. While Bosnian courts were trying cases immediately after the Dayton Agreement had been signed, international and national concerns arose over the trials’ fairness and effectiveness. Post-conflict prosecutions at the local level were not only impaired by “loss of skilled members of the legal profession and the judiciary, as well as the physical destruction and lack of proper equipment or facilities,” but were also subject to a number of “well-founded allegations of arbitrary arrests and unfair trials” due to the politically and ethnically driven appointment of prosecutors and judges.³² “The situation was compounded by complexities in the legal framework and inappropriate procedural laws,” as Singh wrote,³³ and was further affected by “bias of judges and prosecutors, poor case preparation by prosecutors, and ineffective witness protection mechanisms.”³⁴ Since this judicial approach appeared to be ultimately deficient, it was unable to have any impact on the national and international public, who had no faith in the BiH’s capacity to prosecute war crimes. In addressing this issue, the ICTY’s Rules of

the Road, established under the Rome Agreement of February 18, 1996, introduced international oversight over prosecutions in BiH.³⁵ But the ICTY mandate was soon to expire. And for this reason, in January 2005, the Bosnian War Crimes Chamber (BWCC), a hybrid tribunal, was embraced as a possible solution.³⁶

The Chamber was the response to both an international and a domestic necessity. Part of the agreement was that the BWCC would first work as a hybrid institution but over the course of five years would become a fully domestic court.³⁷ In fact, the creation of the BWCC was first and foremost a way to reconstruct BiH's judicial system, giving it the power to try war crimes in accordance with international standards. As a consequence, however, a problem of legal pluralism arose in the Balkans. War crimes committed in BiH between 1992 and 1995 may be tried in three different venues, before 20 courts.³⁸ Moreover, the BWCC was also a product of an international necessity—namely, the ICTY's need to comply with deadlines endorsed by the UNSC for the completion of its mandate, extended at the time of the creation of the BWCC until March 16, 2009.³⁹

a. The BWCC's Jurisdiction: Referrals by the ICTY, BiH Laws and BWCC Structure

The BWCC's jurisdiction is based on both ICTY's referrals and BiH's laws. Amending its Rules of Procedure and Evidence Rule, the ICTY gave its judges the power to refer cases to another jurisdiction, after having "consider[ed] the gravity of the crimes charged and the level of responsibility of the accused."⁴⁰ As Ivanisevic reports, the ICTY applies seriousness and seniority criteria, and transfers only "lower- and intermediate-rank accused" to other jurisdictions.⁴¹ In the case of referrals, the indictment must be confirmed by the ICTY. Upon referral, in order to proceed, "the BiH Prosecutor shall adapt the ICTY indictment in order to make it compliant with the BiH Criminal Procedure Code (CPC), following which the indictment shall be forwarded to the Court of BiH" for a final approval.⁴² Furthermore, if the BiH Prosecutor adds charges to the indictment, the Court of BiH has to approve the additional charges based on the CPC.⁴³ Since, under Rule 11*bis*, the ICTY maintains the power to revoke the referral before a verdict has been rendered—due to concerns regarding the conduct of the trial—the BWCC has the incentive to run fair and just trials.⁴⁴

The BWCC operates in accordance with the Law on the Court of BiH, imposed by the OHR on November 12, 2000. The Court "has jurisdiction over criminal offences defined in the Criminal Code of BiH and other laws of BiH," among which genocide, crimes against humanity, war crimes, and *individual* criminal responsibility related to those crimes.⁴⁵ War crimes cases can be classified in two groups. The first group includes lawsuits filed after the CPC entered into force on November 21, 2003, which fall directly under the BWCC's jurisdiction. The second group encompasses cases that were presented in front of cantonal and district courts prior to the entry into force of the CPC and in which the indictment has not been legally confirmed. These cases "shall be finalized by these courts unless the [BWCC], *ex officio* or upon the reasoned proposal of the parties or defense attorney, decides to take" such cases

under its jurisdiction.⁴⁶ The BWCC is therefore deeply intertwined with the domestic legal system, and yet has been subject to a clear international influence: it has a very unique institutional locus.

In the BWCC, the international presence has been necessary to establish a feeling of independence and impartiality of the judiciary, but over time such a presence has completely faded out. International presence within the Chamber was, from the beginning, intended to be only secondary, for the BWCC was, and is, seen as a Bosnian institution.⁴⁷ Such presence was, however, necessary. Since the Bosnian war was fueled by exacerbated ethnic hatred, the international component was pivotal to both establishing rule of law principles and building the public confidence in the judiciary's ability to implement impartial justice, free from political pressures. It was crucial to train domestic judges, who had little or no experience with international legal standards. A total of 26 international judges worked at the Court between 2005 and the end of 2012.⁴⁸ In the Chamber, trial panels used to be formed by one national and two international judges, but this ratio was reversed in 2007. Even though the mandate of international prosecutors and judges expired at the end of 2009, the OHR extended it until the end of 2012. In January 2012, as reported by Sandra Orlovic, 9 local judges and 4 international ones worked in the BWCC.⁴⁹ Starting from the beginning of 2013, the Chamber became fully Bosnian, replacing its entire international staff with national experts.^{50,51} As reported by Ivanisevic, the three main Bosnian ethnic groups are all represented on the Court.⁵²

4. AN ANALYSIS OF THE BWCC

The previous sections laid out first, a brief history of the Bosnian conflict—highlighting both BiH internal division, but most importantly the main political players involved in this fragmentation—and second, the road to peace taken by BiH with the help of the international community. While BiH has been a *de facto* international protectorate since the signing of the Dayton Agreement in 1995, the international community has been trying to sponsor the reconstruction of Bosnian national institutions as an attempt to help BiH meet the standards required for admission into the EU. In 2003, as part of this larger project, the UN and the OHR created the BWCC within the body of the Court of BiH. The BWCC, while originally a hybrid court in which both domestic and international judges worked hand-in-hand, witnessed throughout the years a decrease in the international presence, becoming fully domestic in 2013.

The next section, departing from the previous background discussion, will analyze the transitional justice efforts seen in Bosnia, particularly focusing on the BWCC. I will present a critique of the Chamber as a counterproductive transitional justice mechanism. I will question this view by claiming that the Chamber's *individualization of guilt* and its evolution from a hybrid tribunal to a domestic court hold promise to facilitate reconciliation. The objection of a Serb-bias will also be challenged, pointing at the Chamber's outreach program as a possible way to cure this

misconception.

A. COUNTERPRODUCTIVE CRIMINAL PROSECUTIONS AND INDIVIDUALIZED GUILT

Many critics oppose criminal prosecutions, arguing that they have actually been counterproductive for both reconciliation and peace talks. As D'Amato argued in an article written right before the Dayton Agreement—eloquently titled “Peace v. Accountability in Bosnia”—“securing peace in Bosnia may seem to the UN officials to be preferable to achieving individual accountability for war crimes,” implying not only that peace might be more important than justice, but also that the two are ultimately incompatible.⁵³ Prosecuting war criminals in BiH might have the result of exacerbating the already problematic internal fragmentation of the country. Moreover, while it has been argued in favor of an international duty to punish—which would justify the international community’s desire to establish the BWCC—such an obligation does not appear plausible and has been discarded by others. Diane Orentlicher claims that international laws and treaties “impose a general duty to investigate allegations of torture, extra-legal killings, and forced disappearances, and [...] to prosecute those that are responsible.”⁵⁴ However, such a state of affairs appears undesirable, at the least. In fact, as Carlos Nino argues in response to Orentlicher, while punishment might be desirable for most gross human rights violations, there might be cases in which we may want to pursue *peace* instead of *justice*. “The inclusion in international law of the duty to prosecute past crimes could itself cause some further negative consequences that must be taken into account” on a case-by-case basis.⁵⁵ For these reasons, it is objected that BWCC criminal prosecutions may ultimately be politically unjustified, by endangering the reconciliation, and therefore stability, of modern BiH: peace should be prioritized over accountability.

This critique of criminal trials, and therefore of BWCC, as an ineffective transitional justice mechanism relies on the flawed assumption of an irreconcilable dichotomy between peace and accountability. While recognizing their inevitable incompatibility at least to some extent, in specific circumstances, peace and accountability can also be considered intertwined, for it would be paradoxical to argue that peace is *completely* impossible in the presence of justice. Rather, as Yaacov Bar-Siman-Tov argues, “considerations of justice cannot be excluded from a successful peace process.”⁵⁶ And in the case of BiH, justice can actually assist the peacemaking process. As the first section of this essay outlines, BiH’s historical ethnic fragmentation was not the direct cause of war. Rather, causality can be traced back to the whims and desires of authoritarian leaders, who primed ethnic hatred with empty demagoguery. As Akhavan claims, “there is a grudging but emerging widespread acceptance...that regional peace and stability, democratization, and multiethnic coexistence in Bosnia-Herzegovina are at best precarious without the arrest and prosecution of indicted persons.”⁵⁷ Reconciliation can be supported by deactivating the perception of a group’s collective wrongdoings, which triggered the conflict in the 1990s. Rec-

conciliation may be facilitated by a symbolic and rhetorical *denial*, the denial that ethnic divisions intrinsic to BiH were the direct causes of the war. It is the denial of *general* guilt. By holding individual perpetrators accountable, through particular prosecutions, the BWCC holds promise to prevent and deny the possibility of any generalized collective guilt that could be broadly attributed to any ethnic group at large, therefore facilitating ethnic and social reconciliation.⁵⁸ The BWCC should be, and is, striving for an *individualization of guilt*.

Many, at this stage, may object: why not amnesty instead of prosecution? Blanket amnesties would not represent a viable alternative to war crimes prosecutions as part of the reconciliation process in BiH, because they would *unjustly* fail to attribute individual guilt. It can be argued that blanket amnesties completely remove the question of guilt from the political landscape, according to the “forgive and forget” principle. But unless a blanket amnesty was given to the whole nation at large, meaning Croats, Serbs, and Bosniaks, guilt would not be removed. No punishment at all, however, would ultimately be unjust according to any standard of justice, and would endanger both social trust and the Court’s legitimacy, which I will argue are pivotal for reconciliation.⁵⁹ As a response to this critique, one may want to restrict the spectrum of the amnesty and give it to any specific group to which a large number of perpetrators belong, let this group be an ethnic group or a national army. This, however, would implicitly depict that group’s members as *guilty*. This collective criminal guilt would simply be unjust, and would impair reconciliation. In fact, as claimed by the International Military Tribunal in Nuremberg, one of the most fundamental principles of criminal prosecutions is “that criminal guilt is personal.”⁶⁰ Therefore, criminal prosecutions are preferable over amnesties, as they avoid focalizing the nation’s hatred against one “guilty” ethnic group.⁶¹

Moreover, it is methodologically mistaken to assume that amnesties could somehow eliminate questions of responsibility from public discourse, and therefore be a viable alternative to war crimes prosecution. Such questions of responsibility have a social life of their own: a top-down decision to forgive and forget, namely an amnesty, cannot make people *actually* forgive and forget. Emotions like forgiveness cannot be over-imposed, but must arise from within. For this reason, in post-conflict societies, retributive emotions must be taken as granted, and transitional justice mechanisms can only attempt to channel and manage them. The BWCC’s individualization of guilt, with due process guarantees, may actually be an effective way of transforming ethnic-based, collective, and wild retributive emotions into more tractable and reasonable judgments of guilt.

While ethnic bias can be seen as a promoter of generalized guilt, the opposite prosecutorial strategy—one based on selecting representative perpetrators from all groups—may have the same effect. Reconciliation through criminal trials is indissolubly connected to the legitimacy and fairness of the basis of the prosecutorial selectivity, which play a pivotal role, along with outreach and local ownership, in establishing the

legitimacy and fairness of the Court itself. In the absence of legitimacy, in the case the Chamber was either perceived as biased or simply selected wrongdoers on the basis of ethnicity and not of blameworthiness, reconciliation would be impossible. Even if aimed at establishing a sense of fairness, the multiethnic composition of the defendants, if artificial, may impair reconciliation. It would counterproductively support critiques of an allegedly manipulative goal lying behind the selection of the cases to prosecute and the legal narratives presented. Trials cannot be *show* trials. As Osiel claims, those prosecuted may be convicted through an exaggeration of their actual blameworthiness, causing an inescapable aura of arbitrariness.⁶² Prosecutions can only “individualize public attributions of responsibility in a convincing and defensible fashion if [their] ascriptions of responsibility are consistent with the actual culpability of those it pursues.”⁶³ Reconciliation is possible not only if guilt is individualized, but also if such culpability is grounded on actual responsibility. The illegitimacy resulting from a selection based on factors other than culpability compromises the political objective of reconciliation: it implies that the real blame lies somewhere other than where courts have placed it.⁶⁴ The Chamber’s and the prosecution’s legitimacy are therefore crucial for reconciliation.

B. SERBIAN AND BOSNIAN SERB BIAS

It has been argued that criminal prosecution may actually facilitate ethnic reconciliation by individualizing guilt. However, since its establishment, the BWCC has been attacked both by politicians—who criticize the Court in an attempt to increase public support—and by various Serb associations.⁶⁵ Among these detractors, who argue that prosecutions almost exclusively focus on Bosnian Serb perpetrators, the Prime Minister of the Republika Srpska claimed that the BWCC is selective in filing its charges.⁶⁶ For this reason, Bosnian Serbs maintain, the Chamber is actually focalizing the nation’s resentment on the Serb population. If this were true, the BWCC might actually be impairing peace in BiH.

These claims should be reconsidered in light of the context of the Bosnian war and of its aftermath. That the Chamber initially tried a majority of Serb perpetrators is undeniable, and yet a reasonably predictable and explainable fact. It is a historically sound claim that the Bosniaks represent the majority of the victims, due to widespread tactics of ethnic cleansing by Serbs against Muslims at the dawn of the conflict. And for this reason, as Ivanisevic explains, Bosniak organizations were also particularly active during and after the war in accumulating war crimes evidence.⁶⁷ The BWCC, which, it must not be forgotten is in part composed by Bosnian Serbs, does not have any influence on these facts: it merely began its prosecutions by appealing to the available evidence. Since 2006, moreover, in response to new evidence and investigations, the BWCC has started to diversify more the group of perpetrators who are tried. As the Bosnian media have paid less attention than expected to the BWCC, this might explain the ability of political leaders to use bias discourse to their own advantage. Public outreach has been part of the BWCC mission since its creation, and

it can play a crucial role in debunking these diffused misconceptions.

The statistical data made public by the Public Outreach and Information Section of the Chamber alone does not help clarify the dilemma surrounding ethnic bias, and yet advances the overall goal of the BWCC—namely, to deactivate ethnic hatred and avoid group guilt. Up to April 18, 2013, the BWCC has confirmed to the author the emission of a final and binding verdict in 93 cases, against 126 defendants.⁶⁸ According to other data, the average prison sentence among all the defendants for which a verdict was rendered is 9 years and 8 months.⁶⁹ However, as the Chamber stated in an e-mail message to the author, “it is not the policy of the Court to catalogue Defendants based on their ethnic or some other background; rather, the Court treats all Defendants equally.”⁷⁰ While this policy seems to leave open the doors for criticisms of biased judgments toward the Serbs, it however advances the Chamber’s overarching goal—namely, to contribute to the process of reconciliation by not merely avoiding, but rather by addressing, counteracting, and actively dissolving both generalized guilt and ethnic narratives. Such narratives would have the potential of dangerously inflaming ethnic hatred. Public outreach has been part of the BWCC mission since its creation, and could be crucial in debunking the diffused accusation of bias.

C. BWCC’S POOR OUTREACH EFFORTS

BWCC’s outreach program, which could represent a way of fighting the ethnic bias accusations made by Bosnian Serbs, had from its inception very ambitious goals. In fact, “transparency [obtained through outreach efforts] would guard against misperceptions and misinformation that could undermine the Tribunal’s work.”⁷¹ Outreach was included in the initial BWCC’s proposal by the OHR, under the name of Public Information and Outreach Section (PIOS). As stated in the proposal itself,

Due to fears [...] concerning the effectiveness and possibility for such an institution to operate smoothly in BiH post-conflict society, there is a *clear and urgent need* for an effective public outreach program and a press information office. [This Outreach program needs] to prepare the local media to take a lead role in bringing the work of the newly established War Crimes Chamber to wider public attention, and to ensure that key stakeholders in its success, including schools, religious institutions and local government agencies, are as fully engaged as possible (emphasis added).⁷²

However, since the outreach program was only implemented in 2006, in March 2005—when the Court was created—there was a fairly limited media coverage, public knowledge, and support for the BWCC.

Unfortunately, the BWCC does not have a good and comprehensive outreach strategy and its outreach efforts could use substantial improvement. While the Court does issue press releases multiple times a week (and in some instances,

even multiples times a day) in English, as well as in the main BiH languages (Bosnian, Croatian, and Serbian), it does not hold press conferences. Moreover, only relying on these succinct press releases and on the few visitors of the Court is not enough to guarantee that the public will follow the progression of any case. The reason behind this outreach failure should be, at least in part, traced back to the relationship between the judges and the media. Newspaper reporters and Court officials often disagree on whether making some information public or not.⁷³ The PIOS has made efforts to share information in certain areas, but a systematic strategy is lacking due to the disinterest of the BWCC's judges themselves.⁷⁴ Moreover, the mainstream media do not engage with the prosecution process unless there is an opportunity to report a scandal, also in response to a general fatigue of society in relation to war-related themes.⁷⁵ Finally, as Ivanisevic claims, "although the Court has adequate cooperation with civil society, it has not done sufficient outreach to help the public understand its work or to encourage potential witnesses to come forward."⁷⁶ The weaknesses of the outreach program left the Chamber vulnerable to the misconceptions promoted by politicians.

5. THE IMPORTANCE OF OUTREACH AND OF LOCAL OWNERSHIP OF THE COURT

Outreach is a vital part of any transitional justice mechanism. If the transitional justice mechanism is somehow relevant to a population, then the people are more likely to effectively support reconciliation.⁷⁷ The problem of many transitional justice mechanisms is that they often seem remote from the communities in which the crimes they address were perpetrated.⁷⁸ Outreach in BiH should have the goal of increasing the participation of the public in the transition and creating a relationship between the Chamber and the population as a way of "selling" the Chamber's legitimacy. Trials have the possibility of affecting reconciliation only if the Court engages in effective outreach. A failure to do so makes it too easy to dismiss the process as exogenously imposed.⁷⁹ Only relatively recently in 1999 did international criminal courts realize the importance of outreach.⁸⁰ At first, these courts' outreach efforts were concentrated in attempting to increase the tribunal's transparency as a way to inform the public about the transition process and guard against misconceptions. Victor Peskin defines this first goal of outreach, namely transparency, as a model "focused on demystifying the Tribunal's work and making it more comprehensible" to the population.⁸¹ It was only later, especially with the creation of hybrid tribunals like the BWCC, that transitional justice realized the importance of the engagement factor in war crimes trials, of facilitating extensive and frequent interaction with the tribunal.⁸² Therefore, outreach by the BWCC should aim at educating and informing society about the transitional justice process, by engaging the people in the transition itself through court hearings and victims' participation.⁸³ While Lambourne and Peskin understand these two goals outreach models—transparency and engagement—as separate steps, I believe that in hybrid tribunals they are inherently intertwined. It is impossible to have transparency without engagement, and this is why the BWCC's credibility and legitimacy is impaired

by its weak outreach efforts.

While many have criticized transitional justice mechanisms—and therefore including outreach efforts—as an inherently manipulative top-down tactic, this objection cannot be persuasively applied to the case of the BWCC.⁸⁴ As Orentlicher argues, “given the extraordinary range of national experiences and cultures, how could anyone imagine there to be a universally relevant formula for transitional justice?”⁸⁵ In the particular case of criminal prosecutions, critics address the creation of these mechanisms at the international level as imposing foreign standards and processes. Looking at outreach, its educative and informative goals can be criticized as ultimately top-down manipulations, by attempting to influence and shape people’s beliefs. However, BWCC’s outreach effort cannot be stigmatized as manipulative, unless we are ready to characterize as such *any* contact between a court and the public media. The Chamber is in fact part of the Court of BiH, and has successfully evolved from a hybrid tribunal to a domestic court. For this reason first, the alleged danger of an international up-down manipulation vanished. And second, the Chamber’s press releases and updates on judicial decisions, its efforts in incentivizing visitors to attend the hearings, and its attempts to establish an active participation between the Chamber and laypeople of different ethnic groups cannot be considered manipulative. If we were to do so, we would be forced to agree with the claim that *any* attempt by domestic courts to make their decision-making process as transparent as possible is manipulative. However, my argument against any allegedly manipulative nature of the BWCC should not be misinterpreted as supporting the argument that all *domestic* transitional justice mechanisms are necessarily bottom-up.⁸⁶

Both outreach and local ownership are crucial for a well-developed transitional justice strategy. It is only by showing the impartiality of the proceedings and by facilitating the engagement of different ethnic groups that the Chamber can hope to both make the transition meaningful and contribute to reconciliation. The local ownership of the BWCC can greatly benefit the engagement aspect of outreach, while the PIOS has the role of establishing the Chamber’s transparency. As former UN Secretary Kofi Annan claimed that since “both national and international experts have a vital role to play, [we should look to] nationally led strategies of assessment and consultation carried out with the active and meaningful participation of national stakeholders.”⁸⁷ By making the process close to the BiH people, and by engaging them, the Chamber holds promise to be perceived as legitimate. As Cohen argues, “the promotion of this latter sense of ownership [namely, of connecting the trials and the citizens] is vital if the tribunal is to have an impact on the often stated goals of promoting reconciliation [and] developing a culture of accountability.”⁸⁸ However, it must be recognized that legitimacy—or better, society’s perception of it—might not only come from prosecutions based on accountability (as it has been previously argued) and outreach. Maybe a third component is necessary to this complex process of balancing: visible, high profile, and widely known perpetrators. By first prosecuting *visible* and *guilty* perpetrators, the court may be better able to promote its

legitimacy through outreach efforts, and therefore free itself from external political pressures. As a consequence of considering this third factor, however, the question of manipulation arises once again. I will leave this question open for discussion. Simply put, by individualizing guilt, the BWCC holds promise of being a successful tool for reconciliation. However, the overall inefficient efforts of the Court in developing its outreach program, as described above, dangerously endanger the very possibility of reconciliation.

CONCLUSION

While I have depicted an overall positive picture of the BWCC, a hybrid tribunal that successfully metamorphose into a domestic court, the Chamber should strengthen its outreach program in the attempt to establish its legitimacy and transparency. By virtue of being located in Bosnia, and being run by Bosnian officials, the Chamber has a “greater chance of making effective contributions to reconciliation, stability, development of the rule of law, and capacity building.”⁸⁹ Individualized criminal prosecutions, unlike blanket amnesties, have the potential to diminish ethnic hatred and facilitate social reconciliation. While it is certainly recognized that accountability for the BiH conflict cannot be fully reflected in the few hundreds of people who have actually been prosecuted, criminal prosecutions are nonetheless able to attach guilt to specific individuals, thereby diminishing—or at least avoiding the inflammation of—ethnic hatred and dispelling the notion of collective guilt. However, the Court’s poor outreach tactics are counterproductive to this promising effect of criminal prosecution. In fact, “different communities inside BiH continue to understand the causes and events of the war in different ways, and those differences are often exaggerated for political advantage.”⁹⁰ The BWCC and the ICTY, through their prosecutions and reports, have at least in part provided an empirical basis on which to judge these different narratives. However, the BWCC must effectively and directly engage BiH’s society to show these misconceptions as unfounded. Otherwise, the public will not accept this empirical basis, and the Chamber will remain unfit to protect itself from accusations of being biased against the Serb community.

Without a direct engagement of the population in the transitional justice process, political leaders will still be able to fuel ethnic hatred as a way to advance their own interests. “The most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out”—namely, outreach.⁹¹ It is for this reason that we must try to mitigate the ethnic hatred that has been left behind by the Bosnian war. We must emphasize the *justice* that guides the unbiased criminal trials run by the Bosnian War Crimes Chamber by directly engaging the public, and thus at least partially facilitate reconciliation.

NOTES

1. In the Socialist Federal Republic of Yugoslavia, "Muslims by nationality" was used as an official designation of nationality for Slavic Muslims, also known as Bosniaks. The term did not have any religious connotation, nor did it assume actual religious practice.
2. Data from: Council of Europe, "Report Submitted by Bosnia and Herzegovina Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR (2004) 001)." Accessed April 5, 2013. http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_1st_SR_BiH_en.pdf
3. Noel Malcom, *Bosnia—A Short Story* (Macmillan: London, 1994), 234.
4. At the 1990 General Elections, voter turnouts were high: 74.4% for the presidential election, 81.6% for the House of Peoples election, and 77.5% for the House of Representatives. Reported in: Dieter Nohlen and Philip Stöver, eds. *Elections in Europe: A Data Handbook* (Baden-Baden: Nomos, 2010), 330.
5. Source: Mirsad Karic, "Social Cleavages, Conflict and Accommodation in Bosnian Political History from the Late 19th Century until the 1990s" *Bilgi* 22 (2011): 91.
6. Noel Malcom, *Bosnia—A Short Story*, 235.
7. The Karadjordjevo meeting is known to history as the agreement between the Croatian president Franjo Tudjman and the Serbian president Slobodan Milosevic. It concerned the redistribution of territories in the Yugoslav republic of Bosnia and Herzegovina between Croatia and Serbia, so that territories with either Croatian or Serbian majority would be annexed to the respective "motherland."
8. Tim Judah and Dassa Trevisan, "Serb Assaults Push Bosnia to Edge of War," *The Times*, April 4, 1992.
9. Noel Malcom, *Bosnia—A Short Story*, 236.
10. Laura Silber and Alan Little, *Yugoslavia: Death of a Nation* (New York: Penguin Books, 1995), 244.
11. *Ibid.*, 239.
12. *Ibid.*, 242.
13. More comprehensive analyses of the conflict can be found in: Noel Malcom, *Bosnia—A Short Story*; Carole Rogel, *The Breakup of Yugoslavia and the War in Bosnia* (Westport: Greenwood Press, 1998); Laura Silber and Alan Little, *Yugoslavia: Death of a Nation*.
14. Snežana Trifunovska, *Yugoslavia through Documents: from its creation to its dissolution* (Boston: Martinus Nijhoff Publishers, 1994), 519.
15. See Figure on page 38, representing the ethnic composition of BiH by municipality according to the 1991 census on which the division proposed by the Carrington-Cutileiro peace plan was based. Source: Josip Glaurdic, *The hour of Europe: Western powers and the breakup of Yugoslavia* (Yale University Press, 2011), 291.
16. Josip Glaurdic, *The hour of Europe: Western powers and the breakup of Yugoslavia* (New Haven: Yale University Press, 2011), 294.
17. See Figure on page 39, reporting an edited version of the map of the division proposed by Republika Srpska found in: Mladen Klemencic, *Territorial Proposals for the Settlement of the War in Bosnia-Herzegovina* (Durham: International Boundaries Research Unit, University of Durham, 1994), 38.
18. Bertrand Ramcharan, ed., *The International Conference on the Former Yugoslavia: Official Papers* (The Hague: Kluwer Law International, 1997), 24-27.
19. See Figure on page 40, reporting a map of the division proposed by the Vance-Owen plan. Source (modified): Mladen Klemencic, *Territorial Proposals for the Settlement of the War in Bosnia-Herzegovina* (Durham: International Boundaries Research Unit, University of Durham, 1994), 49.
20. See Figure on page 41, reporting a map of the division proposed by the Stoltenberg-Owen plan. Source: The Full Wiki, "Peace plans offered before and during the Bosnian War." Accessed April 4, 2013. http://www.thefullwiki.org/Peace_plans_offered_before_and_during_the_Bosnian_War

21. Rogel, *The Breakup of Yugoslavia and the War in Bosnia*, 34.
22. Lester Brune, *Chronological History of U.S. Foreign Relations Volume III 1989-2000: Vol. III* (New York: Routledge, 2003), 1248.
23. Rogel, *The Breakup of Yugoslavia and the War in Bosnia*, 36.
24. See the full text of the Agreement: "The General Framework Agreement for Peace in Bosnia and Herzegovina," (December 14, 1995), accessed April 13, 2013, http://www.ohr.int/dpa/default.asp?content_id=379. The Muslim-Croat federation controlled 51% of the BiH territory, while the Bosnian Serb Republic 49%. Each unit was granted separate executive and legislative bodies, and a separate constitution. The BiH state-government was left weak, with the agreement to rotate the collective presidency between a Muslim, a Bosnian Croat, and a Bosnian Serb.
25. In 1997, in order to avoid delays in the implementation of the Dayton Agreement due to continued political obstruction by nationalist parties, the OHR was granted special powers (the "Bonn powers"), including the power to adopt binding decisions when local parties seem unable or unwilling to act, as well as the ability to remove from office public officials who violate the Dayton agreement, or legal norms in general.
26. See The Office of the High Representative's website, accessed April 3, 2013, <http://www.ohr.int>.
27. *Ibid.*, 41.
28. Bogdan Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina: From hybrid to domestic court* (New York: International Center for Transitional Justice, 2008), 4.
29. See the list of objectives: "Communiqué of the Steering Board of the Peace Implementation Council," (June 25, 2008), accessed April 3, 2013, www.ohr.int/pic/default.asp?content_id=41874.
30. "Communiqué of the Steering Board of the Peace Implementation Council," (November 30, 2012), accessed April 3, 2013, http://www.ohr.int/pic/default.asp?content_id=47643.
31. "Communiqué of the Steering Board of the Peace Implementation Council," (May 23, 2012), accessed April 3, 2013, http://www.ohr.int/pic/default.asp?content_id=47195.
32. OSCE Mission to Bosnia and Herzegovina, Human Rights Department, *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles* (March 2005), accessed April 3, 2013, http://www.oscebih.org/documents/osce_bih_doc_2010122311024992eng.pdf.
33. Param-Preet Singh, *Looking for Justice-The War Crimes Chamber in Bosnia and Herzegovina* (Human Rights Watch, 2009), 4.
34. Bogdan Ivanisevic and Jennifer Trahan, *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro* (Human Rights Watch, 2004), accessed April 10, 2013, <http://www.hrw.org/reports/2004/10/13/justice-risk>.
35. See "ICTY - Working with the Region," accessed April 4, 2013, <http://www.icty.org/sid/96>.
36. See "Joint Preliminary Conclusions of OHR and ICTY Experts Conference on Scope of BiH War Crimes Prosecutions," (January 15, 2003), accessed April 14, 2013, <http://www.icty.org/sid/8312>.
37. Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 7.
38. As Sandra Orlovic explains, "there are two supreme courts in the two Entities (The Supreme Court of the Federation of BiH and the Supreme Court of the Republic of Srpska), the State court of BiH, which does not have the jurisdiction of a supreme court, the Appellate Court of the Brčko District of BiH, ten cantonal courts, and six district courts in two different state administrative units" in addition to the ICTY. In *Transitional Justice in Post-Yugoslav Countries: report for 2010-2011* (Belgrade: Humanitarian Law Center, 2013), 16.
39. Currently, after a series of one-year extensions, the UN Security Council's extended the judges' mandate until 31 December 2013, or until completion of cases. The SC current position asks the ICTY to complete its entire remaining works no later than December 31, 2014. See "Security Council Reporting and Mandate Cycles," (April 1, 2013), accessed April 12, 2013, <http://www.un.org/en/sc/inc/pages/pdf/sccycles.pdf>.
40. See Rule 11 *bis* in "ICTY Rules of Procedure and Evidence," (July 24, 2009), accessed April 3, 2013, http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev43_cn.pdf.

41. Letter dated May 21, 2004, 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 Doc. S/2004/420, para. 7. Cited in: Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 6.
42. See "Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the use of evidence collected by ICTY in proceedings before the courts in BiH," accessed April 3, 2013, http://www.sudbih.gov.ba/files/docs/zakoni/en/zakon_o_ustupanju_predmeta_-_61_04_-_eng.pdf.
43. *Idem*.
44. See Rule 11 *bis* in "ICTY Rules of Procedure and Evidence," (July 24, 2009), accessed April 3, 2013, http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev43_en.pdf.
45. See "Law on the Court of Bosnia and Herzegovina," (November 12, 2000), accessed April 3, 2013, <http://www.legislationline.org/documents/id/16973>.
46. See "Criminal Procedure Code of Bosnia and Herzegovina, Article 449," accessed April 4, 2013, https://www.unodc.org/tldb/pdf/Bosnia_and_Herzegovina_Criminal_Procedure_Code_Full_text.pdf.
47. Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 11.
48. Public Outreach and Information Section of the BWCC, e-mail message to author, April 18, 2013.
49. Sandra Orlovic, *Transitional Justice in Post-Yugoslav Countries: report for 2010-2011* (Belgrade: Humanitarian Law Center, 2013), 16.
50. Public Outreach and Information Section of the BWCC, e-mail message to author, April 18, 2013.
51. See current composition of the court here: <http://www.sudbih.gov.ba/?opcija=bio&jezik=e>.
52. Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 7.
53. Anthony D'Amato, "Peace v. Accountability in Bosnia," *The American Journal of International Law* 88.3 (1994): 500.
54. Diane Orentlicher, "Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime," *The Yale Law Journal* 100 (1990-1991): 2540.
55. Carlos Nino, "The duty to punish past abuses of human rights put into context: The case of Argentina," *The Yale Law Journal* 100 (1990-1991): 2622.
56. Karin Aggestam and Annika Björkdahl, eds. *Rethinking Peacebuilding: The quest for just peace in the Middle East and the Western Balkans*. (London: Routledge, 2012), 28.
57. Payam Akhavan, "Justice in the Hague, peace in the former Yugoslavia? A commentary on the United Nations War Crimes Tribunal" *Human Rights Quarterly* 20.4 (1998): 741.
58. See supra note and Olga Martin-Ortega, "Transitional justice in the quest for just and durable peace in Bosnia-Herzegovina," in Karin Aggestam and Annika Björkdahl, eds. *Rethinking Peacebuilding: The quest for just peace in the Middle East and the Western Balkans*, (New York: Routledge, 2012), 192.
59. See de Greiff's argument in: "DDR and Reparations: Establishing links between peace and justice instruments," in Kai Ambos et al., eds. *Building a Future on Peace and Justice* (New York: Springer, 2009), 346. According to de Greiff, law "can help generate trust between citizens by stabilizing expectations and thus diminishing the risks of trusting others. Similarly, law helps generate trust in institutions (including the institutions of law themselves) among other ways, by accumulating a record of reliably solving conflicts."
60. See Judgment of the International Military Tribunal For The of German Major War Criminals, <http://www.nizkor.org/ftp.cgi?imt/tgmwc/judgment/j-accused-organisations.01>.
61. The argument in favor of individualization of guilt raises the problem of group accountability as described by Osiel. In fact "the law seeks a defensible way to link up the requisite elements of the offense to contributions by multiple participants, so that all may be held responsible for the resulting wrong." Moreover, "state atrocities are instead often the product of collective, systematic, bureaucratic activity, made possible only by the collaboration of massive and complex organizations in the execution of criminal policies initiated at the highest levels of government." I will however not focus on this claim here. For further reading on the topic, see

- Mark Osiel, *Making Sense of Mass Atrocity* (New York: Cambridge University Press, 2009).
62. Osiel, *Making Sense of Mass Atrocity*, 20.
 63. Mark Osiel, "The Banality of Good: Aligning Incentives Against Mass Atrocity," *Columbia Law Review* 105.6 (2005): 1810.
 64. *Idem*.
 65. Martin-Ortega, "Transitional justice in the quest for just and durable peace in Bosnia-Herzegovina," 192.
 66. Bertelsmann Stiftung, *BiH Country Report* (BIT: 2010), accessed April 7, 2013, <http://www.bti-project.org/fileadmin/Inhalte/reports/2010/pdf/BIT%202010%20Bosnia%20and%20Herzegovina.pdf>.
 67. Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 34.
 68. Public Outreach and Information Section of the BWCC, e-mail message to author, April 18, 2013. The breakdown of these trials is as follows. First-instance verdicts: 111 verdicts against a total of 172 defendants, including 25 final verdicts based on a plea-agreement (against 26 persons), for which no appeal was filed. Second-instance verdicts: 68 verdicts, against 100 defendants. Third-instance verdicts: 2 verdicts, against 2 defendants.
 69. "Million euros to be invested in war crimes prosecution in Bosnia," *dalje.com*, (March 26, 2013), accessed April 13, 2013, <http://dalje.com/en-world/million-euros-to-be-invested-in-war-crimes-prosecution-in-bosnia/461039>.
 70. Public Outreach and Information Section of the BWCC, e-mail message to author, April 18, 2013.
 71. Wendy Lambourne, "Outreach, inreach and civil society participation in transitional justice" in Nicola Palmer, Phil Clark and Danielle Granville, eds. *Critical Perspectives in Transitional Justice*, (Cambridge: Intersentia, 2012), 242.
 72. Office of the High Representative, "War Crimes Chamber Project Implementation Plan," (October 20, 2004, accessed April 7, 2013, <http://www.ohr.int/ohr-dept/rule-of-law-pillar/pdf/wcc-project-plan-201004-eng.pdf>.
 73. See for example: Ivanisevic, *The war crimes chamber in Bosnia and Herzegovina*, 35.
 74. Human Rights Watch, "Justice For Atrocity Crimes," (March 2012), accessed April 7, 2013, www.hrw.org/sites/default/files/reports/bosnia0312_0.pdf.
 75. Karin Aggestam and Annika Björkdahl, eds. *Rethinking Peacebuilding: The quest for just peace in the Middle East and the Western Balkans*. (London: Routledge, 2012), 193.
 76. *Idem*.
 77. Lambourne, "Outreach, inreach and civil society participation in transitional justice," 237.
 78. Lorna McGregor, "International Law as a 'Tiered Process': Transitional Justice at the Local, National and International Level" in Nicola Palmer, Phil Clark and Danielle Granville, eds. *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, (Oxford: Hart Publishing, 2008), 48.
 79. David Cohen, "Hybrid Justice in East Timor, Sierra Leone, and Cambodia: Lessons Learned and Prospects for the Future," *Stanford Journal of International Law* 43.1 (2007): 6.
 80. The ICTY Outreach Programme was created in 1998-1999 under the leadership of the then President of the Tribunal, Judge Gabrielle Kirk McDonald. It had become obvious that the Tribunal's proceedings were poorly publicized in the former Yugoslavia, and the governments in the region were not doing much to help their citizens gain accurate information about the trials in The Hague. The regional media often deliberately advanced hostile misinformation about the Tribunal. Read more at <http://www.icty.org/sid/8936>.
 81. Victor Peskin, "Courting Rwanda The Promises and Pitfalls of the ICTR Outreach Programme," *Journal of International Criminal Justice* 3.4 (2005): 954.
 82. *Idem*.
 83. *Ibid.*, 238.
 84. See, among the others: Lundy, Patricia. "Exploring home-grown transitional justice and its dilemmas: a case study of the Historical Enquiries Team, Northern Ireland." *International Journal of Transitional Justice* 3.3 (2009): 321-340; Lambourne, "Outreach, inreach and civil society participation in transitional justice," 235-261.
 85. Diane Orentlicher, "Settling accounts" revisited: Reconciling global norms with local agency," *International Journal of Transitional Justice* 1.1 (2007): 18.

86. Patricia Lundy warns us from doing so in: "Exploring home-grown transitional justice and its dilemmas: a case study of the Historical Enquiries Team, Northern Ireland," *International Journal of Transitional Justice* 3.3 (2009): 321-340.
87. Kofi Annan, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, UN Doc. S/2004/616 (August 24, 2004), para 15.
88. David Cohen, "Hybrid Justice in East Timor, Sierra Leone, and Cambodia: Lessons Learned and Prospects for the Future," *Stanford Journal of International Law* 43.1 (2007): 6.
89. *Ibid.*, 36.
90. Aggestam and Björkdahl, eds. *Rethinking Peacebuilding*, 193.
91. Kofi Annan, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, para 16.

BIBLIOGRAPHY

- Aggestam, Karin, and Annika Björkdahl, eds. *Rethinking Peacebuilding: The quest for just peace in the Middle East and the Western Balkans*. (London: Routledge, 2012).
- Akhavan, Payam. "Justice in the Hague, peace in the former Yugoslavia? A commentary on the United Nations War Crimes Tribunal." *Human Rights Quarterly* 20.4 (1998): 737-816.
- Annan, Kofi. *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, UN Doc. S/2004/616, August 24, 2004. Accessed April 3, 2013. <http://www.unrol.org/files/2004%20report.pdf>.
- Bertelsmann Stiftung, *Bosnia and Herzegovina Country Report* (BIT: 2010). Accessed April 7, 2013. http://www.bti-project.org/fileadmin/Inhalte/reports/2010/pdf/BTI_2010_Bosnia_and_Herzegovina.pdf.
- Brune, Lester. *Chronological History of U.S. Foreign Relations Volume III 1989-2000: Vol. III*. (New York: Routledge, 2003).
- Council of Europe, "Report Submitted by Bosnia and Herzegovina Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR (2004) 001)." Accessed April 5, 2013. http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_1st_SR_BiH_en.pdf.
- Court of Bosnia and Herzegovina. "Communiqué of the Steering Board of the Peace Implementation Council," (June 25, 2008). Accessed April 3, 2013. www.ohr.int/pic/default.asp?content_id=41874.
- . "Communiqué of the Steering Board of the Peace Implementation Council," (November 30, 2012). Accessed April 3, 2013. http://www.ohr.int/pic/default.asp?content_id=47643.
- . "Communiqué of the Steering Board of the Peace Implementation Council," (May 23, 2012). Accessed April 3, 2013. http://www.ohr.int/pic/default.asp?content_id=47195.
- . "Criminal Procedure Code of Bosnia and Herzegovina, Article 449." Accessed April 4, 2013. https://www.unodc.org/tldb/pdf/Bosnia_and_Herzegovina_Criminal_Procedure_Code_Full_text.pdf.

- . "Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the use of evidence collected by ICTY in proceedings before the courts in BiH." Accessed April 3, 2013. http://www.sudbih.gov.ba/files/docs/zakoni/en/zakon_o_ustupanju_predmeta_-_61_04_-_eng.pdf.
- D'Amato, Anthony. "Peace v. Accountability in Bosnia." *The American Journal of International Law* 88.3 (1994): 500-506.
- Glaurdic, Josip. *The hour of Europe: Western powers and the breakup of Yugoslavia*. (New Haven: Yale University Press, 2011).
- Human Rights Watch. *Justice For Atrocity Crimes* (March 2012). Accessed April, 7 2013. www.hrw.org/sites/default/files/reports/bosnia0312_0.pdf
- International Criminal Tribunal for the former Yugoslavia. "ICTY - Working with the Region." Accessed April 4, 2013. <http://www.icty.org/sid/96>.
- . "ICTY Rules of Procedure and Evidence," (July 24, 2009). Accessed April 3, 2013. http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev43_en.pdf.
- . "Joint Preliminary Conclusions of OHR and ICTY Experts Conference on Scope of BIH War Crimes Prosecutions," (January 15, 2003). Accessed April 14, 2013. <http://www.icty.org/sid/8312>.
- Ivanisevic, Bogdan. *The war crimes chamber in Bosnia and Herzegovina: From hybrid to domestic court*. (New York: International Center for Transitional Justice, 2008).
- , and Jennifer Trahan. *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*. (Human Rights Watch, 2004). Accessed April 7, 2013. <http://www.hrw.org/sites/default/files/reports/icty1004.pdf>.
- Judah, Tim and Dessa Trevisan. "Serb Assaults Push Bosnia to Edge of War," *The Times*, April 4, 1992.
- Karic, Mirsad. "Social Cleavages, Conflict and Accommodation in Bosnian Political History from the Late 19th Century until the 1990s." *Bilgi* 22 (2011): 71-97.
- Klemencic, Mladen. *Territorial Proposals for the Settlement of the War in Bosnia-Herzegovina*. (Durham: International Boundaries Research Unit, University of Durham, 1994).
- Lambourne, Wendy. "Outreach, inreach and civil society participation in transitional justice." In *Critical Perspectives in Transitional Justice*, edited by Nicola Palmer, Phil Clark, and Danielle Granville, 235-261. (Cambridge: Intersentia, 2012).
- Lundy, Patricia. "Exploring home-grown transitional justice and its dilemmas: a case study of the Historical Enquiries Team, Northern Ireland." *International Journal of Transitional Justice* 3.3 (2009): 321-340.
- Malcolm, Noel. *Bosnia A Short Story*. (London: Macmillan, 1994).
- Martin-Ortega, Olga. "Transitional justice in the quest for just and durable peace in Bosnia-Herzegovina." In *Rethinking Peacebuilding: The quest for just peace in the Middle East and the Western Balkans*, edited by Karin Aggestam and Annika Björkdahl, 183-

196. (New York: Routledge, 2012).

McGregor, Lorna. "International Law as a 'Tiered Process': Transitional Justice at the Local, National and International Level." In *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, edited by Kieran McEvoy and Lorna McGregor. (Oxford: Hart Publishing, 2008).

Nino, Carlos. "The duty to punish past abuses of human rights put into context: The case of Argentina." *The Yale Law Journal* 100 (1990-1991): 2619-2640.

Nohlen, Dieter, and Philip Stöver, eds. *Elections in Europe: A Data Handbook*. (Berlin: Nomos, 2010).

Office of the High Representative in Bosnia and Herzegovina. "The General Framework Agreement for Peace in Bosnia and Herzegovina," (December 14, 1995). Accessed April 13, 2013. http://www.ohr.int/dpa/default.asp?content_id=379.

---. "War Crimes Chamber Project Implementation Plan," (October 20, 2004). Accessed April 7, 2013. <http://www.ohr.int/ohr-dept/rule-of-law-pillar/pdf/wcc-project-plan-201004-eng.pdf>.

Official Gazette of Bosnia and Herzegovina. "Law on the Court of Bosnia and Herzegovina," (November 12, 2000). Accessed April 3, 2013. <http://www.legislationline.org/documents/id/16973>.

OSCE Mission to Bosnia and Herzegovina, Human Rights Department. *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles* (March 2005). Accessed April 3, 2013. http://www.oscebih.org/documents/osce_bih_doc_2010122311024992eng.pdf.

Orentlicher, Diane. "Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime." *The Yale Law Journal* 100 (1990-1991): 2537-2615.

---. "'Settling accounts' revisited: Reconciling global norms with local agency." *International Journal of Transitional Justice* 1.1 (2007): 10-22.

Orlovic, Sandra. *Transitional Justice in Post-Yugoslav Countries: report for 2010-2011*. (Belgrade: Humanitarian Law Center, 2013).

Osiel, Mark. *Making sense of mass atrocity*. (New York: Cambridge University Press, 2009).

---. "The Banality of Good: Aligning Incentives Against Mass Atrocity." *Columbia Law Review* (2005): 1751-1862.

Peskin, Victor. "Courting Rwanda The Promises and Pitfalls of the ICTR Outreach Programme." *Journal of International Criminal Justice* 3.4 (2005): 950-961.

Ramcharan, Bertrand ed. *The International Conference on the Former Yugoslavia: Official Papers*. (The Hague: Kluwer Law International, 1997).

Silber, Laura and Alan Little. *Yugoslavia: Death of a Nation*. (New York: Penguin Books, 1995).

Singh, Param-Preet. *Looking for Justice-The War Crimes Chamber in Bosnia and Herzegovina*. (Human Rights Watch, 2009). Accessed April 7, 2013. <http://www.hrw.org/>

sites/default/files/reports/ij0206webwcover.pdf.

Trifunovska, Snežana. *Yugoslavia through Documents: from its creation to its dissolution*. Boston: Martinus Nijhoff Publishers, 1994.

United Nations. "Security Council Reporting and Mandate Cycles," (April 1, 2013), accessed April 12, 2013, <http://www.un.org/en/sc/inc/pages/pdf/sccycles.pdf>.