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# Ghosts of the Past: The Competing Agendas of Forensic Work in Identifying the Missing across Bosnia and Herzegovina<sup>1</sup>

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## Introduction

The end of the war in Bosnia and Herzegovina (B&H), at least the one fought with weapons, was marked by signing of the General Framework Agreement for Peace (GFAP), more commonly known as the Dayton Peace Agreement (DPA), by the warring parties. Afterwards, around 100.000<sup>2</sup> casualties were recorded and around 31.500 persons went missing<sup>3</sup>. These disappearances were mostly a result of mass executions with burials in mass graves across the country and its neighbours. In her book Katherine Verdery writes that ‘dead bodies have enjoyed political life the world over and since far back in time’<sup>4</sup>, and it is therefore no surprise that such was the case with the dead bodies resulting from the war in Bosnia and Herzegovina. Today, B&H’s landscape is marked with once clandestine, and now mostly exhumed, mass graves. These graves are a harrowing reminder of those that are gone and their suffering, and of unsettled ghosts of the past that still haunt the present. These ghosts are kept in limbo through the never-ending ‘transition’ of B&H and the ongoing search for the missing in an effort to restore identities to material human remains, thus enabling their surviving kin to remember and commemorate their lost family members.

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<sup>2</sup> M. Tokača, *The Bosnian Book of the Dead: Human Losses in Bosnia and Herzegovina 1991-1995*, vol. I (Sarajevo, Research and Documentation Centre, 2013) lists 95,940 names of those that died from direct or indirect consequences of war, but the evaluation of this database P. Ball, E. Tabeau, and P. Verwimp. *The Bosnian Book of Dead: Assessment of the Database (Full Report)*. HiCN Research Design Note 5. (Brighton, Households in Conflict Network, 2007). Accessed November 22, 2014 <http://www.hicn.org/wordpress/wp-content/uploads/2012/07/rdn5.pdf>, stresses that the number within it should be considered a minimum number and the analysis by the ICTY in J. Zwierchowski and E. Tabeau, ‘The 1992-95 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation Of Casualties’ Undercount’, (paper presented at International Research Workshop on ‘The Global Costs of Conflict’ Berlin, February 1-2, 2010). Accessed November 22, 2014, [http://www.icty.org/x/file/About/OTP/War\\_Demographics/en/bih\\_casualty\\_undercount\\_conf\\_paper\\_100201.pdf](http://www.icty.org/x/file/About/OTP/War_Demographics/en/bih_casualty_undercount_conf_paper_100201.pdf) places the figure at 104,732.

<sup>3</sup> ICMP. ‘Bosnia and Herzegovina’. Last modified June 18, 2014. Accessed November 22, 2014. <http://www.icmp.org/where-we-work/europe/western-balkans/bosnia-and-herzegovina/>.

<sup>4</sup> K. Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York, Columbia University Press, 1999)

International interventions in B&H, that ultimately brought the war to a standstill, begun as early as in 1992, from the very start of the war. An international agency, the USA's CIA<sup>5</sup>, played an important role in the public discovery of mass graves, and this discovery in turn led to their subsequent digging up and reburial in different locations in an attempt by one of the warring parties to hide the evidence of their crimes. The intentional disturbance has posed a great challenge in recovering and identifying the missing, processes that "were chief among the goals of repair and reconstruction"<sup>6</sup> for the international community in post-war B&H and in hopes of uniting now heavily divided country. With the formation of the *ad hoc* tribunal for former Yugoslavia in 1993, these processes were dealt within the scope of international law, namely the International Humanitarian Law and International Criminal Law.

International Humanitarian Law sets out provisions for accounting for persons missing from conflicts, especially in the Geneva Conventions and their Additional Protocols, with the Additional Protocol 1 specifically requiring that "each party to the conflict to search for persons who have been reported missing by the adverse party"<sup>7</sup> and establishing "the right of families to know the fate of their [disappeared] relatives"<sup>8</sup>, regardless of the nature of the armed conflict, i.e. international or civil armed conflict. In 1974 UN General Assembly passed a resolution that states that "the desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible" highlighting that provision of information to the families of the missing should not be delayed because other issues are pending and being resolved<sup>9</sup>. This resolution also called for warring parties "to take such action as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterring and the return of remains, if requested by their families, and to provide information about those who are missing in action". Furthermore, International Convention for the Protection of All Persons from Enforced Disappearance states that "each victim has the right to know the truth regarding the circumstances of the forced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard."<sup>10</sup>

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<sup>5</sup> M. Dobbs, 'Memo to the CIA: Share your secrets', *Foreign Policy Blog: Mladic in the Hague – Michael Dobbs Explores the Origins of Evil*, Last modified 27 January 2012. Accessed November 22, 2014.

[http://dobbs.foreignpolicy.com/posts/2012/01/27/memo\\_to\\_cia\\_share\\_your\\_secrets](http://dobbs.foreignpolicy.com/posts/2012/01/27/memo_to_cia_share_your_secrets).

<sup>6</sup> S. Wagner, "The Social Complexities of Commingled Remains," in B. J. Adams and J. E. Byrd (eds.) *Commingled Human Remains: Methods in Recovery, Analysis, and Identification* (Oxford and San Diego, CA, Academic Press, 2014), p. 495.

<sup>7</sup> ICRC. 'Customary International Humanitarian Law, Rule 117. Accounting for Missing Persons.' Accessed November 22, 2014. [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule117](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule117).

<sup>8</sup> ICRC. 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).' Accessed November 22, 2014.

<http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/470>.

<sup>9</sup> UN General Assembly, 'Resolution 3220 Assistance and Cooperation in Accounting for Persons Who are Missing or Dead in Armed Conflicts'. (6 November 1974). Accessed November 22, 2014. <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/738/22/IMG/NR073822.pdf>.

<sup>10</sup> OHCHR, 'International Convention for the Protection of All Persons from Enforced Disappearance'. (Undated). Accessed November 22, 2014. <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

As a signatory to these conventions, B&H was obliged to resolve the fate of those that have gone missing as the result of the war. This paper attempts to examine the various actors that have taken up the task of locating and identifying the missing, as well as to examine their incentive and, at times competing, agendas for participating in this process.

### **Politics of the Early Efforts**

In any war there are casualties. Throughout the war in Former Yugoslavia, reports of grave breaches of the Geneva conventions were documented on the territory of B&H, and included incidents of torture, sexual violence and mass killings. Incidences of *en masse* killings and burials in clandestine mass graves were common in B&H. Victims, survivors and families of those killed wanted justice for crimes committed against them and thus created pressures on the Governments to account for these crimes, with trials even being conducted by local military courts as early as 1992 with both Karadžić and Mladić being indicted by District Military Court in December that year<sup>11</sup>. In the politics of war in B&H bodies of the imprisoned, killed and missing became powerful biocapital to be traded, recovered and consecrated through ‘proper burials’, but also to be used and manipulated by different holders of biopowers at play in B&H.

Therefore, even during wartime the State and all the warring parties<sup>12</sup> were taking actions to account for the missing persons. On 16 July 1992, the Government of B&H adopted a Decision on formation of the State Commission for the Exchange of Prisoners of War, (*Državna komisija za razmjenu ratnih zarobljenika*)<sup>13</sup> with a role of exchanging prisoners of war and the remains of the fallen. In addition the Commission was also tasked with documenting the fallen, injured and missing persons on the territory of B&H<sup>14</sup>. In 1996, the Government of B&H passed a Decision through which the Commission for the Exchange of Prisoners of War was disbanded, and the State Commission for Tracing Missing Persons (*Državna komisija za traženje nestalih osoba*) was formed<sup>15</sup>. Although the idea behind this Commission was for it to be multi-ethnic and to search for all missing persons regardless of their ethno-religious affiliations, unfortunately this was not the case and their investigations went in three different directions, where inter-ethnic separation took place and tracing of

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<sup>11</sup> 'Duga lista zločina' [Long List of Crimes]. *Oslobođenje*, December 29, 1992, 6.

<sup>12</sup> The crude rendering of the war posits that the main warring parties were the Army of Bosnia and Herzegovina (ABiH) against the Army of Republika Sprska (VRS) and between ABiH and the Croatian Defence Council (HVO). After the signing of the Washington Agreement in 1994, ABiH and HVO united in their fight against the VRS.

<sup>13</sup> Decision on formation of the State Commission for the Exchange of Prisoners of War, *RBiH Official Gazette*, 10/92 (1992).

<sup>14</sup> *Ibid.*

<sup>15</sup> Decision on formation of the State Commission for Tracing Missing Persons, *RBiH Official Gazette*, 9/96 (1996).

and account for the missing was done along ethno-religious lines. Also the Commission, although envisioned as a State body, was in fact financed and overseen by the entity of Federation of B&H<sup>16</sup>.

In addition to the State Commission, during the war Croatian Defence Council's (HVO, *Hrvatsko vijeće odbrane*) Commission on Missing Persons and the Republika Srpska's (RS) Missing Persons Commission were also active. Unlike the State Commission, these two Commissions had clear ethno-religious affiliation. The HVO Commission was in charge of tracing and exchanging prisoners of war and bodies of those killed on the territory of the Croat (Roman-Catholic) governed and self-proclaimed Herceg-Bosna in Herzegovina, namely those presumed to be Croats, while the RS Commission was clearly interested in resolving the fate of only those individuals that were perceived to be of Serb (Orthodox-Christian) ethno-religious affiliation.

These earliest efforts were conducted during the conflict, which impacted its later course immensely. During, and in the early days after the conflict, bodies and living prisoners of war (POW) were exchanged between warring parties, both within the emerging state of B&H, but also between it and its opposing sides. One could argue that these exchanges were governed by official actors involved in the process in an effort to strengthen their emerging societies through resolving the fate of the fallen and bringing closure to the families. If one considers that the "dead bodies ... have properties that make them particularly effective political symbols"<sup>17</sup>, during the conflict in the 1990s in the Former Yugoslavia they would have held that role even more firmly as symbols of heroes of the society, particularly ethnically divided groups, that were fighting to emerge as nations in B&H.

By the end of the war, through the signing of the DPA in December 1995, all these organisations had different lists of recorded missing persons which included citizens throughout B&H, and some just those of a certain ethnicity. Still, the issue of missing persons was included into the Dayton Agreement itself, with Annex VII Article 7 stating that "the Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for."<sup>18</sup>. This provided a legal, and monetary and material basis for addressing the issue of missing persons in post-war B&H.

Concurrently with the initiation of the process through international interventions, the national government of B&H had to find a way to deal with identifications. The State Commission on Tracing

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<sup>16</sup> E-E. Klonowski, 'Forensic Anthropology in Bosnia and Herzegovina: Theory and Practice amidst Politics and Egos,' in Roxanna Ferllini (ed.) *Forensic Archaeology and Human Rights Violations* (Springfield, IL, Charles C. Thomas Publishers, 2007), pp. 148-196.

<sup>17</sup> Verdery, *The Political Lives of Dead Bodies*, p. 33.

<sup>18</sup> 'Annex of 7 Article III §2 of the General Framework Agreement for Peace (GFAP) (Dayton Peace Agreement)', Accessed: 05 May 2013, [http://www.ohr.int/dpa/default.asp?content\\_id=375](http://www.ohr.int/dpa/default.asp?content_id=375).

Missing Persons continued operations as an oversight institution for lower-level institutions with clear ethno-religious divisions. The DPA divided the country into two entities: the Federation of B&H and the Serb Republic, which now started dealing with the missing in their territories. In July 1997 the Federal Government passed a decision of formation of a Federal Commission on Missing Persons (*Federalna komisija za nestale osobe*)<sup>19</sup>. This Commission, again, functioned through two components: Bosniak and Croat Contingents, with each searching for persons belonging to the ethno-religious group the Contingent represented either Bosniak (Muslim) or Croat (Roman-Catholic). The members of the third ethno-religious group, Serbs (Orthodox Christians), were sought by the Office of Tracing Detained Prisoners and Missing Persons of the Republika Srpska. All the Commissions were tasked with tracing and locating human remains, gathering information on missing persons, and keeping records of missing persons<sup>20</sup>.

After signing of the DPA efforts at locating and identifying missing persons intensified, and first exhumations by international actors started taking place as early as 1996. On 1<sup>st</sup> March 1996 a Working Group on Missing Persons and Exhumation was established with ICRC as chair of the Working Group<sup>21</sup>. Still, the process of searching for and identifying the missing was also undertaken by the local government, who attempted to grapple with the issue it faced. The process was put under the auspices of the local Courts, and later Prosecutor's Offices, who would work with the Commissions on Missing Persons in dealing with these issues. The early days of the process were not without its obstacles. With the war just over and memories of it still fresh, the Commissions had to find a way to manage the work in each other's territories. This was achieved through the Joint Exhumations Process administered by the Office of the High Representative (OHR), the organisation tasked with civilian implementation of the Dayton Peace Agreement and the member of the Working Group.

In an effort to give some structure and transparency to this, until then a somewhat disorganised process, and attempting to make it accessible to all formerly warring parties, local government and communities agreed on the Joint Exhumation Process (JEP). The JEP required for the inter-entity exhumations to be requested of the OHR and monitored by their Joint Exhumation Process' Monitors. This process was based on two Agreements between the entities, the so-called Banja Luka Agreement signed on 25 June 1996, and the subsequently developed Operational Agreement on Exhumations signed on 4 September 1996. According to these agreements, the three former warring parties are "free to carry out exhumations and collect unburied mortal remains in territory under the authority of a

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<sup>19</sup> Directive on the formation of a Federal Commission on Missing Persons, *BiH Official Gazette*, 15/97 (1997).

<sup>20</sup> Human Rights Chamber for Bosnia and Herzegovina, (CH/01/8569, CH/02/9611, CH/02/9613, CH/02/9614, CH/02/11195 and CH/02/11391) *Decision on Admissibility and Merits*, Selima Pašović, S.N, Z.M, H.P, Zada Nikšić and Ibrahim Burić v. Serb Republic

<sup>21</sup> OHR, '1st Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations', Last modified 14 March 1996. Accessed November 22, 2014. [http://www.ohr.int/other-doc/hr-reports/default.asp?content\\_id=3661#3.13](http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=3661#3.13).

different majority ethnic groups [sic]<sup>22</sup>. What this meant was that, for example, if the Republika Srpska's Commission was to excavate in the territory of Federation of B&H, the entity under the jurisdiction of the two contingent Federal Commission, they would have to obtain the permission to do so from the OHR Monitor who would attend the excavation to negotiate between the different actors. The same was required from the Federal Commission if it was to conduct exhumations in the territory of Republika Srpska<sup>23</sup>.

### **Agendas of International Actors**

With the JEP in place, the local government(s) started undertaking exhumations and identification of mortal remains, with scarce international assistance available to B&H. Elisabeth Rehn's, (then UN Special Rapporteur of the Commission on Human Rights) after visiting one of these mass graves submitted a Report to the UN Commission on Human Rights, had a public appeal for assistance in investigations of crimes committed in the Western Balkans- This appeal yielded in the Finnish Government politically and financially supporting a mission of 22 Finnish experts to B&H<sup>24</sup>.

In March of 1996 members of the Finnish Disaster Victim Identification team, conducted preliminary talks with Republika Srpska authorities regarding the possibility of conducting investigations. On 22 April 1996, upon an agreement between the UN High Commissioner for Human Rights and Republika Srpska's Prime Minister, the project was approved<sup>25</sup>. Work started in early July 1996; however, the United Nations Finnish Expert Team (UN-FET) was soon ordered by the Republika Srpska authorities to refrain from any further activities, and 64 cases of human remains were transported to the Tuzla Clinical Centre for medico-legal examination<sup>26</sup>. The cases showed a high level of commingling and the Finnish experts continued to provide expert assistance at the Tuzla Clinical Centre, where such expertise was otherwise not available, and finally pulled out of B&H in September 1997. By the end of their term in B&H, the UN-FET had examined and documented approximately 350-400 individuals, all relating to the July 1995 fall of Srebrenica.<sup>27</sup> This process was completely humanitarian in focus, and was based in a desire to give the victims an honourable handling and burial of remains, with emphasis being placed on their identification<sup>28</sup>.

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<sup>22</sup> OHR, 'Domestic War Crime Trials and Exhumations', Last modified: 15 March 2000, Accessed 07.05.2013. [http://www.ohr.int/ohr-dept/hr-rol/thedep/war-crime-tr/default.asp?content\\_id=5231](http://www.ohr.int/ohr-dept/hr-rol/thedep/war-crime-tr/default.asp?content_id=5231).

<sup>23</sup> Klonowski, Forensic Anthropology in Bosnia and Herzegovina.

<sup>24</sup> UN Doc. E/CN.4/1996/63, 'Situation of human rights in the territory of the former Yugoslavia Report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1995/89,' Last modified: 19 March 1996. Accessed: 07 May 2013. <http://www1.umn.edu/humanrts/commission/country52/63-yugos.htm>; H. Ranta and A. Penttilä, 'Finnish Forensic Expert Team in Bosnia and Herzegovina', in M. Koskeniemi (ed.), *Finnish Yearbook of International Law* (The Hague, Kluwer Law International and Ius Gentium Association, 1999) pp. 420-431.

<sup>25</sup> J. Rainio, K. Lalu, H. Ranta, K. Takamaa and A. Penttilä, 'Practical and Legal Aspects of Forensic Autopsy Expert Team Operations', *Legal Medicine*, 3:4, (2001), 220-32.

<sup>26</sup> *Ibid.*; Ranta and Penttilä, 'Finnish Forensic Expert Team in Bosnia and Herzegovina'

<sup>27</sup> *Ibid.*

<sup>28</sup> Ranta and Penttilä, 'Finnish Forensic Expert Team in Bosnia and Herzegovina', 422

The approach of the UN-FET is much different from the approach taken by the International Tribunal for the Former Yugoslavia (ICTY) which also worked on resolving the fate of the missing. The ICTY was an *ad hoc* tribunal set up by two Security Council resolutions adopted in February and May 1993, the UNSC Resolutions 808 and 827, and was given jurisdiction over the territory of the former Socialist Federal Republic of Yugoslavia. This included B&H, and thus the ICTY was given authority to undertake investigation and exhumations in B&H<sup>29</sup>, and with the primacy over national courts it could also overtake any national investigations and proceedings at any stage it wanted (both in B&H and the region)<sup>30</sup>. The ICTY is an international body and having been given both territorial jurisdiction and primacy clearly shows that it was set up to serve the agenda of the international community. This agenda did not necessarily differ from the agendas of local actors, but it was certainly separate.

The first series of exhumations undertaken by the ICTY started on 7 July 1996, and according to the ICTY, the purpose of these mass grave excavations was threefold: to corroborate witness testimony, to recover evidence related to the indictments, and to document injuries and identify the cause and time of death<sup>31</sup>. To this end ICTY managed both exhumation and human remains recovery teams, and mortuary staff (forensic pathologists, forensic anthropologists etc.) tasked with human remains examinations. These teams were composed of international staff members. The ICTY only excavated mass graves for prosecution purposes, i.e. only graves related to previously issued indictments or those indictments that were going to be issued.

The ICTY did not deal with identifications of these remains, but those involved in the process did feel that the future endeavours to identify these remains would rely on collection of as much data on identification features as possible, and collection and preservation of bio-samples<sup>32</sup>. Still the identification process itself, as well as issuing of death certificates, was left to the local Government. The excavations and examinations of human remains recovered were undertaken by the ICTY between 1996 and 2001. In 2001, the ICTY Prosecutor determined that “exhumations by the International Tribunal will end in 2001 as there are no more known sites of particular relevance to remaining

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<sup>29</sup> ICTY, ‘Article 8 “Territorial and Temporal Jurisdiction” of the Updated Statute of the International Criminal Tribunal for the former Yugoslavia’, Accessed: 07 May 2013. [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf).

<sup>30</sup> K Juhl, *The Contribution by (Forensic) Archaeologists to Human Rights Investigations of Mass Graves* (Vols. AmS-NETT nr. 5). (Stavanger, Norway, Arkeologisk museum i Stavanger, 2005).

<sup>31</sup> ICTY, ‘ICTY Press Release - First exhumation by ICTY to begin in Srebrenica area’, Last modified: 05 July 1996, Accessed: July 20, 2013, <http://www.icty.org/sid/7329>; ICTY, *ICTY Bulletin No 8 - Special: Exhumations* (The Hague, ICTY, 1996), p. 1.

<sup>32</sup> M. Klinkner, ‘Psycho-Social Aspects Surrounding Criminal Investigations into Mass Graves’ *International Criminal Law Review*, 12:3, (2012), p. 418.



investigations<sup>33</sup>. All information ICTY collected on potential sites of mass graves was released to the local government.

At the same time, as part of the early post-war efforts of locating and identifying the missing, the ICTY contracted the Physicians for Human Rights (PHR), whose members previously visited the region to investigate violations of human rights, to work on exhumations in B&H, but shortly after ended this relationship and started employing international staff for their own teams. At this point the International Commission on Missing Persons (ICMP) started contracting organisations to provide technical assistance in exhumation and examination work, and from 1997 to 1999 they contracted PHR to undertake this work with the local authorities.

The PHR, an independent organization based in Cambridge, Massachusetts, monitored and assisted on exhumations sites in which the bodies of at least 1427 individuals were recovered in Bosnia<sup>34</sup>. Unlike the ICTY, identification of individual victims was a goal of PHR-led efforts, at least officially<sup>35</sup>. After the ICTY-PHR relationship ended, PHR started their own forensic project in B&H with three parallel but separate components: the Forensic Assistance Project, the Identification Project, and the Antemortem Database Project, but with a particular focus on Srebrenica<sup>36</sup>. The goal of this project was to complete individual identifications, and by the end of 1999, 70 identifications were made<sup>37</sup>. It was also through this PHR's project that the first identifications using mitochondrial DNA were made<sup>38</sup>. PHR's goal was to assist local efforts in dealing with the missing through collection of antemortem information on the missing, collecting individualising information from human remains, comparing this data in an attempt to generate possible matches, and to monitor exhumations of sites ICTY did not deem of prosecutorial interest. Such approach was clearly different from the one ICTY employed.

The ICMP was established in 1996 at the initiative of the US president Bill Clinton and its role was to help deal with the issue of missing persons in the territory of former Yugoslavia<sup>39</sup>. ICMP's role expanded and in 2001 they were tasked with providing technical assistance in both the field (on

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<sup>33</sup> ICTY, a/56/352-S/2001/865. 'Eight Annual Report of the International Tribunal for the Prosecution of Persons Responsible for serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991', 17 September 2001, Accessed: 08 June 2013. [http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual\\_report\\_2001\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2001_en.pdf).

<sup>34</sup> PHR, *Physicians for Human Rights Bosnia Projects, Annual Report January – December 1999* (Boston, Massachusetts, PHR, 2000).

<sup>35</sup> M.E. Keough, S. Khan and A. Andrejevic, 'Disclosing the Truth: Informed Participation in the Antemortem Database Project for Survivors of Srebrenica.' *Health and Human Rights* 5:1 (2000), 68-7.

<sup>36</sup> M.E. Keough, T. Simmons and M. Samuels, 'Missing Persons in Post-Conflict Settings: Best Practices for Integrating Psychosocial and Scientific Approaches', *The Journal of The Royal Society for the Promotion of Health*, 124:6 (2004), 271-5.

<sup>37</sup> PHR, *Physicians for Human Rights Bosnia Projects*

<sup>38</sup> L. Vollen, 'All That Remains: Identifying the Victims of the Srebrenica Massacre', *Cambridge Quarterly of Healthcare Ethics*, 10 (2001), 336-40.

<sup>39</sup> International Commission on Missing Persons Assistance Act of 2012, H.R. 4344, 112th Cong (2012)

excavations)<sup>40</sup> and in the mortuaries (on examination of human remains) using their own teams, work that ICMP, until then sub-contracted to first PHR and then Kenyon International. ICMP took a ‘holistic’ approach, and it was anticipated that the organization would also help to develop legal institutions, engage in civil society initiatives (such as appropriate commemorations), and coordinate technical assistance with the purpose of ensuring adherence to international standards<sup>41</sup>. The holistic approach here can be viewed as merging the ‘scientific’ and the ‘social’, as yet another attempt of the international community to address all issues related to the missing persons whereby unifying emerging society’s ethno-religious groups towards the same goal.

ICMP worked with established protocols and standards, but revolutionised the approach through employing high-throughput DNA technology for the purposes of identification of the missing in the territory of Former Yugoslavia<sup>42</sup>. This novel approach integrated different scientific disciplines - forensic archaeology, forensic anthropology, pathology and DNA analysis - for the purpose of establishing individual identities of those exhumed. This approach also relied on the family members of the missing persons providing their DNA samples for comparison with DNA isolated from recovered human remains, and on 16 November 2001 ICMP obtained their first DNA match that led to an identification<sup>43</sup>. ICMP also has a role in legal and social issues in B&H. It works with associations of families of missing persons on their empowerment and active role in the process of tracing and identifying missing persons, while recognizing the role and the need for involvement of states and states’ actors in the search for the missing<sup>44</sup>. Therefore ICMP played a role in the legal workings of the process in B&H, which resulted in the adoption of the Law on Missing Persons in 2004 by the Parliamentary Assembly of B&H<sup>45</sup>, and the creation of the state-level institution specifically tasked with implementing the Law and resolving the fate of the missing, the Missing Persons Institute (MPI)<sup>46</sup>.

MPI was co-founded by the Council of Ministers of B&H and the ICMP in 2005, but became fully operational in 2008, and the state and entity commissions on missing persons were disbanded<sup>47</sup>.

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<sup>40</sup> A Jugo, ‘Primena forenzičkih tehnika na masovne grobnice u Bosni i Hercegovini’ (Application of forensic techniques to mass graves in Bosnia and Herzegovina), *Matemi reasocijacije*, 2011, 35-9.

<sup>41</sup> E. Huffine, J. Crews, B. Kennedy, K. Bomberker and A. Zinbo ‘Mass identification of persons missing from the break-up of the former Yugoslavia: structure, function, and role of the International Commission on Missing Persons’, *Croatian Medical Journal*, 42:3 (2001) pp. 271-275.

<sup>42</sup> L Yazedjian and R Kešetovic, ‘The application of traditional anthropological methods in a DNA-led identification process’, in B.J. Adams and J.E. Byrd (eds.), *Recovery, Analysis, and Identification of Commingled Human Remains*, (Totowa, NJ Humana Press, 2008) pp. 271-284.

<sup>43</sup> *Ibid.*

<sup>44</sup> K. Bomberger ‘Plenary Session Part 9.’ Speech presented at AAFS 2012, Atlanta. Video file. YouTube. Posted May 3, 2012. Accessed November 22, 2014. [http://www.youtube.com/watch?v=FdvNEGQ\\_Ymk](http://www.youtube.com/watch?v=FdvNEGQ_Ymk).

<sup>45</sup> Law on Missing Persons, *BiH Official Gazette*, 50/04 (2004).

<sup>46</sup> Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of Bosnia and Herzegovina, *BiH Official Gazette – International Agreements*, 13/05 (2005).

<sup>47</sup> Jugo, Application of forensic techniques to mass graves in Bosnia and Herzegovina

Like the State Commission before it, MPI was envisioned to encompass all ethno-religious groups and to search for any and all citizens of B&H indiscriminately. The founding of a state-level MPI coincided with the 2003 judiciary reform in B&H. Until 2003 all judiciary was based at the lower political and administrative levels, i.e. the entities, cantons, districts and municipalities. In 2003, backed by many international actors, B&H passed Laws on the Court of B&H, and the Prosecutor's Office of B&H. The formation of these state-level institutions also marked a change in excavations as the overseeing was transferred from the investigative judges to prosecutors and their offices.

In this new landscape it seemed that unity the international actors pushed for might overcome ethno-religious divisions that marked post-war B&H, divisions that are just continuation of the war in another form, but that are even now inscribed in the DPA. Still, after many political pushes, the Government of Republika Srpska decided to form their own Republika Srpska's Operational Team (*Operativni tim Republike Srpske*) in June 2008<sup>48</sup>, just five months after MPI became operational, claiming that the state-level institutions do not work for all ethnicities. It was tasked with tracing and identifying the missing persons in the territory of Republika Srpska, clearly competing with the work of MPI. Formation of the RS Operational Team was marked by a large departure of Serb employees of the MPI, who joined the Operational Team.

## **Problems of Limbo**

The story of the process of tracing and identifying the missing in B&H, and indeed the territory of former Yugoslavia, is one of success with over 70% of the roughly 40.000 reported missing being accounted for<sup>49</sup>, but it is not without its challenges, problems and repercussions. As the actors in this process changed, and their agendas competed the definition of the end-goal, the process went through several technical changes. The 'traditional' individual identifications used in the early days (visual identification, identification through artefacts, witness information etc.) proved to be unsuccessful, unsatisfactory and erroneous<sup>50</sup>. They were employed because the technology used in identifications in B&H today, namely DNA analysis, was not as well developed and required higher investments, which the state could not afford, and ICTY was not interested in these individual identifications. This was also the time when storage of remains was quite chaotic and unsuitable for these purposes. Since a possibility of employing DNA technology was unknown at the time, the state face a raising problem of storage of

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<sup>48</sup> Decision of the Formation of the Operational Team of Republika Srpska no. 04/1-012-1330/08, *RS Official Gazette*, 56/08 (2008).

<sup>49</sup> Bomberger, Plenary Session

<sup>50</sup> Yazedjian and Kesetovic, The application of traditional anthropological methods in a DNA-led identification process

dead bodies. With ICTY starting up operations in B&H, and the pressures of family members for dignified burials, the state was forced to start attempting to identify the dead.

At the time, identifications were under the authority of the local government and were conducted through visual inspection of the remains by family members, dental comparison, utilising ante-mortem data, medical records, and presumptive identification through artefacts, witness information and other so-called traditional techniques. Still, full anthropological examination was conducted by a pathologist in order to obtain an individual biological profile of victims. These profiles proved to be very limited in their power to be useful for identification, especially given that foreign anthropological standards were originally utilised for lack of any previous B&H specific standards. In order to overcome these obstacles, local and international researchers started subjecting bodies to examination in order to produce scientific standards that would more accurately individualise these bodies. It was soon realised that some of these studies might be erroneous as they were based on bodies with unreliable ante-mortem data, where identifications were made without DNA and were bodies might have been misidentified<sup>51</sup>. Nevertheless this proliferation of studies on anthropological characteristics of the dead in B&H also meant an increase in knowledge production on the dead of B&H, and this knowledge was now a commodity that was being exported in forms of Master's and PhD theses and various research projects of students and researchers<sup>52</sup>.

Once ICMP, as the impartial international organisation, overtook the overseeing of the exhumation process from the OHR in 2001, and has introduced a DNA-lead approach of identification efforts. The application of the DNA-led approach increased the number of official identifications: for example out of over 8.000 reported missing from the fall of Srebrenica 5.317 official identifications were completed by the end of 2011<sup>53</sup>, and 17.702<sup>54</sup> unique DNA reports were issued for those that went missing in B&H by the end of November 2014<sup>55</sup>. In B&H, where identification are conducted in large

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<sup>51</sup> A. Zukanović, N. Sarajlić & S. Škulj, 'Bosnia and Herzegovina – Physical Anthropology and Legislation', in N. Marquez-Grant & L. Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislations – An international guide to laws and practice in the excavation and the treatment of archaeological human remains* (Oxon, New York Routledge, 2011) pp. 92-101; S. Škulj, 'The Krajina Identification Project (KIP): Challenges identifying missing persons in Krajina Region', presented at *21st International Meeting on Forensic Medicine Alpe-Adria-Pannonia*, Sarajevo, 30 May – 2 June 2012

<sup>52</sup> The use of biological samples for research was also criticised by the families of the missing in B&H, and most vocally in 2004 when the news of samples of pubic symphyses, ribs and clavicles being shipped to Knoxville, Tennessee without the consent of families broke out, see: M. Fazlić, 'Ko je peruanskom banditu forenzičaru Baraybaru odobrio da kosti bosanskih žrtava stavlja u privatnu kolekciju?!' [Who Allowed Peruvian Bandit Forensic Scientist Baraybar to Place Bones of Bosnian Victims in His Private Collection], *Slobodna Bosna*, September, 23, 2004, 48-50, and *Journal of Forensic Science* 50:3 as some of the examples.

<sup>53</sup> R. Huel, 'DNA Analysis for Identification of Missing Persons', presented at *21st International Meeting on Forensic Medicine Alpe-Adria-Pannonia*, Sarajevo, 30 May – 2 June 2012.

<sup>54</sup> It has to be understood that this number of unique DNA profiles generated for Bosnia and Herzegovina also includes roughly 2.500 DNA profiles of the unidentified remains stored throughout 11 mortuaries in B&H and that are currently being reviewed.

<sup>55</sup> ICMP, Western Balkan Tracking Chart: 21 November 2014, Accessed: November 22, 2014. [http://www.icmp.org/fdmsweb/index.php?w=wb\\_chart&l=en&s=1&dt\\_year=2014&dt\\_month=11&dt\\_day=21](http://www.icmp.org/fdmsweb/index.php?w=wb_chart&l=en&s=1&dt_year=2014&dt_month=11&dt_day=21).

numbers and victims are mostly commemorated through joint commemorations, the process has additional significance: it has an additive effect which gives a public face to the process and a sense of ‘something being done’, it provides tools for victims to peruse their rights and empowers relatives in pursuit of justice, gives legal resolution to cases of missing persons and families’ pursuit of damages from the state or entity. The scientific approach, objective and critical in nature, provides for scientific account of history, accuracy in truth telling and provides evidence for war crimes trials and criminal prosecutions<sup>56</sup>.

While the process was undoubtedly a success, it is still not without obstacles today. One of the biggest problem the process faces today is the issue of misidentifications, which are most commonly rooted in the roughly 8.000 previously mentioned ‘traditional’ identifications used prior to introduction of the DNA-led approach<sup>57</sup>. In the early days of the post-war efforts, population of B&H was a traumatised, poor and ravaged society, whose citizens suffered severe material losses during the war. For many people identifications of a missing relative, at the time, meant receiving sorely needed international aid in the name of their lost loved ones. During this period of a certain chaos, already traumatized people had to undergo a very painful and re-traumatizing process of identifying their missing loved ones. One has to wonder how many, under such pressures, could have made a mistake?

Due to changes in approaches and actors, as well as to the development of new technologies it has been shown that misidentifications of human remains occur<sup>58</sup>. Currently, there are some 9.300 excavated cases of human remains representing, based on DNA profiles extracted from them, around 2.500 individuals stored in the mortuaries in B&H that are unidentified<sup>59</sup>. These are designated as NN from Latin *nomen nescio* which translates into ‘name unknown’. They, most commonly, either have DNA profiles extracted and generated from a bone sample that do not have a DNA match to any reference blood samples given by family members, or DNA extraction was impossible<sup>60</sup>. The reasons for the former are threefold: the remains are not related to the conflict of the 1990s and thus are outside of the mandate of the Law on Missing Persons, there are no living relatives to provide a blood reference sample, and they are a case of misidentification<sup>61</sup>. These cases are stored as “NN” remains and have

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<sup>56</sup> A. Jugo and S. Wastell, ‘Disassembling the Pieces, Reassembling the Social: The Forensic and Political Lives of Secondary Mass Graves in Bosnia and Herzegovina’, in E Anstett & JM Dreyfus (eds.), *Human Remains and Identification: Mass Violence, Genocide and the ‘Forensic Turn’*, (Manchester, Manchester University Press, forthcoming in 2015).

<sup>57</sup> S. Dedajić, ‘U Krajini su griješili prilikom ukopa žrtava’ [They Made Mistakes in Krajina when Burying Victims], *Dnevni Avaz*, August 10, 2013, p. 7.

<sup>58</sup> Zukanović, Sarajlić and Škulj, Bosnia and Herzegovina

<sup>59</sup> ICMP, Process to Review Cases of Unidentified Mortal Remains in BiH Facilities is Welcomed by BiH Prosecutor and ICMP, Last modified: 05 June 2013. Accessed: 22 November 2014. <http://www.ic-mp.org/press-releases/review-of-nn-remains-starts/>.

<sup>60</sup> A. Brkić-Čekić 'Porodice nestalih žive u neizvjesnosti' [Families of the Missing Are Living in Uncertainty]. *Oslobođenje*, June 30, 2013, 5.

<sup>61</sup> S. Škulj, ‘The Krajina Identification Project (KIP): Challenges identifying missing persons in Krajina Region’, presented at *21st International Meeting on Forensic Medicine Alpe-Adria-Pannonia*, Sarajevo, 30 May – 2 June 2012; Dedajić, They Made Mistakes in Krajina When Burying Victims

been in this unidentified limbo state for a long time. Even though attempts have been made in the past to start dealing with these cases, the process of the revision of these cases started in June 2013<sup>62</sup>, with the hopes that these cases will be resolved and that these ghost of the past will finally be put to rest.

### **Where does it end?**

The politics of the process of searching and identifying the missing in B&H are very multifaceted, and have evolved and changed along with the changes in actors in the process and their agendas. It is clear that wartime Commissions for Missing Persons could be viewed as yet another extension of war in their clear goals of resolving the fate of only particular ethno-religious group. These Commissions dealt in very important capital in war politics at the time: the lives of the living POWs, and the bodies of the dead. Through their work being so clearly ethno-religiously defined, the commissions reinforced the goal of the emerging nations/warring parties by, to borrow Verdery's argument, claiming 'our' living and dead, from 'them' and bringing the living and the dead to 'our' territory and burying them in 'our' soil, using the dead to consecrate the space and territory as 'our'<sup>63</sup>, as they have now been given religious burials. Giving how death has long been associated with religion<sup>64</sup>, these bodies have now been re-ascribed a collective, ethno-religious identity. In the war of ethno-religious affiliations this further solidified the claims of land, territory and soil belonging to a particular ethno-religious group.

This was not the only way collective identity was ascribed by the Commissions. We would argue that Commissions also held biopower, in Foucauldian terms, over their POWs, where they governed their lives, and possible death, but also, symbolically, life (the living prisoners) and death (the bodies) themselves. The biopower Commissions held was both individual to each Commission, but also collective to them all, as only through their mutual agreement could exchanges proceed, a process that was mostly based on reciprocity of these biopowers. Still, the relations of these biopowers were somewhat governed by the POWs and bodies these biopowers controlled, as identities of POWs, and at times even of the dead, were known, thus already ascribing them to a particular ethno-religious group, even if by the person's name alone. Through this collective identity, POWs and dead bodies governed which Commissions, biopowers, will negotiate their exchange. The Commissions in turn, through the workings of their biopowers, i.e. the exchange of POWs and the bodies, ascribed the collective, ethno-religious identity on persons and bodies exchanged through this act. This, we would posit, worked as a feedback loop for the biopowers.

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<sup>62</sup> *Ibid.*; ICMP, Process to Review Cases of Unidentified Mortal Remains in BiH

<sup>63</sup> *Ibid.* pp. 97-98.

<sup>64</sup> *Ibid.* 31-32., Katherine Verdery, 'Dead Bodies Animate the Study of Politics', in Antonius C. G. M. Robben (ed.) *Death, Mourning and Burial: A Cross Cultural Reader* (Oxford, Blackwell, 2002).

While collective identities, in this case ethnicity and religion, in 'pure' sciences would not constitute 'biological', for Foucault life, and thus the 'bios' in biopolitics and biopower is a synthetic notion of life, embracing all facets of human existence, and thus in turn ethnicity and religion<sup>65</sup>. The Commissions therefore held both forms of Foucault's biopower or they played a role in 'subjugation of bodies and the control of populations'<sup>66</sup>. This biopower was organised around Foucault's two poles: it was in charge of both bodies of individuals, but it was also in charge of biopolitics of populations<sup>67</sup>, collectively identified bodies, through perceived ethno-religious 'belonging' of bodies to a particular collective identity. With the nature of the conflict, it is not surprising that every aspect of it was aimed at defining the emerging societies that wanted to be recognised as separate, and that so too were the bodies of the captured and the dead.

As already stated the conflict ended through the signing of DPA. Through these process the international community was now claiming authority over the parties through both brokering the deal, but also through the establishment of the OHR, international community made manifest in Bosnia and Herzegovina. Annex VII Article 7 of the DPA, the article specifically dealing with the issue of missing persons, opened the doors for expectations of the families of the missing that identifications of the bodies will be individual identifications of physical remains. It also enabled control of the bodies by the state as the one who is ultimately responsible for them<sup>68</sup>. The fact that the issue of the missing is directly dealt with in the DPA showcases the international community's agenda to base reconciliation, in part, on accounting for those missing from the war. One could further argue that this was an attempt by the international community to push for unity within B&H; while it did broker a divided country through DPA, now it was attempting to include identifications as a goal of 'the State', not its divided parts, and in turn reinserting all 'the missing back into the embrace of the state'<sup>69</sup> and thus reasserting the state's authority<sup>70</sup>.

A more critical reading of this article also highlights the international community's new approach to knowledge production on the dead and the missing. After the fall of Srebrenica, even though utilising 'technological feat of looking down from above'<sup>71</sup> using U2 airplanes before the event to produce knowledge on the Serb positions, the international community failed to act upon this knowledge. Now it would seem, it would be in charge of producing and disseminating knowledge on

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<sup>65</sup> M. Foucault, *The Order of Things: An archaeology of the Human Sciences*, 2<sup>nd</sup> ed. (New York, Routledge, 2002), p. 293.

<sup>66</sup> M. Foucault, *The History of Sexuality: vol 1. An Introduction*, trans. Robert Hurley (New York, Pantheon Books, 1978), p. 140.

<sup>67</sup> *Ibid.* p. 40.

<sup>68</sup> C. Bennett, 'Who knows who we are? Questioning DNA analysis in disaster victim identification', *New Genetics and Society*, 33:3 (2014), 239-256.

<sup>69</sup> S. E. Wagner, *To Know Where He Lies: DNA Technology and the Search for Srebrenica's Missing* (Berkeley and Los Angeles, University of California Press, 2008), p. 255.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

those it failed by utilising services of the *international* organisation, the ICRC. The involvement of ICRC also determined part of the nature of this future process for the international community: resolving the fate of the missing was a humanitarian effort aimed at strengthening the authority of the clearly divided State.

International community's ideas behind Annex VII Article 7 clearly did not translate into reality. Instead, the process being a state-run operation was now an extension of the war and run by the former warring parties that made up this state. The role of the bodies of the missing now took on a new dimension: the bodies became biocapital in the division politics in postwar B&H. The international community kept the roles it had during the war: an observer and a referee. Now it was the OHR, the political manifestation of the international community's will, that was brokering agreements between the Commissions and territories they claimed as their own, lands the international community recognised as belonging to one side or the other in the DPA. Instead of the missing being returned into the embrace of the state, they were being returned into embraces of newly emerged societies/nations and the ethno-religious groups they represented. Verdery's 'our' and 'their' started to slowly materialise, now even in the postwar B&H. The international community was now complicit in the biopolitics of the dead, and instead of utilizing them to unify the heavily divided country, it stood on the side as the bodies of the missing were utilised as powerful biocapital in ethno-religious politics. Still as the broker of the DPA it had to keep authority of the processes it defined and thus the Joint Exhumation Process (JEP) was established. JEP required the OHR to give approval for actual exhumations and to therefore keep of control both the process and the consequent knowledge. The JEP worked on the premise of agreement between former Commission, now transformed into a new form, and the individual identities, promised by DPA, were now only possible within the collective identity of ethno-religious affiliation these Commissions represented. The process moved from the state looking for its citizens to particular ethno-religious groups retrieving members of its nation from 'their' territory, and then consecrating remains on 'our' soil and within collective identities inscribed by the DPA.

One other major international actor in this plethora of actors in the process was the ICTY, and having been given primacy over any local actors it could freely peruse any agenda it had. ICTY's agenda was tied to prosecuting perpetrators, and the bodies of the dead served as sites of knowledge production: post-mortem examinations, and later DNA testing yielded critical evidence, which the international community, specifically in the context of the Tribunal, levied to secure criminal convictions of perpetrators. The knowledge produced did not differentiate between individual bodies, but rather, in a Foucauldian sense of biopolitics, depended on the collective identity of ethno-religious affiliations that the DPA prescribed as the only possible membership in post-war B&H. The body, for Foucault and in relation to government and administration of populations, is a nexus of three modalities of power: observation, judgment and, the most important, examination. For Foucault examination is 'the most



crucial, since it involves subjecting individual bodies to regimes of expert knowledge and practices<sup>72</sup>, and connecting it to social and political power. The workings of the ICTY firmly kept control over the knowledge of the bodies away from the individual and within collective identity. Again, knowledge production, including on collective but not individual identities, came from the international community: international experts and international agencies, who passed that knowledge on to local actors themselves, more concerned with the individual victims. Indeed, the more important knowledge of how to identify or individualise the body was left to the local actors to discover themselves.

The important turning point in these very separate agendas came with the involvement of the PHR. The point marked the first cooperative approach in this process between local and international players in B&H. The agendas of international and local actors seems to have finally merged, and with the involvement of ICMP, at this point only through financial backing of the PHR<sup>73</sup> and later by overtaking the ‘international’ side of the process, the process started to transform into a cooperative effort of local and international actors, including the way knowledge was produced on individual and collective identities of the missing. With ICMP’s introduction of DNA-led identification system in 2001, these new technologies of identification meant that DNA became the new currency in biopolitics in B&H. While individual identifications were now the primary goal of those involved in the process, along with persecution of perpetrators, they could never be fully removed from collective, ethno-religious identities of former warring parties.

ICMP, as an international co-operator in this new ‘holistic’ process held unity of the political powers searching for the missing as one of the goals of its agenda. Biopowers previously held by the Commission were to be united in the MPI, a state level body which ICMP and the state government agreed on in 2004 and realised in 2008. At this point the state was going to strengthen its authority by ‘fixing individual identity to nameless remains’<sup>74</sup>, and it seemed that individual identities will take primacy over collective, ethno-religious ones. It seemed that the international community’s attempt to unify local actors in efforts to identify all the missing have finally come to realisation. Five months after MPI became operational the RS Operational team became active and clearly competing with the work of MPI. While the Operational Team claims that it is “not formed to locate only missing Serbs, but missing Muslims and Croats”<sup>75</sup>, it does only present “authentic documentation about Serbian suffering”<sup>76</sup> in B&H. The formation of the Operational Team showcases that, at least some, the local

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<sup>72</sup> R. Williams and P. Johanson, *Genetic Policing: The Use of DNA in Criminal Investigations* (London and New York, Routledge, 2011) pp. 25-6.

<sup>73</sup> Klonowski, *Forensic Anthropology in Bosnia and Herzegovina*.

<sup>74</sup> Wagner, *To Know Where He Lies*, p. 255.

<sup>75</sup> RS Operativni Tim, 'About Us'. Accessed November 22, 2014. <http://www.nestalirs.com/onama.html>.

<sup>76</sup> RS Operativni Tim, 'Exhumations'. Accessed November 22, 2014. <http://www.nestalirs.com/indexcir.html>.

actors are still more interested in reclaiming the dead for their ethno-religious nations instead as the citizens of a joint state.

With the DPA bringing such a sudden and unresolved end to the war in the Bosnia and Herzegovina, one cannot but ask: could this have had the impact on the process of recording, recovering and identifying the missing? With no clear 'victor' in the war could the counting of the missing be used to determine such a side? The numbers of those exhumed and identified are constantly counted in B&H by a multitude of different parties: politicians, family members, media and so on. One common theme in these endeavours is that not as many Serb victims are being exhumed and identified as Bosniak ones. These claims have been professed by the different stakeholders in the Republika Srpska for a very long time using the now very common ethno-religious rhetoric. While one might be tempted to just view this as just another political ploy contributing to the overall deterioration of the political situation in B&H especially to public threats of Republika Srpska's politicians of referendum for succession, it is important to note that this view does not have solely ethno-nationalist form. A recent study showed that this kind of criticism has its basis in the perception of some that 'biased and one-sided approach with Bosniak victims being prioritised over Serb and Croat victims'<sup>77</sup> is displayed, but also that the much higher success in identifying those missing from the 1995 Srebrenica genocide are evidence of preferential treatment for victims of this event<sup>78</sup>. Here collective identities of the dead are utilised again, and they are pitted against each other to, it would seem, show that 'our' dead are discriminated against in order to benefit 'their' dead. One important aspect here is that 'their' now also encompasses a smaller part of 'our' that is perceived as somehow getting a preferential treatment. While it is interesting to examine, that discussion is beyond the scope of this paper and should be addressed in the future. However, no matter who 'our' and 'their' are, biopolitics of the dead are evidently still at play in the B&H's society today.

As it has been shown, substantial international and local resources and efforts were put towards resolving the fate of all the missing as one of important methods of reinforcing transitional justice and bringing forth reconciliation in B&H and the region. The goal was to unite a heavily divided society that was the product of war, even though these divisions were now solidified with the DPA. Therefore, one has to question whether reconciliation is achievable within a society where the perception of facts is contrastive among its citizens and the past is still contested?

### **In place of a conclusion**

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<sup>77</sup> M. O'Reilly 'Catastrophe, Memory and Gendered Activism: Peacebuilding in Post-Conflict Bosnia-Herzegovina', Unpublished PhD Thesis, Department of War Studies, King's College London, 2014, p. 214.

<sup>78</sup> *Ibid.*, pp. 214-215

All that was discussed here has an extreme effect on B&H, its whole society and the reconciliation process. On a social level this is a societal trauma as these problems bring the society to a transition without an end, and they pose a question for justice and reconciliation. Social, economic, legal and ethical impact of not having ‘closure’ for families of persons who went missing in any event is of great significance to ‘transitioning’ societies. B&H has made significant strides toward bringing identities back to the missing individuals from the forensic point of view, but the biopolitical reinscribing of collective identities can easily overshadow these efforts. Efforts undertaken in this country can be a role-model for the societies dealing with the same issue and recognizing possibilities for identifications of mass fatalities, but their shortcomings have to be recognised and addressed as well, and it should not be presumed that the model is or should be just transplanted onto other situations without understanding particulars of those contexts.

One of the success of the process is also the Law on Missing Persons which provides certain benefits for the families of missing persons. It is clear that problems the process of identifying the missing faces today, such as misidentifications, have legal ramifications for families of the missing. In case of those bodies that have been misidentified legal ramifications could affect families of those who had a body of a different person identified as their loved one, but also for the families whose loved one has been buried under somebody else’s name. Socially these misidentifications are a cause of trauma for the families. A trauma to those told that they buried a wrong person, and a trauma to those told that their loved one was wrongly identified as somebody else and, had it not been for the misidentification, their fate would have been known and resolved. These misidentifications do not just cause this new trauma, they also prolong the family’s trauma of uncertainty and ‘not knowing’ the fate of their loved one, but they also create restless ghosts of the pasts that are bound in identification limbo. Misidentifications also become political biocapital used by all sides for their various goals, including manipulation of numbers of those identified which allows for the perception that groups are given preferential treatment to develop.

Still, it is clear that no matter what political roles they take and how they are utilised, dead bodies of the missing in B&H persists symbolically and materially. The families of those still unaccounted for are waiting for them to be found and identified in order to put them to rest. Nearly 20 years on from the end of the war B&H is still in its never-ending ‘transition’ and resolving the fate of the missing is an important part of that ‘transition’. Ghosts of those not found for the past nearly 20 years are still being put to rest. One has to wonder if all these ghosts are ever going to be put to rest, and if not, who and how will decide when to stop chasing them? Maybe we should really be asking *if* this process will ever end since dead bodies clearly still play a crucial role in a divided, post-war B&H. How to articulate to those that are still striving for peace for their lost loved ones and themselves that this might not happen?

What seems clear to us is that wartime divisions, subsequently inscribed in the DPA are still alive and well, and deepening. If we are to move forward, dialogues and discussions should take place within this torn society, in order for scientific and fact supported conclusions to be accepted and for the past not to become a burden for generations to come. Authors of this paper are hoping that an integrated approach to examining B&H's facts from the past and full reporting on the same will deliver some relief to the families of the missing, killed, injured, and to other survivors, and that lessons learnt will not allow for the same atrocities to take place again.

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