3.1 **Introduction**

The starting point for Bosnian victimization and the struggle for redress is the destructive Bosnian war that lasted from 1992 to 1995 and cost around 100,000 lives. While the conflict was marked by mass atrocities and brutalization of the civilian population, it is the post-war development that forms the basis of the current malaise of surviving victims and Bosnian citizens alike. Much has been written about the 1992–1995 war and equally enough has been written about the post-war peacebuilding efforts that tried to reverse the disruption of the Bosnian ethno-national patchwork. Yet it is also the political reality of the past decade in Bosnia, best described as a stagnation and at worst as a frozen conflict, that has fundamentally shaped victims’ struggle for redress. This is due to what a prominent Bosnian sociologist Dino Abazović called a ‘predominant ethnicization of all aspects of social and political life’ in post-Dayton Bosnia and Herzegovina (2014, p. 35). Under such circumstances, it is easy to frame victims’ plight in ethno-national terms only. However, as this chapter outlines, the ethno-national and religious tensions have been refabricated, repackaged and securitized by key elites of the three so-called constitutive nations of the country. The imagined ethnicized security threats then easily trickle down to those citizens most affected during the war by sectarian and nationalist violence.
3.2 THE BOSNIAN WAR AND PEACE

Unlike the rest of Central and East Europe that transitioned from communism fairly peacefully, the Socialist Federative Republic of Yugoslavia (SFRY) plunged into ‘Europe’s bloodiest war since the Second World War’ (Hoare, 2010, p. 111) in the early 1990s. Nationalist rhetoric of the main political actors coupled with economic failures of Yugoslav socialism eventually led to the break-up of SFRY. After Croatia, the war took a savage course in Bosnia, the most multi-ethnic country of the socialist federation, where Bosnian Muslims (also now referred to as Bosniaks) only had a marginal majority over Bosnian Serbs and Bosnian Croats (Burg & Shoup, 2000, p. 27). The swift pitting of its ethno-national communities against each other, the war’s ‘intimate’ nature where neighbours killed neighbours and brutal methods of ‘ethnic cleansing’ by the Bosnian Serb military and Serbian paramilitaries sent shockwaves across the world (Clark, 2014, p. 116). By 1995, nearly half of the 4.4 million pre-war population of Bosnia was displaced and over 100,000 died, majority Bosnian Muslims. Although the war was initially portrayed in primordial terms as a religious and ethnic struggle, it was a deeply political conflict, fuelled by nationalist rhetoric and territorial claims made by Bosnia’s two neighbouring republics—Serbia (officially called the Federal Republic of Yugoslavia then) and Croatia, which were both ruled by authoritarian and power-driven nationalist leaders Slobodan Milošević and Franjo Tudman, respectively (Cigar, 1995; Gow, 2003). In the spring of 1992, Bosnia found itself caught between their territorial claims that were supported by local Bosnian Serb and Bosnian Croat separatists. The fundamental friction that lasted during the war (and continues to last to this day) was over whom Bosnia belonged to, i.e. which national community had a right to take over its territory and people (Bieber, 2006; Cigar, 1995; Hoare, 2004; Silber & Little, 1996).

3.2.1 The War as a ‘Problem from Hell’

War did not descend upon Bosnia overnight. Small skirmishes and violent incidents in the spring of 1992 across the country gradually engulfed the capital Sarajevo and other areas in the north and east. A full-scale war erupted on 6 April 1992 when Bosnian Serb forces began the indiscriminate shelling of the capital that lasted until the end of the war. Although the exact causes of the start of the war remains a matter for
discussions and various theories compete, the conflict in Bosnia was part of a larger process of disintegration of SFRY, which had already begun in 1991 (Burg & Shoup, 2000; Gow, 2003; Jović, 2001; Woodward, 1995). After SFRY de facto ceased to exist in the summer of 1991 when Slovenia and Croatia declared independence (followed by today’s North Macedonia) that was internationally recognized (Caplan, 2005a), Bosnia could either stay in rump Yugoslavia or become independent. Bosnian Serbs (31.5 percent of the population), Bosnian Croats (17.3 percent) and Bosnian Muslims (43.8 percent) each had a different idea about Bosnia’s future—whether it should declare independence, remain part of the rump Yugoslavia, or break apart into smaller territorial units.4

These opposing ideas were represented by the main nationalist political parties that overwhelmingly won the last pre-war elections in 1990. The Serb Democratic Party (SDS), Croat Democratic Union of BiH (HDZ BiH) and the Bosniak Party of Democratic Action (SDA) were all founded in 1990 as nationalist parties for ‘their’ people. In the case of Serb and Croat parties, the idea was also to potentially merge with their ethno-national brethren in neighbouring states (Manning, 2004). Main leaders of these parties became the key belligerents: Radovan Karadžić for SDS, Alija Izetbegović for SDA and Mate Boban for HDZ BiH. When on 3 March 1992 Izetbegović (the then President of Bosnia) declared independence after a referendum that most Bosnian Serbs boycotted, the first clashes erupted. BiH independence was recognized by the US and European Communities on 7 April 1992. On 22 May 1992 Bosnia and Herzegovina became a member of the United Nations (UN Resolution 757).

How to describe the war is another matter of dispute: while Bosniaks call it an ‘aggression’ and a ‘defensive-liberation war’, Serbs see it as a ‘civil’ or ‘patriotic war’ where they defended themselves after the Bosniaks declared independence while Croats (and Croatians in neighbouring Croatia) refer to it as a ‘homeland war’. These definitions remain key friction points. They are also critical national war-related ‘master frames’ of each group, as articulations and alignments of various events and experiences that ‘hang together in a relatively unified and meaningful fashion’ for each group (Snow & Benford, 1992, p. 137). These disputes notwithstanding, the war soon turned into a fundamentally multi-partite conflict with the involvement of neighbouring and external parties that supported armies in their own ‘nationalizing statelets’ as Brubaker called it (Brubaker, 1996).
Serbia armed and supported Karadžić who formally declared Republika Srpska (RS) on 9 January 1992 and formed a separate Army of RS (VRS). Its wartime seat became Pale near Sarajevo. Croatia supported Bosnian Croats who proclaimed their own separatist ‘Community of Herzeg-Bosna’ centred around Mostar (and a seat in Grude) and created their armed units as the Croatian Defence Council (HVO) (Bougarel, 1996, pp. 103–104). The Muslims (and those who wished for an independent Bosnia) were caught in-between and only gradually created the Army of BiH (ABiH) by the end of 1992. Because of the international arms embargo from September 1991, ABiH lacked equipment and weapons. According to Hoare, although ABiH had nearly 200,000 soldiers in its ranks as compared to 70,000 among VRS, VRS had ten times more tanks and armoured personnel carriers than the poorly equipped ABiH (Hoare, 2004, p. 112). HVO relied on supplies from neighbouring Croatia while VRS was supplied by the now disintegrated Yugoslav National Army (JNA). The military course of the fighting was tortuous. HVO initially fought with ABiH but this alliance broke down in the spring of 1993. The three official armies were thereafter pitted against each other—with support of various paramilitaries—until an agreement between Bosniaks and Croats about a united front was reached under heavy external pressure in Washington in March 1994. There was an additional inter-Bosniak conflict in north-western BiH between ABiH and the Army of the Autonomous Province of Western Bosnia led by a prominent SDA leader and businessman Fikret Abdić.7

Although the war was fought over political power and resources, ethnicity and religion were instrumentally applied to frame the animosities between the belligerents. The unresolved constitutional issues from the Yugoslav period and lingering traumas from World War II were manipulated by Serbian and Croatian political propaganda to demonstrate their rights over the Bosnian territory. Primordial notions of ethnic and national identities were exploited, creating a ‘collective paranoia’ (Woodward, 1995, p. 228) where ethnicity became the key framing tool of politics (Baker, 2015, p. 60). Stereotypes of bloodthirsty Croats as Ustaše, Serbs as Četniks and Muslims as barbaric Turks from World War II were revamped and amplified in the media. Moreover, many paramilitary units operating across Bosnia such as Željko Ražnatović - Arkan’s Tigers, Lukić cousins’ White Eagles and Vojislav Šešelj’s Četniks appropriated these labels and instilled further fear.
Religious communities added an extra identity dimension. A Bosnian Catholic came to be taken for a Croat and an Orthodox Christian for a Serb. Bosnians, Muslims or ‘Yugoslavs’ (which no longer existed), i.e. those who were Muslims by religion or had Muslim-sounding names, were confounded about their identities, some even identifying with Croats or Serbs (see Campbell, 1998). As Bosnians of identifiable Muslim background were targeted for their religion (although many were non-practicing), their previously secular and only historical identification with Islam strengthened.9 Faced with a lack of territorial identity, many Bosnians embraced a new political identity of ‘Bosniakhood’ that was resuscitated from the old Austria-Hungary in 1993 by SDA (Bougarel, 2007, p. 119) when the ‘Bosniak Congress’ adopted a decision to call all Muslims in Yugoslavia Bosniaks. Subsequently, while some Bosnian Muslims refused (and continue to refuse) the politicized Bosniak label embraced by the leadership of Alija Izetbegović and SDA, the terms Bosnian Muslims and Bosniaks have become merged in general parlance. The result was a simplification of highly multi-layered identities and allegiances and the emergence of a ‘group think’, i.e. ideas of ‘us’ as Bosniaks against ‘them’ as Croats and/or Serbs (Bougarel, Helms, & Duijzings, 2007; Hronešová, 2012; Kolind, 2008; Oluić, 2007).

In addition to the multi-partite and ethno-nationalist nature of the war, it was also characterized by targeting civilians. As the subsequent international criminal investigations ascertained, the aim of the war was to ethnically cleanse10 territories and create mono-ethnic units. This was clearly expressed in the 1992 ‘Six Strategic Goals’ of Radovan Karadžić (Donia, 2014). This strategy led to sky-high casualties, especially at the start and end of the war (Tokača, 2012, pp. 180–181). Indeed, the greatest numbers of civilians died in the first and the last months of the war in eastern Bosnia, the northern region of Krajina with Prijedor as its centre, and the capital Sarajevo, which staged the longest civilian siege in European history. Yet war crimes were also committed by Bosnian Muslim forces (e.g. around Konjic and eastern Bosnia), criminalized gangs operating Sarajevo and especially the mercenary mujahideen fighters that came from Arab countries to help ‘fellow Muslims’ (see especially Li, 2020). The crimes committed during the war to many observers seemed incompatible with the putative victory of liberalism and human rights in the early 1990s: they included mass rapes, burning people alive, massacres of women and children (especially in and around Prijedor and
in central Bosnia) and the well-documented killing raids of paramilitaries in north-eastern Bosnia in Bijeljina and Brčko.

Already in March 1993, the Bosnian government submitted a case to the international Court of Justice (ICJ) against the Federal Republic of Yugoslavia for violations on the Genocide Convention. Comparing Bosnian Muslims to Jews in the Holocaust, the aim of the case was not only to incite intervention and punishment but also to lift the arms embargo on Bosnia (Mallinder, 2009, p. 42). The decision (see below) came only after an internationally recognized genocide was indeed committed but not pinned to what was by then Serbia. The atrocity that shook the western world to the ground and was ultimately defined as genocide by international criminal courts was committed in Srebrenica. In July 1995, roughly 8000 mostly Muslim men were killed by VRS soldiers under Ratko Mladić in the UN protected ‘safe zone’ of Srebrenica (see Chapter 5). The external failure of the UN protection forces (UNPROFOR) to save the unarmed men, who had been previously forced to give up their weapons, irreparably tainted the image of international peacekeeping and is often used as a tragic example of international peacekeeping missions.

The controversial external involvement in the war—or rather its double-edged connivance and tardiness in response—is another legacy of the war that has influenced Bosnian post-war development. The then US Secretary of State Warren Christopher famously called the war a ‘problem from hell’ (Power, 2013). Due to the framing of the conflict as a religious clash between Christians and Muslims, fuelled by Serbian propaganda that all parties were ‘equally guilty’ (Williams & Scharf, 2002, p. 50), external reaction was slow and restrained. Diplomatic negotiations at international conferences, the deployment of UNPROFOR in demilitarized zones in Srebrenica, Žepa and Foča, and humanitarian aid through the UN and other agencies were the key tools used throughout the war. Additionally, given the extent of the crimes and reports about large-scale victimization, the UN agreed to create a war-crimes investigation commission under the legal scholar M. Cherif Bassiouni in October 1992 (Hagan, 2003, p. 41). Based on his findings but also due to the general abhorrence about such atrocities committed at the end of the twentieth century, the UN decided to set up an international court in May 1993—referred to as the International Criminal Tribunal for the former Yugoslavia (ICTY).
Against the backdrop of all the other failed attempts to stop the war, this external justice tool was meant to symbolize that the main perpetrators of war crimes would not go unpunished and that further crimes will be deterred by this (Williams & Scharf, 2002, pp. 20–22). But the longer the conflict lasted, the clearer it became that local war thugs had little respect for justice or persecution and that a stronger message would be needed. Moreover, given the strong presence of foreign journalists in the country, the Bosnian war was under great scrutiny from the world’s public, growing dissatisfied with the lack of action—beyond humanitarian aid and diplomatic efforts. The so-called ‘CNN effect’ of the gruesome images (Bouris, 2007, p. 4; Sontag, 2003, p. 93) on the global public made external non-involvement increasingly untenable. The collected evidence also suggested that the death toll and atrocities were skewed to the Bosniak side, especially after Srebrenica. Shortly after Srebrenica, the US President Bill Clinton gave his consent to NATO forces to bomb Serbian posts in Bosnia (without a UN approval), forcing all sides to the negotiation table. At the time of the bombing, Bosnian Serbs controlled nearly 70 percent of the territory (though scarcely populated), but by the late autumn of 1995, Bosnian Army made major military headways and contemplated the takeover of Banja Luka, the heart of RS. The fact that Izetbegović stopped short of taking over key Serb centres to this day puzzles observers. However, as Hoare documented, this decision was driven by the dictat of the United States as the US policy was to ‘stop the war’ rather than ‘help Bosnians win’ the war (Hoare, 2004, p. 124). Faced with potential strikes against his own forces, Izetbegović decided to negotiate instead.

By then, Bosnia was physically and psychologically decimated. The direct economic losses were estimated at around 60 billion USD. Industrial and agricultural production dropped by 80 percent (Cousens & Cater, 2001, p. 87). In addition, 2000 kilometres of roads and 445,000 houses were destroyed, while over 750,000 deadly land mines were scattered across the country (Council of Europe Parliamentary Assembly, 2007, p. 135). Over 300,000 soldiers emerged from the war only within Bosnia, many having spent their youth on the military lines. According to Hoare, midway through the war, ABiH disposed of 110,000 troops and 100,000 in reserves, VRS had 80,000 and HVO had 50,000 (Hoare, 2004, p. 112). Most importantly, the pre-war Bosnian patchwork of intermixed ethno-national groups had been reversed and territories had been
ethnically homogenized (i.e. cleansed). Over half of the pre-war population of 4.4 million was uprooted, two thirds residing abroad. Around 2.5 million people were forced out of their homes: 537,000 persons fled to countries outside the SFRY, 714,000 to Croatia, 495,000 to Serbia and Montenegro and 810,000 were internally displaced in Bosnia (Tabeau & Zwierzchowski, 2010). According to UNHCR statistics, 80 percent of all refugees were Bosniaks, 13 percent Bosnian Croats, and 6 percent Bosnian Serbs (UNHCR, 2003). By the end of 1997, 540,000 Bosnians (i.e. around one fifth of the pre-war population of BiH) had already been granted permanent status abroad—with small incentives to return. Thousands of those who returned initially found their houses ruined, mined or inhabited by members of the ‘other’ group.

The human loss was tremendous, but its true extent was a matter of speculation during the first post-war decade. While Bosniaks and external actors reported over 250,000 dead, the Bosnian Serbs claimed the number as low as 25,000 (Skrbic, 2006). The last pre-war census was carried out in 1991 and the first post-war census data was only released in 2016, leaving space for furious number wars. By 2007, a civil society run team of Bosnian investigators led by Mirsad Tokača at the Research and Documentation Centre in Sarajevo established that 95,940 people were killed, mostly Bosnian Muslims (see Fig. 3.1). According to their findings, 64.6 percent of casualties were Bosniaks, 41 percent were civilians and nearly 90 percent were men (see Fig. 3.2). The fatalities were thus greatly

![Fig. 3.1 Fatalities of the Bosnian war by ethnic identity](Source Figure created from data included in the Bosnian Book of Dead [Tokača, 2012, pp. 125–127])
skewed towards men, resulting in thousands of widows and fatherless children. While this is not the official record, it is widely cited as a realistic death-toll account. Moreover, these findings roughly corresponded to research done by the ICTY’s demographic unit, which concluded that war-related deaths amounted to 104,732, i.e. numbers higher to Tokača’s initial findings (Tabeau & Zwierzchowski, 2010). This discrepancy has been mainly caused by the growing number of identifications of missing people (see Chapter 5). Additional investigations established that 20–50,000 mostly women (but also men) were raped, up to 200,000 people were detained in war camps and over 32,000 people went missing (ICMP, 2017). As many as half of Bosnian citizens were estimated to suffer from the post-traumatic stress disorder, PTSD, although there are no clear data sources (Ramet, 2006, p. 467).

### 3.2.2 The Dayton Peace Agreement of 1995

While the international intervention was delayed, ineffective and controversial, NATO’s bombardment of Serb positions in Bosnia in the fall of 1995 helped to bring the adversaries to the negotiating table of the US diplomat Richard Holbrook. In November 1995 at a US military base in Dayton Ohio, Slobodan Milošević of Serbia, Franjo Tudman of Croatia and Alija Izetbegović of Bosnia finally concluded the ‘General Framework for Peace Agreement’, better known as the ‘Dayton
Peace Agreement’ or simply ‘Dayton’ (OHR, 1995). Although neither of the parties was satisfied with its final form, Izetbegović famously calling it ‘unjust’, it appeared to have been the only agreeable compromise. Dayton has since then become a laboratory for political scientists, who have revelled in criticizing the agreement’s flaws while stressing its peace-making success (Bose, 2002; Chandler, 2000; Mertus, 1999; Sebastian-Aparicio, 2014; Weller & Wolff, 2008). On its 150 pages, Dayton presented a blueprint of comprehensive liberal peacebuilding. It covered extensive state-building clauses, ordered military consolidation, specified refugee return, proposed elections and included a series of key human rights agreements. It also introduced a new institution—the Office of the High Representative (OHR)—tasked with supervising the implementation of the peace accords. While Dayton was an unequivocal success for peace, it did not prove to be a framework for integrating Bosnia’s centripetal ethno-national elites—quite the opposite (Abazović, 2014). Dayton set out a byzantine constitutional structure in its Annex IV (de facto Bosnian Constitution), based on far-reaching consociationalist power-sharing, decentralization, ethnic vetoes and proportionality. While power-sharing may be viable for states where some minimal level of accommodation is possible and some future political direction is shared, in the case of Bosnia—where the war was abruptly stopped by external intervention without solving the underlying issues of whom the country belongs or what its future should be like—such extensive power-sharing resulted in a ‘paralysis’ (Bennett, 2016).

Dayton created two entities—Republika Srpska (RS) and the Bosniak-Croat Federation (FBiH)—with the territorial proportion of 49:51 respectively. These units were divided by the so-called ‘Inter-Entity Boundary Line’, which de facto legitimized the military gains and ethnic cleansing of the Bosnian Serb leadership by creating internal ethnic borders between Serbs and mainly Muslims. The anthropologist Stef Jansen described the two entities as ‘ethnic fiefdoms’ of nationalist political parties (Jansen, 2006, p. 179). RS became centralized and divided into five regions and 63 municipalities. In contrast, FBiH was sub-divided into ten cantons with wide self-governing powers, three of which were under Croat majority (West Herzegovina, Posavina, and Canton 10) and two mixed (Central Bosnia and Herzegovina-Neretva). Thereafter, cantons differed in terms of their administration and the structure of their municipalities. Two cities—Sarajevo and Mostar—were set to be ruled by special provisions, and the disputed and highly strategically
located Brčko in the north-east was left to be decided later in an arbitration, which in 1999 defined it as a multi-ethnic internationally governed District. In 2009, it was included in the Constitution, which became the first and only constitutional amendment. Therefore, most executive and legislative power was granted to the subnational level of entities, which, as Caplan argued, have enjoyed ‘many of the prerogatives of a state’ (Caplan, 2005b, p. 111). The central state was initially so weak that only around 20 percent of all state functions fell under the central institutions (Merdžanović, 2015, p. 163). At the top is the tri-national rotating Presidency (consisting of members representing Bosniaks, Croats and Serbs), Council of Ministers (ipso facto central government) and a Parliamentary Assembly (henceforth ‘Parliament’) comprising the House of Representatives and the House of People. Only three ministries were created at the central level (Foreign Affairs, Foreign Trade and Civil Affairs). Entities were given control over the rest, including social care and veteran issues.

Article 6 of the Constitution also established the central Constitutional Court (opened in 1997) as a hybrid institution consisting of three international and six domestic judges (two from each ethno-national community). Both entities were to have their own presidents, governments, ministries, assemblies, courts (including entity supreme and constitutional courts) and police forces. Each entity was also set to have its own parliamentary assembly (henceforth ‘Assembly’ to distinguish it from the state-level ‘Parliament’). As a result, Bosnia has had over 140 different ministries at various levels and seven separate electoral contests organized at different times. In FBiH, a significant level of authority was devolved further down to the cantonal level to allow for Croat self-administration. While the entity level adopts the so-called ‘umbrella laws’, each cantonal assembly adopts its own specific laws (Maglajlić Holiček & Rašidagić, 2007, p. 154). At the state level, people vote for the two parliamentary houses and the presidency. At the entity level, for assemblies, presidents and vice-presidents and in FBiH for cantonal assemblies and municipal councils. The legal quagmire has to this day plague the implementation of many laws.

With regards to human rights, the entire Annex VI of Dayton included a substantial set of human rights provisions. Chapter 2 of the Annex established the Commission of Human Rights, consisting of the Ombudsman and the Human Rights Chamber, tasked with processing human rights violations. The Commission’s functions were to be revised in five years,
but it existed until 2004, when its cases were transferred to the Constitutional Court. During its existence, the Human Rights Chamber was a key institution, processing claims of returnees, victims, but also other minorities. In addition to addressing war-related claims, it also processed cases of ethno-national discrimination, paradoxically often in clash with the Dayton provisions. According to Dayton, the three so-called ‘constituent peoples’ of Croats, Bosniaks and Serbs gained significant collective political rights at the expense of individual rights of citizens but also minorities, which are referred to as the ‘Others’ in the constitution. For example, on all issues deemed as ‘vital’ by any of the constituent peoples, a majority vote of all present delegates is required, effectively stalling many reforms (Bieber, 2002a, p. 215). Although Dayton also made Bosnia a signatory to every major international human rights treaty, which inherently contained anti-discrimination provisions, the ethnic key has been applied in all political functions and the local level, later leading to several anti-discrimination court cases. For example, in March 2002, after the so-called ‘Constituent Peoples Agreement’ of Mrakovica-Sarajevo, all citizens gained equal representation across the Bosnian territory (Chandler, 2000, p. 111). It has also effectively forestalled a viable creation of non-national identities and civil citizenship concepts. Dayton also included a series of human rights conventions that obliged Bosnia to provide redress for victims and refugees.

Acknowledging that this system may have difficulty functioning at first, authors of Dayton tasked the OHR with supervising the peace, ensuring compliance with the rules and coordinating the variety of externally deployed civilian organizations (in Annex X). In other words, the OHR was to ensure the transition of the country from war to peace and from chaos to stability. The High Representative (HR) was to be appointed and guided by the so-called Peace Implementation Council (PIC), an ad hoc coalition of 55 states and organizations that had come together independent of the UN to steer the implementation of the peace process. The OHR and the stipulations of Dayton were initially fiercely opposed by Bosnian Serbs as it left them in a state whose very existence they rejected. In contrast, Dayton was endorsed by Bosniaks—even if they called it ‘unjust’ as it recognized the Republika Srpska despite it being created by ethnic cleansing. Later, Bosnian Serbs became strong defenders of the Dayton-created statelets, but Bosniaks criticized it for freezing Bosnia in the state of 1995. A recent poll demonstrated that most Bosnians agree with the expert assessments that Dayton was a necessary measure to end
the war but not a framework to build a state (Toal & O’Loughlin, 2016). Overall, because of its institutional provisions, the role of external actors, and the human rights clauses, Dayton has been constantly invoked in Bosnia’s post-war realities. As an interviewed Bosnian legal expert noted, ‘Dayton stopped us from killing each other … but we carry on fighting via different means’. This view tallies with the general opinion among political scientists in Bosnia, one of whom argued that Dayton ‘created fertile soil for political interventions with an ethno-national prefix’ (Abazović, 2005, p. 195), suggesting that it solidified divisions created during the war.

3.3 Post-War Politics: Between Guardianship and Polarization

Beyond internal divisions, post-war development in Bosnia can be characterized by complex dynamics between external and domestic actors. These interactions unravelled in different stages after the war. Their impact on daily life in Bosnia and the ability to move for both victims and ordinary citizens could not be overstated. The blocked nature of Bosnian politics and laggard economic progress have created various types of frustrations and apathies on the one hand but also social movements on the other. To provide more clarity to the post-war Bosnian developments, I structure this section by introducing three phases after 1995, defined by broader policy priorities of the main proximal actors with powers over victims’ recognition and redress. While the phases are not delineated by clear borders, there are several milestones to recognize that mark off the main post-war developments in Bosnia. They highlight the changing priorities of external actors and the levels of domestic cooperation and intransigency. They are as follows:

1. Emergency post-war stabilization (1995–1999);
2. Centralization and external state-building (2000–2006);
3. Flawed Europeanization and re-nationalization of politics (2007–present).
3.3.1 Emergency Post-War Stabilization (1995–1999)

The final stages of the Bosnian war and the immediate post-war period were characterized by massive reconstruction efforts by a vast number of external actors, ranging from military organizations to humanitarian agencies. According to McMahon and Western, ‘17 different foreign governments, 18 UN agencies, 27 intergovernmental organizations, and about 200 nongovernmental organizations (NGOs)—not to mention tens of thousands of troops from across the globe—were involved in reconstruction efforts’ (McMahon & Western, 2009, p. 69). The key efforts of this multitude of actors was security, physical reconstruction, humanitarian aid and refugee return. After NATO’s military intervention in 1995, several peacekeeping missions were deployed to Bosnia. The wartime peacekeeping UNPROFOR forces were soon reinforced by 60,000 soldiers from the NATO Implementation Force (IFOR) that in 1996 turned into a Stabilization Force (SFOR). The initial policing was also taken over by a UN force (International Police Task Force, IPTF), which was not only tasked with policing but also vetting procedures and demobilization programmes, later taken over by the World Bank (Moratti & Sabic-El-Rayess, 2009). Over 10,000 civilian foreign officials were also deployed to secure the peace implementation under OHR’s supervision.

The humanitarian aid offered to the country’s post-war reconstruction was immense. During the first five donor conferences (until 1999), external actors pledged to spend 5.25 billion USD (Bennett, 2016, p. 93). The IMF later established that between 1996 and 1999, 3.7 billion USD were spent on civilian aid in Bosnia (International Monetary Fund, 2005, p. 2). On a per capita basis, the reconstruction of Bosnia—with less than four million citizens-made the post-World War II rebuilding of Germany and Japan look modest,’ McMahon and Western concluded (2009, p. 69). Bosnia was indeed inundated by foreign aid directed at physical reconstruction and infrastructure, financing the emerging NGO sector, and supporting up to 80 percent of the population (Cousens & Cater, 2001, p. 88). By 1997, nearly 1500 local NGOs were set up either as spin-offs of international NGOs or through international funds with the aim to supplement—or even substitute—some key state functions (Black, 2001, p. 180; see also Helms, 2014). While these efforts were an emergency response to the war, they later became a key feature of the Bosnian civil sector, which has been dominated by a small number of organizations whose lifespans and priorities were driven
by foreign funding (see Belloni, 2001; Bieber, 2002b; Fagan, 2010; Maglajlić Holiček & Rašidagić, 2007; Sejfija, 2006).

This first period was also marked by the highest number of refugee and displaced returns, a policy area included in Annex VII of Dayton. The agenda of returns, implemented by the new Return and Reconstruction Task Force (RRTF), was in line with the peacebuilding aims of the UN and the EU, both represented by the OHR, and in the case of the EU also by the newly set up Delegation of the European Commission (established in July 1996). Their aim was to re-create a multi-ethnic Bosnia and strengthen capacities for return at the central level (Jansen, 2007). Returns were initially slow due to security concerns: some returnees found their houses mined, others were intimidated and beaten. Despite over a thousand attacks by 2001, post-war returnee violence was relatively low though present (Boyle, 2014, p. 119). UN agencies (e.g. UNHCR and UNDP), International Committee of the Red Cross (ICRC), OSCE, charities (such as Caritas) and EU agencies first focused on returns to areas under control of one’s own ethno-national community, where returnees faced lower security risks, so-called on ‘majority returns’ (ICG, 1998a). But as security improved by 1998, the emphasis shifted towards minority returns, i.e. people returning to areas where their ethno-national community was not in the majority (Black, 2001, p. 182). Despite the wider deployment of SFOR and IPTF, many understandably feared returning to an area ruled by the ‘other’ group. While Bosniak politicians encouraged minority returns, arguing that the international forces would protect returnees, Bosnian Croats and Serbs worked in the opposite direction to consolidate their territorial gains. They argued that minority returns would lead to the creation of fifth columns within their ethno-national turfs (Belloni, 2007, p. 128). Radovan Karadžić famously led a fear-mongering campaign in 1996, threatening Sarajevo Serbs to move out unless they want to become victims of Bosniak vengeance. His campaign led to the 1996 exodus of up to 50,000 Serbs from Sarajevo, turning the capital into a largely mono-ethnic city (ICG, 1998b).

The fearmongering nationalist rhetoric led to the fact that by 1998, only 570,925 individuals, i.e. 25 percent of the displaced population, returned to their pre-war homes (Belloni, 2007, p. 141). In addition to improving security, another strategy was needed. Property restitution was soon selected to offer an effective incentive encouraging people to come back. The HR in 1999 decided to amend procedures of the existing so-called Commission for Real Property Claims, which was created by
Dayton, in order to facilitate people’s access to their pre-war property (Williams, 2004). These changes simplified administrative procedures, leading to an increase in returns. The following year, 2000, was later dubbed the year of returns when around a million people returned. By 2003, over 90 percent of all property cases were presumably resolved (Ferstman & Rosenberg, 2009, p. 511). Despite such success, property restitution also became a lucrative business. The main Bosniak party, SDA, controlled the new property funds in FBiH and soon misappropriated large sums using their informal networks and patronage (Pugh, 2002). In a notorious case in RS, the government accepted a financial support of one billion USD to restore Bosniak and Croat houses for 70,000 people, but only 3,700 were housed while the rest of the funds were embezzled (Belloni, 2007, p. 136). Refugees wanting to return to Croat parts of Mostar were equally prevented by HDZ BiH authorities that used intimidation and introduced bureaucratic obstacles to discourage any potential Bosniak returns and repossession of houses (Bojičić-Dželilović, 2006, p. 212). The property reconstruction was thus a continuation of the clandestine economy and violence of the war (Andreas, 2004).

It must be acknowledged that physical violence rapidly plummeted after 1995 (Boyle, 2014, p. 101). However, the domestic political constellation in this period was warlike. The same actors and conflicts created during the war remained in place, manifesting themselves in the first elections in September 1996, i.e. only nine months after the end of the war. Against the backdrop of electoral fraud, intimidation and voter manipulation, the belligerent nationalist parties won. The three presidential winners were the leader of SDA and the war-time President Alija Izetbegović, the co-founder of SDS Momčilo Krajišnik and the former president of the separatist Herzeg-Bosna Krešimir Zubak of HDZ BiH. Amnesty was soon granted for desertion and all economic crimes (including illegal commerce, tax evasion and misuse of humanitarian aid) and only serious human rights violations and crimes under ICTY’s investigation were considered reasons for political vetting and decertification of electoral candidates (Zupan, 2007, p. 333). As some noted, ‘close relationships of loyalty and trust between nationalist politicians, the security apparatus and criminals’ that were forged during the war remained intact thereafter (Andreas, 2004, p. 44). In the absence of any substantial political vetting, their transition from war to politics was smooth.
Politics was initially so confrontational that the first HR Carl Bildt stated that the peace ‘felt like another war’ (Sebastian-Aparicio, 2014, p. 59). Bosnian Croats refused to participate in governmental institutions of the Federation and the central state, further insisting on the creation of a third entity for Croats. Bosnian Serbs challenged the HR and led a political boycott of Dayton’s provisions. On the Bosniak side, internal conflicts within SDA led to the April 1996 creation of a new Bosniak political party under the former wartime prime minister Haris Siljadžić—the Party for Bosnia and Herzegovina (SBiH). Initially created as a moderate Bosniak party, it later became the key vanguard of Bosniak nationalism. By the end of the first phase, its main aim became the centralization of the country and dissolution of the cantonal and entity system, best exemplified in its 2000 electoral slogan ‘Bosnia without Entities’ (Bose, 2005). Carl Bildt had only limited powers and was reliant on these intransigent actors for cooperation in implementing the peace agreement (Sebastian-Aparicio, 2014, pp. 58–59). As some poignantly argued at the time, ‘OHR’s powers are like those of the pope: it can issue an encyclical, but unless people believe, there is very little it can do about their behavior’ (Daalder & Froman, 1999, p. 111). The HR also struggled to control the multiplicity of external bodies and actors involved in Bosnian post-war reconstruction (cf. Caplan, 2005b, p. 36).

For these reasons, Bildt’s successor Carlos Westendorp (in office from 1997 to 1999) demanded direct tools for dismissing politicians and imposing laws. The multilateral PIC allowed for such powers in December 1997 at a summit in Bonn (Merdžanović, 2015, pp. 181–183). It approved the HR to make decisions on ‘interim measures to take effect when parties are unable to reach agreement’ and ensure the smooth running of institutions. In effect, these so-called ‘Bonn Powers’ gave Westendorp and all his successors the right to dismiss officials that violated legal commitments under Dayton, or in any other way obstructed peace implementation. This was used soon after when the HR imposed a new and more inclusive citizenship law in December 1997 (Merdžanović, 2015, p. 258). The Bonn Powers were also used to sack some obstructionist politicians, such as in March 1999 when the HR removed the elected RS President Nikola Poplašen. Although the OHR expanded its powers only gradually, the institution became the key motor behind neoliberal reforms aimed at reducing welfare and state apparatus as remnants of socialism, while strengthening political institutions that had to be rebuilt after the collapse of the state. Among others, strengthening
HR’s position also led to the creation of an FBiH Ministry for Veterans’ Affairs in 1999.\textsuperscript{18}

\textbf{3.3.2 Centralization and External State-Building (2000–2005)}

In the second phase from early 2000, the HR (since August 1999 Wolfgang Petritsch) launched a series of state-building interventions while the EU began to play an increasingly important role. This period was dominated by the Office of the High Representative and the application of the Bonn Powers. A new state media law, imposition of a common currency, vehicle licence plates and national passports were all carried out through the Bonn Powers (Sebastian-Aparicio, 2014, p. 61). HR impositions were further used to introduce some key justice reforms. The Law on the State Court of BiH was enacted by the HR in 2000 and later adopted in 2002 by the Parliament, leading to the opening of the War Crimes Chamber in March 2005.\textsuperscript{19} The state ministries of Human Rights and Refugees (MHRR), Treasury for Institutions of BiH and European Integration (later Directorate) and the State Border Service in 2000 were also the result of these external powers. After Lord Paddy Ashdown took over the office in May 2002 (he also served jointly as the first EU Special Representative, EUSR), the impositions were on average used 14 times a month (Sebastian-Aparicio, 2014, p. 67). He pushed for the creation of the State Investigation and Protection Agency (SIPA) in 2002, the Prosecutor’s Office (2002), the High Judicial and Prosecutorial Council (2002), Ministry of Justice (2003), Ministry of Security in 2004, Ministry of Defence in 2004 and joint Armed Forces of BiH in 2006. He also enforced the enactment of the new Criminal Code of BiH (2003) and enforced standard Value Added Tax (VAT) in 2006. His interventionist approach to administering Bosnia (until January 2006)—best demonstrated in his so-called ‘Bulldozer Initiative’ of November 2002 to dismantle all obstructions to the labour and business market—resulted in the establishment of some key central institutions.

Despite positive centralization, by making key institutional decisions, the HR took over responsibilities of domestic elites, who had limited incentives for accommodation when the HR took ownership over difficult decisions. Until 2014, 921 decisions were imposed by the HR in economic, political, and constitutional matters (Butenschøn & Stiansen, 2016, p. 141). The external governance led to what some called a ‘dependency syndrome’ (Solioz, 2007) when external actors became the main
guarantors but also culprits of any reform initiatives. The various views about the role of the HR to this day essentially revolve around two bipolar camps of those arguing for either too much or too little external input (see Merdžanović, 2015). Some experts even dubbed BiH an ‘international protectorate’ while others compared it to the British colonial rule in India (Knaus & Martin, 2003), mainly due to the ‘proconsul’ style of politics by Paddy Ashdown (Pond, 2006, p. 156). Also because of the continuous presence of the HR, Bosnian democracy earned adjectives such as ‘faked’ (Chandler, 2000) or ‘controlled’ (Bojkov, 2003). The external practices of governance in Bosnia also produced a parallel world of international aid workers that Coles termed ‘Hyper-Bosnia’, where external actors became detached from the reality on the ground, often leading to domestic disgruntlement, opposition and eventually lethargy (Coles, 2007). The role of the HR—Paddy Ashdown in particular—has been debated to this day. However, given the previously intransigent local elites, there is little evidence to suggest that key reforms would have been carried out without some initial input by the OHR.

Nonetheless, this phase also experienced a political moderation due to several factors. The ICTY indictments (and later trials) of Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić, among others, removed these key nationalists from the political scene in RS.20 Internal disputes in the nationalist Serb Democratic Party (SDS) also created space for a new political actor, Milorad Dodik and his Alliance of Independent Social Democrats (SNSD). Although Dodik served as an SDS-deputy in the RS Assembly during the war, he later created a reputation of a politician with whom international actors could negotiate. After the 1998 elections, supported by the OHR, he created a minority coalition government called Sloga (Concord), formally signalling to become a ‘moderate Prime Minister’ (see ICG, 2002). Though Dodik on paper vouched for Dayton’s implementation, he was as persistent about the separate RS state-like identity as the wartime government.21 As a pragmatic and power-driven politician, he instrumentally cooperated with external actors to receive aid, which had until then avoided RS, to address the sky-high unemployment.

After the general elections of November 2000, the political monopoly of the three wartime parties (SDS, SDA and HDZ BiH) was further undermined (Hulsey, 2016, p. 55). Although ethnic voting prevailed, the SDA lost some of their votes to SBiH in the Federation and the Social Democratic Party (SDP) that won while the Party of Democratic
Progress (PDP) won in RS. The subsequent governmental talks in FBiH led to a compromise and the creation of a reform coalition, ‘Alliance for Change’, under the wartime prime minister Zlatko Lagumdžija from SDP (Merdžanović, 2015, pp. 280–288). The elections coincided with an escalation of the Croat question when HDZ BiH threatened a referendum on a new entity. This initiative was abruptly stopped in March 2001 by the HR and the removal of the Croat leader Ante Jelavić from the Presidency. Thereafter, Croats at last started cooperating with Bosniaks in the Federation and even submitted Croat soldiers to the new single Bosniak-Croat army. Probably the key factor in the willingness of nationalist parties to cooperate was the eroding authoritarian regimes in neighbouring Croatia and Serbia in the death of Tudman in late 1999 and toppling of Milošević in October 2000 (Pond, 2006, p. 154). Another factor was the departure of Alija Izetbegović and the ascent of Sulejman Tihić as a more conciliatory SDA leader in 2001.

Moreover, the political elites started to frame their politics towards the EU membership. The EU applied a combination of ‘carrots and sticks’, i.e. rewards and punishments, often called conditionality. The EU conditionality developed as a top-down pressure for democratic reforms in the form of compliance with the rules of the EU in exchange for significant economic aid and the eventual prospect of a membership. The preconditions included a range of neoliberal economic reforms but also stability of democratic institutions, rule of law and observance of human and minority rights. An additional set of reforms—especially vis-à-vis cooperation with the ICTY—was included for all ex-Yugoslav countries. The broad set of requirements was in March 2000 summarized in the EU Roadmap that stood at the beginning of the so-called ‘Stabilization and Association Process’ (SAP), guiding potential candidates through the EU accession path (Fagan & Sircar, 2015, p. 36). In June that year at the summit in Feira, the European Council stated the EU prospects of all countries in the Western Balkans, including Bosnia. The roadmap was in November 2003 adopted by the European Commission in the form of a Feasibility Study on the preparedness of Bosnia to conclude the Stabilization and Association Agreement (SAA), following the June 2003 Thessaloniki summit.

This further crystallized into the ‘European Partnership’ document in June 2004 (updated in 2006 and fully amended in 2008) where Bosnia was asked to harmonize its legislation with the EU’s legal compendium, the acquis communautaire. The reform progress was monitored through
annual reports by the European Commission (in the so-called ‘Progress Reports’). Since 2001 the main carrots became EU funds targeting democratic governance reforms, the civil sector, judiciary and technical assistance to Bosnian institutions. EU sticks came with the transfer of policing and military oversight when the EU Police Mission (EUPM) took over from IPTF in 2003 and EUFOR from SFOR in 2004. All in all, by early 2004, leading political parties formally subscribed to the Euro-Atlantic agenda although NATO remained a sore point for Bosnian Serbs because of its 1999 bombing in Serbia. By November 2005, BiH officially opened negotiations about the SAA that took three additional years to sign (June 2008) and was later frozen due to Bosnian failure to fulfil some conditions in the realm of constitutional reforms and human rights (Weber, 2014).

However, EU conditionality was not the only type of mechanism for change applied in Bosnia. Other examples were NATO’s requirements for civilian control over the military (which was established in 2004), military property regulation and the Council of Europe’s (CoE) adoption of a variety of human rights requirements. CoE became an important critic of the persistent violations of human rights in the country. It conditioned membership to it on revoking several discriminatory legal clauses within Bosnian governance. Bosnia was eventually granted membership in CoE in April 2002. In economic and financial affairs, the International Monetary Fund (IMF) and the European Bank for Reconstruction (EBRD) were tasked with setting up the Central Bank (established in June 1997) and proposed fiscal reforms while continuing to provide economic aid. The World Bank became the main Bosnian creditor and through the so-called Poverty Reduction Strategies pressed the government to comply with its priorities, again in exchange for economic support. In electoral affairs, the OSCE conditioned its approval for transfer of electoral organization to domestic institutions by the adoption of a new Election Law and the establishment of an Electoral Committee (adopted in 2001). Until 2002, elections were run by the OSCE. Thereafter, the OSCE became an important watchdog in areas such as education, democratic governance, human rights and social reforms (Stoessel, 2001). In sum, this period was defined by centralization and intransient national authorities that at times cooperated when pressurized.
3.3.3 Flawed Europeanization and Re-nationalization of Politics (2007–Present)

The third phase that has lasted for the past 13 years has been dominated by reform backsliding, increasing tensions between Republika Srpska and central institutions, and weak foreign policy of the European Union that has failed to convince Bosnia to move away from its sectarian politics. The precursor to the start of the third phase can be traced back to June 2006 when the PIC announced that the OHR was to be closed within 12 months and the democratic (no longer peace) transition was to be left in the hands of domestic actors. This move was a reaction to the intensifying EU convergence process for Bosnia. The idea was to move Bosnia from ‘Dayton to Brussels’, i.e. from imposed peacebuilding to assisted democratization (Belloni, 2007, p. 152). EU influence had grown since 2002 when the HR was merged with the EU Special Representative (EUSR) as a double-hatted position called HR/EUSR (under Paddy Ashdown). At that time, the multilateral (mainly US) interest in Bosnia started to wane. As a result, the EU took over the BiH stabilization agenda, focusing mainly on civil society, financial assistance and facilitation of a political dialogue (Fagan, 2010, p. 85). Its approach became part of its Europeanization approach to countries aspiring to join the EU. Instead of scaling down external interventionism, though, the initial period of this phase led to some of the greatest mishaps of interventionism in Bosnia. Two initial reform proposals of 2007 caused an uproar and a political crisis.

In 2007, the new HR/EUSR Miroslav Lajčák tried to centralize the police to fulfil the last condition in signing SAA (originally proposed by Ashdown) and later reform the voting procedures used by the Parliament and the central government (Fagan, 2010, p. 87). Bosnian Serbs under increasingly nationalist Milorad Dodik strongly opposed these efforts, leading to a protest resignation of the Serb chairman of the government (de facto PM), Nikola Špirić, who famously said that if the HR was allowed to freely intervene into Bosnian affairs, he could be Bart Simpson for all it mattered. Bosnian Serb deputies started blocking the state Parliament through walk-outs as a form of protest against HR’s interventions (Bennett, 2016, p. 171). After a series of visceral and protracted negotiations, Lajčák was forced to abandon the original plans about a united police force and find a compromise, effectively allowing for entity-run
policing (Weber, 2014). He managed to streamline the voting procedures but only at the cost of growing political opposition.

This double crisis unfolded against the backdrop of broader constitutional debates. As Dayton was never meant to be a lasting document but a peace-management tool, a new constitution was needed and widely discussed. The report of the so-called ‘Venice Commission’ of the Council of Europe published already in March 2005 clearly outlined the need for amending Dayton, which was deemed discriminatory against the minorities in the country (Perry, 2016, p. 17). Four years later (in December 2009), these findings were confirmed by the European Court for Human Rights (ECtHR) that decided that Bosnia had to change its constitution so that Bosnian citizens, who do not belong to the three constituent nations, would be allowed to run for the state presidency and the House of the Peoples (in the so-called ‘Sejdić-Finci’ case). Although other judicial decisions had asserted this before (the 2005 case of Ilijaz Pilav) and also later (the 2014 case of Azra Zornić), any reform of the ethno-national principle would require an overhaul of Dayton. In what followed Sejdić-Finci, the Bosnian Council of Ministers adopted an Action Plan and appointed a Working Group to work on the constitutional amendments.

Several attempts were made—all to no avail: the so-called April Package in 2006, the Prud Agreement of 2008 and the Butmir Process of 2009 all demonstrated that finding a common ground about how to overhaul the ethnic framework, streamline political decision-making and introduce more effective policymaking was close to impossible. The Bosnian Central Election Commission also adopted the Action Plan 2010, detailing the necessary changes in the Election Law. A series of deadlines passed and the Constitution as well as the Election Law remained unchanged, not reflecting the 2009 ECtHR ruling. Changing the ethnically defined political system of Dayton’s Bosnia became an insurmountable problem. This was also caused by the fact that around this time wartime rhetoric was revamped in the nationalisms of Milorad Dodik and Haris Siljadžić. Although it first seemed that welfare and EU accession instead of nationalism were the key topics of the time, the electoral campaigns of 2006 were again run on the wartime master frames propagated by Dodik and Siljadžić. While Dodik used respect for Dayton as a safeguard to keep RS as a separate entity to the extent that independence became an option, Siljadžić called for the abolition of RS and centralization, ultimately giving Dodik more ammunition to frame RS as under threat. Siljadžić became the main champion of the frame that the Bosnian
entity was a ‘product of genocide’ and that Bosnia lived in an ‘ethnic apartheid’, antagonizing Serbs further (Bennett, 2016, pp. 193–195).

Dodik soon realized that juxtaposing centralization efforts was a ‘politically effective strategy’ as an interviewed political analyst put it. Gradually, Dodik not only reinvented ‘Srpska nationalism’, i.e. nationalism of the separate RS statelet, but also became the main denier of war crimes committed by Serbs. The aggressive nationalism initially paid off for both—Dodik and Siljadžić won the 2006 general elections. In an atmosphere of ‘emotionally powered wartime rhetoric, securitization of ethnic issues in public discourse and tensions over BiH’s territorial structure and constitution’ (Bertelsmann Transformation Index, 2010, p. 2), the HR’s previously announced closure was soon conditioned by amending the Dayton constitution. Frequent clashes between Dodik and Siljadžić dominated the failed reform debates, most prominently with Siljadžić blocking the April Package in 2006 and Dodik increasing his pressure to close the OHR thereafter. As the failed reforms dominated the public sphere, several high-level corruption cases that revealed the extent of pillaging of state industries, companies and services went nearly unnoticed at that time (Bennett, 2016, pp. 214–218). Instead, Bosnian Serbs insisted on their increased autonomy, Bosnian Croats resuscitated the idea of a third entity and Bosniaks maintained their position that more centralization was needed.

Political parties have remained dominated by ethno-nationalist parties even in the few instances where the old parties have been replaced by new political actors. The only non-national party at the time, the Social Democratic Party (SDP), was unable to trump such an ethno-nationally defined political landscape that awarded aggressive and ethnically driven discourse. Although it emerged as the strongest party in 2010, it soon lost its sway after 16 months of protracted governmental negotiations when a series of corruption scandals about its officials and procurement erupted (European Stability Initiative, 2014; ICG, 2014). After SDP de facto sacrificed its multi-ethnic platform in order to stay in power, it lost credibility. The next elections in 2014 saw a return to ethnic voting. Despite the passage of time and the fact that Bosnia in 2014 had a staggering number of registered political parties—one party per 20,000 citizens28—the incumbents have since the war been from the ranks of the wartime nationalist blocs (Pasic, 2014). Milorad Dodik’s Alliance for Independent Social Democrats (SNSD) successfully replaced SDS but its radicalism is on par with its wartime predecessor—currently cultivating a culture of
denial of war crimes. Challengers from the Serb Party for Democratic Progress (PDP), especially under Mladen Ivanić, have also rarely offered anything other than nationalist platforms. In FBiH, the only political forces that have challenged the main war blocs were SDP, which effectively turned into a party of Bosniaks, the Party for BiH (SBiH), the Union for Better Future (SBB) and the Democratic Front (DF), which have at times successfully entered the governing coalitions (Touquet, 2012, p. 213). Among Croat parties, HDZ BiH and its radical splinter HDZ 1990 kept firm control over their constituencies. Parties such as Our Party (NS) that represent civic platforms have been limited to urban centres (and in the 2018 election gained control of Sarajevo). Overall, the party system remains swaddled in a contestation of nationalisms between Bosniaks, Serbs and Croats.

As for international response, the OHR was overshadowed by the EU that has struggled to maintain a clear strategy. The EU’s carrots continued through visa liberalization to the EU for Bosnian citizens passed in December 2010 and through being ‘the largest single donor to the country’ (Fagan, 2010, p. 96). The HR has increasingly become toothless. The last use of the Bonn Powers by the current HR Valentin Inzko was in March 2011. At the same time, worried about potential destabilization, the EU has become more prone to lowering its benchmarks (Weber, 2014). Its progress reports have become catalogues of failures and occasional praise, rather than admonitions and incentives for reform. However, reforms are critical, as the economic crisis of 2008 (and the 2020 COVID-19 pandemic) demonstrated. Hit hard by the reduction in remittances and external aid, external debt increased and public-sector spending skyrocketed, leading to frequent delays in the distribution of state salaries and pensions (World Bank, 2015). Domestic authorities attempted to use nationalist rhetoric to divert public attention from the decline in living standards with limited success. Social tensions and mass protests first erupted in June 2013, when new-born babies were not issued with identity cards, and then in full swing in February 2014 across the country and centred around Tuzla (see Lai, 2020). Although the protests failed to crystallize into a structured political opposition, they demonstrated the seriousness of the state failure and the dissatisfaction of the public. Using the slogan ‘we are hungry in three languages’, the public also signalled that Bosnians were concerned about the economy rather than nationalism (Belloni & Strazzari, 2014; Milan, 2019).
The lack of any progress in these last years has thus been marked by a strenuous and inconsistent Europeanization of Bosnia, with Bosnian politics oscillating between nationalism and economic deprivation (Sebastian-Aparicio, 2014, p. 6). With the direct interventionist powers of the HR long gone and with limited EU hard-power influence over Bosnia, the EU has struggled to face up to the centrifugal tendencies of Milorad Dodik but also HDZ BiH under Dragan Čović. In April 2011, the RS National Assembly voted to organize a referendum on the Bosnian State Court, a move interpreted as a direct attack on the fragile central state. It was later called off after a direct intervention by top EU officials, ultimately forcing the EU to take over the Bosnian democratization process and further marginalizing the OHR (also through splitting the previously double hatted HR/EUSR role) (Bennett, 2016, p. 215). But Milorad Dodik’s rhetoric only became more vulgar, separatist and pro-Russian, while Bosnian Croats reinforced their calls for more autonomy and Bosniaks radicalized their political nationalism. In September 2016, Dodik organized a referendum on celebrating the anniversary of the creation of RS in 1992 (9 January). As Bosnian Serbs voted in favour (with dubious 99.81 percent), Dodik ignored the previous decision of the Constitutional Court and EU warnings; he enacted 9 January as the ‘Day of Srpska’. As Jasmin Hasić rightly outlines in his political analysis of Dodik’s politics, his strategy is a simple political ruse ‘to redirect focus on ethno-identity issues to distract voters from multiple high-level corruption cases including the plunder of several public companies’ (Hasić, 2020, p. 30). In 2020, Dodik again threatened by boycotting state institutions and secession, caused by his attempts to ignore the Constitutional Court’s decision about agricultural land (Kovačević, 2020a). Ignoring decisions of the Constitutional Court has become commonplace in BiH—as of 2016, over 90 of its decisions were ignored (Toe, 2016). By 2020 this number dropped significantly to 15 (six at the state level, two in FBiH, one in RS—see above, and the rest at entity and municipal levels); however, three rulings from the ECtHR, including Sejdjić-Finci still remain unimplemented (Kovačević, 2020b).

Trying to refocus from human rights and the rule of law to the economy, the EU pledged one billion Euro in November 2014 over the following three years. It allowed for SAA to enter into force in 2015 despite previously conditioning it on addressing Sejdjić-Finci, organizing a national census, adopting a new state aid law and creating an EU coordination body (Perry, 2016; Petr, 2016). In February 2016, BiH submitted
its EU application despite failing to adopt some key reforms (Hronešová, 2016). Main rewards have become economic support and direct IMF loans. The IMF has periodically renewed its lending arrangements in return for pledges of economic reforms, which has kept entity budgets afloat with injections between 150 to 300 million Euro per year. It has continued to exercise its financial conditionality by postponing its cash injection in cases when desired reforms were not adopted. Meanwhile, the European Union became ‘distracted’ from its accession agenda by the 2015 migration crisis, the 2016 Brexit referendum, the rise of violent extremism and growing illiberal tendencies in membership countries. By 2019, the French President Emmanuel Macron effectively put a break on further enlargement until substantial changes to the European accession process were made (Anastasakis & Hronešová, 2019). While these changes were announced in early 2020, Bosnian prospects of joining the European Union are best expressed in a local wordplay ‘Ja BiH u Evropu’, which effectively reads ‘I would [go] to Europe’, substituting the conditional tense in Bosnian (bih) for the name of the country (BiH). The Bosnian legal scholar Goran Šimić compared the torn Bosnian statehood to an old car in our 2014 interview: ‘one group wants the windshields, the other bumpers, and the last group wants the roof, but no one wants the entire old car because it does not work’. Combined with the rise of authoritarian tendencies in Serbia, Croatia but also EU countries such as Hungary and Poland, Bosnian prospects for any dramatic progress seem unlikely. The 2020 pandemic crisis of COVID-19 has further laid bare the Bosnian inadequate capacities to provide basic services, including healthcare. Figure 3.3 depicts the key events in post-war Bosnia.

### 3.4 Victims’ Justice and the Status

Against the backdrop of these political developments, the thousands of people that were directly victimized by war crimes and violence had to adjust their lives to the new realities including the ethno-nationally structured social and political landscape. They emerged from the war with distinct identities produced by their wartime experience, but also by some of the existing socialist legacies that structured social relations. Given the levels of political polarization and the urgent need for security, concerns regarding justice for victims only gradually entered the public sphere in Bosnia in the early 2000s. Although victimhood became part and parcel of
Fig. 3.3  Timeline of key post-war political developments (Source Author)
Bosnian life during the war with the high levels of war crimes and displacement and the new ad hoc court, the ICTY, justice-related programmes were rarely targeting victims directly (see Clark, 2014). Instead, the initial focus was on returning refugee and the criminal prosecution of perpetrators, while domestic actors worried about consolidating their territories. While ‘truth and justice’ became sought-after commodities in post-war Bosnia, they have been overshadowed by the trials held at the ICTY. Only gradually have victims started demanding not only legal justice and truth but also wider recognition and redress. This final section discusses the variety of their efforts in the aftermath of the war. While the rest of the book discusses these issues in more detail, the aim of this section is to introduce top-down efforts in transitional justice and how they shaped the later demands for victims.

### 3.4.1 Victimization and the Limits of Legal Justice

As some observers noted, ‘[i]n no other peace-building process in history has there been so much political emphasis placed on the need to employ the norm of justice’ as in Bosnia (Williams and Scharf 2002, xviii). The Dayton agreement already included over 70 references to human rights, 16 international conventions and commitments to cooperation with external judicial institutions, including the ICTY. Although victimization and justice have become key pillars of the three separate ethno-national identities—best exemplified in the various disputes over the nature of the conflict and numbers of fatalities—the main focus has since the end of the war been on the offenders (perpetrators) and the need for retribution rather than victims and their complex experiences and needs. Yet the scale of victimization outlined above provided only limited scope for creating clear-cut definitions of how each ethno-national group was victimized. While Bosnian Muslims have considered themselves the greatest victims of the war due to their mass death rates and crimes committed on them, Bosnian Serbs and Croats argue that their losses and suffering have been belittled and manipulated. Moreover, Serb leadership in particular has also argued that they have been victimized by staying ‘trapped’ in the post-war broken Bosnian state, which they did not desired (Hronešová, 2012).

A variety of terms were introduced to denote these multiple wartime victimizations in the aftermath of the war. People have self-identified with victimhood frames defined by an injury, loss, impairment, their civilian or military belonging and their gender, gradually forming categories that
represented their experiences. At the general level, some have referred to themselves as ‘victims of war’ (žrtve rata) while the broader usage of the term ‘survivors’ (preživeli) as those who came out alive from the wartime hardship has also been used (see Bougarel et al., 2007). Terms such as nestali (missing people), žene žrtve rata (women victims of war), para-plegičari (amputees), logoraši (camp detainees) and ratni vojni invalidi (war military invalids) entered the Bosnian vocabulary during the war, some even taken over from World War II. However, the polarized post-war landscape of Bosnia further added an ethno-national characteristic to these distinctions.

During the immediate post-war phase, the focus of victims was primarily on re-establishing their lives and reuniting with their families where and if possible. As many struggled with returns (both from abroad and internally), reclaiming and rebuilding their houses, and finding the truth about or whereabouts of their loved ones, many victims did not start organizing themselves until the late 1990s. While some victims renewed socialist unions of victims from World War II, hundreds of new ‘associations’ (udruženja) were established anew.35 As Bosnian Muslims accounted for a much higher number of victims-survivors, they also formed most of these associations, which became part of the fragmented and aid-dependent Bosnian civil sector. Similar to other victims around the world at the time, their demands were framed in terms of ‘truth and justice’. Truth and justice soon became synonymous with legal truth and legal justice because of the existence of an external arbiter that victims looked up to with much hope, the ICTY.

During its first years of existence, the ICTY struggled with funding, external support and enforcement of its indictments (see Kerr, 2007). As a symbolic institution, it was put forward to signal that crimes committed in Yugoslavia would not go unpunished and that whoever tried to commit similar atrocities, would pay a heavy price. The principles of deterrence and non-repetition were thus at the heart of its creation. When the first indictees finally arrived to the ICTY in The Hague in 1996, there was much hope that the tribunal would remedy victims through punishing the perpetrators and delivering factual truth about the war. Indeed, when the first sentence of Bosnian Serb Dražen Erdemović was delivered in 1996 after he pleaded guilty to crimes against humanity in Srebrenica, the world heard for the first time a direct testimony of a soldier, who executed civilian Muslim men.36 The ICTY later experienced its apex by prosecuting some key political orchestrators of the 1990s violence, including
Slobodan Milošević who was extradited to The Hague in June 2001 but later died in custody in 2006. Earlier that year, the breakthrough judgment of Radislav Krstić with a genocide conviction for Srebrenica marked a critical moment for Bosnian Muslims and their memory of the war. Thereafter, Srebrenica became officially termed as ‘genocide’.37

A series of other cases influenced each victim group differently. Injured survivors of the Sarajevo siege and families of the killed men in Srebrenica were waiting for Radovan Karadžić and Ratko Mladić to appear at the tribunal. They celebrated when they were finally captured with much delay in 2007 and 2011, respectively. Amputees and families who lost loved ones in Sarajevo were also concerned with the Stanislav Galić case, which documented the brutal shelling under the siege of Sarajevo. Sexually abused women focused on the case of Dragoljub Kunarac, which in 2004 defined rape as a war crime, using previous jurisprudence of its sister tribunal for Rwanda. In total, 161 indictments were issued by the ICTY throughout its nearly 25-year-long existence, which was in many legal respects path-breaking.38 While the ICTY offered much hope, its rarefied nature, physical remoteness in The Hague in the Netherlands, subsequent inconsistency in judgments and lack of early outreach resulted in accusations of politicization and conspiracy theories about its political goals. Moreover, material reparation was never part of the ICTY’s legal mission. Although compensation was excluded from the Tribunal’s Statute (save restitution of property in Article 28), it was formally included in the original Rules of Procedure and Evidence as an option for domestic jurisdiction to pursue.39 Yet the ICTY never advocated its implementation or a reform of the current rules due to the fear that compensation claims would prolong the court proceedings (Ochoa, 2013, p. 210).

The literature assessing ICTY’s legacy is rich and still inconclusive (Bass, 2000; Clark, 2014; Kerr, 2004; Meernik & Guerrero, 2014; Nettelfield, 2010; Orentlicher, 2010; Peskin, 2008; Steinberg, 2011). It is certainly the case that the ICTY problematized one-sided nationalist narratives about the conflict and increased the factual knowledge about important historical events.40 Yet the Tribunal was no panacea for breaking wartime divisions and narratives—quite the opposite. As the ICTY remained silent on defining the war and concentrated on legal findings, procedures and evidentiary standards that were often hard to translate into non-legal language, it did not convince the public about its impartiality and fairness. Its outreach came only in 1999 and delivered mixed results. Serbs and later Croats felt targeted by the ICTY while
Bosniaks feared that guilt has been equalized and their suffering belittled (Gallup Balkan Monitor, 2010). Its findings also had only limited influence over the existing war narratives in the country. A 2010 survey found that around 70 percent of all respondents in BiH believed that the relevant facts about the war in BiH remained unknown (84.4 percent of Serbs, 57.9 percent of Bosniaks and 64.7 percent of Croats) (Kostic, 2013, p. 655). Especially after the 2013 acquittals of Ante Gotovina, Momčilo Perišić and Ramush Haradinaj, the ICTY’s political agenda has been criticized even from the civil sector and the academic community, which had been previously positive about its work (Gordy, 2013b). Each community has kept its own master frame, often not only incompatible with the others but also directly contradictory.

Similar to other existing prosecutions around the world, the Tribunal has adopted a prosecutorial strategy of plea-bargaining, which consisted of trade-offs between attaining factual information from low and mid-ranking officials in return for lower sentences (Nalepa, 2012). To victims and especially witnesses who testified, this strategy represented politicized and compromised justice (Stover & Weinstein, 2004). Moreover, as exemplified on several cases in Latin America, when narrating their ‘truth’, perpetrators have often rationalized their actions and thus minimized their responsibility (cf. Payne, 2007). Victims have thus felt betrayed by the court for striking a deal with those who harmed them. According to the leader of the Bosnian Jewish community Jakob Finci, who is also one of the claimants in the famous Sejić-Finci case, ‘a hero for one group is a criminal for the other’. As some scholars noted because compliance with the ICTY also became part of EU conditionality, the court turned into ‘a useful foil in the hands of political propagandists to solidify a sense that their national group is a misunderstood or unacknowledged victim of the conflict’ (Fletcher & Weinstein, 2004, pp. 600–601). Polarization thus accompanied every judgment delivered at the ICTY until its formal closure in December 2017 and continuation of cases under the International Residual Mechanism for Criminal Tribunals.

Nonetheless, the ICTY was also critical in creating a domestic judicial tool—the War Crimes Chamber at the State Court of BiH. Established in 2005 and originally staffed with international judges and prosecutors (until 2012), it began working in 2008 and focused on war crimes, crimes against humanity and genocide cases, some of which have been referred from the ICTY. From 2004 to March 2013, Bosnian courts at all levels completed a total of 214 war crimes cases, convicting 235 individuals
However, due to the complex nature of the Bosnian court system with entity-level courts often using different legal codes, there has been a great level of judicial parallelism leading to a lack of understanding about how the justice system works. The Bosnian judicial system copies the cumbersome administrative political system of the country. At the national level is the Court of BiH with its War Crimes Chamber. At the entity levels are ten cantonal courts in the Federation and six district courts in RS and a Court for the Brčko District. There are separate supreme courts for the entity level and an appellate court for Brčko. Cantonal and district courts as well as the judiciary in Brčko apply the socialist Criminal Code from 1976, which was in force during the 1992–1995 conflict, while the BiH State Court (and the War Crimes Chamber) applies the Criminal Code of BiH from 2003. In practice, for the same type of offence a different sentence can be delivered.

Such labyrinthine structures are close to impenetrable to many victims. Although victims have a right to file civil cases to claim material compensation, the cumbersome and slow judicial system has rarely awarded them any. Only a handful of claimants had succeeded by 2019, especially in relation to sexual violence (see Chapter 6). Witness protection and counselling has also developed only slowly, resulting in several cases of domestic intimidation and violence on witnesses. Moreover, already in 2002, Bosnia also became the 44th member of the Council of Europe, obliging it to sign the broad human rights framework implied in the membership. Treaties that pertain to victims’ rights that Bosnia signed later include the Convention for the Protection of Human Rights and Fundamental Freedoms (with all later amendments), the European Convention on the Compensation of Victims of Violent Crimes, European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes and the Convention on preventing and combating violence against women and domestic violence among others. Despite the signature of such treaties, the domestic legal practice numerously ignored these obligations, for example, frequently ruling that statute of limitations for war crimes can be applied (for more see Meškić, 2017). Therefore, these issues have over time led to the fact that victims have become sceptical and distrustful of the overall legal system and the protection it offers them.
3.4.2 Non-legal Forms of Justice: Truth and Recognition

Despite the failures of legal institutions to focus on victims, they have provided important information and leverage when demanding further forms of redress such as truth commissions and reparations. Initial efforts for truth-seeking efforts were launched in 1997 under the leadership of the US Institute of Peace (USIP) and with a wide-ranging societal participation (Hayner, 2001, p. 207). However, as ICTY’s work finally started progressing around that time, legal forms of justice were given precedence. The ICTY also partially opposed the creation of truth-seeking mechanisms, wary of their potential to undermine its own investigations (see Dragović-Soso, 2016). Subsequent attempts from the civil society across BiH to establish a national Bosnian truth commission in 2000 also brought no progress. Jakob Finci who was part of the 2000 meetings that resulted in the ‘National Coordinating Committee for Establishment of the Truth and Reconciliation Commission and the Citizens’ Association for Truth and Reconciliation’, described their objectives as follows: ‘Our idea was … to create a system of commemoration of the conflicts, so that we create a system of forgiveness without forgetting as we have to live together’.43 ‘We were inspired by South Africa but our situation was diametrically different,’ he added. Their final legal propositions not only failed to receive backing from the lawmakers but they also faced opposition from victim associations who worried that perpetrators might receive amnesty through the process (Mallinder, 2008, p. 138).

In 2005 a proposal led by UNDP, Dayton Project and USIP for a ‘Truth and Reconciliation Forum’ also failed, mainly because of the opposition of Bosnian Serb leadership and the worsening political situation (Dragović-Soso, 2016, p. 300). Although local commissions for Sarajevo and Bijeljina were set up in 2004 at the request of victim associations, both were riddled with political tensions and concerns over objectivity and legitimate leadership (Mallinder, 2008, p. 153). In the absence of top-down truth-seeking efforts, the civil sector created smaller and local initiatives. From early on, a plethora of NGOs stepped into a vacuum left by the malfunctioning state, to launch memory projects, offer psychosocial care for victims and re-educate victims. Gaining capacities, many victim associations later launched their own truth-seeking projects, partially increasing the cacophony of narratives and localized war interpretations. Ultimately, the only promising efforts have come with the regional ex-Yugoslav commission for the disclosure of facts
and testimonies (called REKOM) in 2006. Although it initially gained momentum, it has so far failed to get wider support for its fact-seeking aims (see Jones, Jeffrey, & Jakala, 2013).

After victims realized that their needs were not at the centre of external or domestic concerns, their mobilization intensified. The longer the post-war stabilization and lack of economic progress lasted, the more victims became concerned with socio-economic justice, rather than legal justice only. As some respondents noted, sentences for war criminals did not provide for victim families on the verge of poverty. The end of victims’ hopes for external reparations came with the final ruling of the International Court of Justice (ICJ) in February 2007 that Serbia was not obliged to pay reparations to Bosnia (ICJ, 2007). It also effectively defined the conflict as international. Although BiH filed a genocide case against Serbia already in March 1993 (i.e. before Srebrenica), it took 14 years for the final verdict to be delivered (for more see Rosenberg, 2008). The court ruled that although Serbia funded VRS operations in Bosnia, Srebrenica or any crimes prior were not carried out by the Serbian state institutions but by individuals.44 Subsequently, individual victims or smaller groups of victims have been filing their own cases at foreign and domestic courts, some resulting in victories and legal compensation payments (see Chapter 6). Such efforts represented unsystematic efforts for individual redress, rather than tackling the underlying lack of socio-economic redress for victims and their recognition.

These concerns also became part of an effort to bring all transitional justice efforts in Bosnia under one roof. After a series of discussions with the civil sector, victim associations and international experts, the UNDP, Ministry of Human Rights and Refugees and the Ministry of Justice and civil society proposed a draft of a ‘Transitional Justice Strategy’ for Bosnia and Herzegovina in 2012 (Ministry for Human Rights and Refugees, 2012). By involving some 200 experts, policy makers and representatives of the civil sector within Bosnia through open debates, the Strategy defined the most painful problems in BiH, while reducing its scope into issues related to non-judicial forms of transitional justice in the form of fact-finding, truth-telling, reparations, memorials and institutional reforms. Criminal prosecution is left out of the Transitional Justice Strategy but it referenced the Justice Sector Reform Strategy (2008) and National War Crimes Strategy (2008).45 Its references to other strategies only demonstrate how closely tied to other reform process the Transitional Justice Strategy for BiH was aimed to be. However, since its
presentation to the Bosnian state Parliament in 2012, it has been laid *ad acta*. Some of the reasons were a high price tag (in the realm of 8,000,000 Euro), lack of consensus about the extent of categorizations but also due to some opposition of victim associations that voiced their concern over definitions of victims. Others suggested that victims’ opposition to previous effort for truth-seeking was related to their dependence on political parties but also to worries about retraumatization, especially of victims of sexual violence (Dragović-Soso, 2016, pp. 305–307).

Aware of the limits of legal justice but also unsatisfied with the existing efforts, victim associations turned their attention to achieving a victim ‘status’ granted by the Bosnian state that would entitle them to domestic benefits and privileges such as free healthcare, employment privileges and educational benefits for their children. The pursuit of ‘status’ has according to some scholars become an ‘obsession’ (Delpla, 2014, p. 246). The ‘status’, i.e. the formal institutionalized recognition of victimization, has not only provided monetary support, it has also encapsulated the recognition of suffering and de facto innocence of the beneficiary. Despite the meagre provisions related to such a status, for many victims it also represented a form of inter-generational social justice, offering their children a better life. Once the status demands became clearly formulated in the early 2000s, victim associations applied a variety of tools and approaches to secure recognition—some with higher success than others. It was especially between 2000 and 2006, when some of the key victim-centred policies were adopted. Despite the growing demands for status, Bosnian victims never ceased to insist on legal justice and the fight against impunity as one of their key demands (Delpla, 2007, p. 225). Therefore, although recognition rose during the second post-war phase as a key priority, legal justice has remained a source of leverage. Against the backdrop of the general feelings of victims’ injustice after the war, victim associations thus only gradually embarked upon a campaign to get what they believed was owed to them—recognition of their suffering and support from the state.

During the last phase, the ICTY and domestic judgements remained critical as a validation of group victimization and justification for demands. However, victims’ efforts for justice have moved away from the ad hoc tribunal and concentrated on accessing their hard-won rights. They also invested in memorialization efforts, aimed at defeating the thriving culture of denial and relativization of wartime suffering. With the growth of nationalist rhetoric, victim associations have become defenders of
wartime narratives and redress for individual victims. However, their ability to demand further rights has been limited due to the growing economic malaise in the country that has defined domestic and external policy priorities. Only limited adjustments to the victim-centric legislation were adopted in this phase. The later each new legal amendment was passed, the fewer victims were alive to be eligible, implicitly also affecting fewer families.

To offer more clarity into the role of time and context for status outcomes, I summarized the political and justice developments in Bosnia in Table 3.1. It depicts the three post-war phases with the main priorities of external and domestic actors as discussed above. It also includes a summary of the main goals of victims that are further described in the next chapters. The aim of the table is to show the temporal progress of the victims’ demands and stress the delay in which recognition and redress entered into their justice preferences. In the first phase, where policymakers focused on returns and security, there was the dominance of ‘truth and justice’ and a focus on legal measures through the ICTY. In the second phase, with the rise of central institutions that included

| Phase                          | Period          | External actors’ priorities | Domestic actors’ priorities | Victims’ demands                                                                 |
|-------------------------------|-----------------|-----------------------------|----------------------------|--------------------------------------------------------------------------------|
| Emergency post-war stabilization | 1995–1999       | Peace, security and returns | Consolidation of ethno-national territories | Truth about whereabouts of loved ones and legal justice (ICTY) |
| Centralization and external state-building | 2000–2006       | Strengthening central institutions | Consolidation of power | ‘Truth and justice’, ICTY, domestic courts, and reparations (ICJ), redress |
| Flawed Europeanization         | 2007–2020       | Transfer to local authorities and EU reforms | Status quo/increase in territorial powers | ‘Truth and justice’, focus on domestic courts, internal access to status, redress and memorialization |

*Source* Author
the strengthening of the domestic judicial system, these demands diversified into a variety of other non-legal claims. In particular, victims’ efforts turned to their socio-economic needs in the form of external and domestic reparations. While some individuals insisted upon external reparations, most claims for redress crystallized into articulated demands for status as a form of recognition and assistance from the Bosnian state. During the last phase, marked by the escalation of domestic politics and increased economic strains, victims continued with their previous demands but also insisted on implementation of the adopted laws and their expansion, as well as on memorialization of victims.

3.5 Conclusion

After wars history is written by the winner. But in the Bosnian cases, the war ended with no clear winner and many losers. Croats in Croatia got their independence and defended the territory, which was occupied by Serbs; Serbs created Republika Srpska as another Serb land outside of Serbia; and Bosniaks succeeded to prevail even if they were attacked from both sides. In such a situation, when Serbs consider it a civil war and Bosniak an aggression, ..., it is very difficult to understand who owes what to whom.47

This excerpt from my interview with Jakob Finci underlines the complex legacies of the Bosnian war and the inherent controversies about its nature, which have structured post-war political life in Bosnia and victims’ efforts to claim justice. It was my aim here to explore the war and the post-war conflicts to set the scene for the victims’ struggle for redress that I analyse next. Understanding the early 1990s when Bosnia was fragmented into ethno-national turfs is critical for studying its post-war developments. War-generated divisions have not only become institutionalized by the consociationalist structures of the Dayton peace framework but also by visceral rivalries of the main political actors, which have later used frames of victimhood to justify their claims for power. Although many external actors steered the post-war stabilization phase, the external guardianship of Bosnia led to domestic conflicts that directed external attention towards stability and peace, rather than creating a socially inclusive political system. Especially until 2006, external actors dominated domestic policymaking, forcing the main nationalist parties towards
cooperation and centralization. But with the end of externally guided policymaking, the start of the economic crisis and the beginning of inconsistent Europeanization thereafter, Bosnian politics returned to the polarized and nationalist discourse of the 1990s that has lasted until now. While the short second phase saw some critical centralization reforms in a rather short period of time, the last phase has lasted for 13 years without much progress. On the contrary, it has been characterized by threats of separatism, intransigent elites, growing nationalism and economic malaise.

The context outlined here has posed many challenges to victims’ efforts and in many respects shaped the strategies they were able to pursue. As Louise Mallinder noted in her detailed overview of transitional justice in BiH until 2009, ‘what is striking about the Bosnian experience is the extent to which decisions on justice issues have been made by political elites, either domestically or internationally, with relatively little engagement with domestic civil society actors’ (Mallinder, 2008, p. 162). Yet she is not entirely correct to argue that ‘unlike the experiences in Uruguay, Argentina and elsewhere, civil society groups have not spearheaded mass mobilisations to demand truth and justice’ (ibid.). While the weakness of civil society in Bosnia when compared to other cases is clear, as the rest of this book shows, had it not been for victim associations’ and civil society efforts, little would have been achieved across BiH regarding post-war justice. In fact, baffled by and unsatisfied with the exogenous forces of justice applied in Bosnia, their demands became directed at the divided domestic institutions and an insistence on the creation of a broader framework for victims’ recognition within the Bosnian state. Although some victims initially believed in formal redress delivered through legal means such as the ICTY or the ICJ, it soon became clear that the disputed nature of the judicial process would not satisfy them. By the end of the first post-war phase, many victims started mobilizing for new policies as a form of material assistance and recognition of their victimization from the central and entity governments. A key goal became the pursuit of a formal ‘status’, i.e. a legal recognition of a victim category as eligible for material and in-kind support. However, as the following chapters suggest, some victim groups have been more successful with such demands than others due to their positioning in the post-war state and their victim capital.
NOTES

1. For literature review of the various theories of the Yugoslav disintegration see Jovic (2001); Dragović-Soso (2008).

2. It should be stressed that some recent research suggests that given the high Gastarbeiter population of Bosnians working in Germany and abroad, the pre-war population might have been lower, closer to 4 million (Judah & Vracić, 2019).

3. The aim of this section is to provide an overview of the war to inform other sections of this book. For more detailed and thorough accounts see Gutman (1993), Vulliamy (1994), Bennett (1995), Cigar (1995), Woodward (1995), Glenny (1996), Maas (1996), Rieff (1996), Silber & Little (1996), Rohde (1998), Hoare (2004), Burg & Shoup (2000), Ramet (2005), Magas & Zanic (2013).

4. These data come from the 1991 census (Burg & Shoup, 2000, p. 27).

5. For a full account of the war military see Hoare (2004).

6. Banja Luka became the capital only after the war.

7. Its members have been called pejoratively autonomaši (de facto separatists). The inter-Bosniak conflict lasted from 29 September 1993 until 7 August 1995 (Andreas, 2004; Magas & Zanic, 2013).

8. Četniks were extreme monarchists fighting for the restoration of Serbian domination under Draža Mihailović during World War II. Ustaše were Nazi-supporting Croatian nationalists that ran an independent puppet state of enlarged Croatia under Ante Pavelić during the same period.

9. It was only in the 1971 census when Bosnians were given the option to identify with their nation under the term Muslimani, with capital M to distinguish nationality from the religious muslimani (Babuna, 2005).

10. The term ethnic cleansing was re-introduced with the Bosnian war (Petrović, 2007).

11. The infamous ‘ethnic hatred thesis’ was advocated in Robert Kaplan’s unscientific analysis of the wars. The paradox of Christian Croats fighting against Christian Serbs was downplayed (Kaplan, 1994).

12. For example, mixed municipalities in FBiH informally agreed to have a Bosniak mayor and a Croat deputy or vice versa (Touquet, 2012).

13. The key agreements according to Annex VI are as follows: 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial
Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter for Regional or Minority Languages; 1994 Framework Convention for the Protection of National Minorities (The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995).

14. The third phase could be further divided into two to reflect the growing marginalization of the HR after 2011. However, for the arguments presented here, the three phases are sufficient.

15. According to Fagan, the EU alone has spent over 2.5 billion Euro in BiH from 1991 until 2010 (Fagan, 2010, p. 95).

16. In 2008, the number of returnees reached a million.

17. For the history of the meetings, see the OHR official website, http://www.ohr.int/pic/default.asp?content_id=5182#11, accessed 7 May 2019.

18. Under the title of Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War.

19. For an overview of the court system see OSCE (2011).

20. Karadžić was later sentenced to life imprisonment in 2019, Krajšnik to 20 years in 2009 (released in 2013) and Plavšić to 11 years (released in 2009).

21. Milorad Dodik was RS’s Prime Minister from 1998 to 2001 and 2006 to 2010 and the President of RS thereafter. He is currently in the Bosnian Presidency.

22. These were the Community Assistance for Reconstruction, Development and Stabilization (CARDS) and within the European Initiative for Democracy and Human Rights. Technical Assistance for Civil Society Organizations has been another key EU signature project. Only in 2000–2004, CARDS distributed nearly 400 million Euro in BiH. See the EU Delegation in Bosnia website at http://europa.ba/?page_id=496, accessed 1 February 2018.

23. Already in 2003, BiH was identified as a potential EU candidate.

24. The Prud Agreement was initially driven by the main political parties due to their EU aspirations but it was buried together with the rest of the reform attempts later (Sebastian-Aparicio, 2014, pp. 154–157).

25. The only tangible results were the final inclusion of the Brčko District into the Constitution and the decision to organize a census in 2011. It was organized only in 2013 with results published in July 2016.
26. Personal interview with a political analyst in Sarajevo, 2015.
27. The only outlier was the election of Croat Željko Komšić from SDP as a Bosniak member of the presidency.
28. According to the 2014 data, the Bosnian electorate was 3.28 million with 7,748 candidates on the list. See online the official Central Election Committee, https://goo.gl/an242G, accessed 4 May 2017.
29. A key instrument of economic aid in 2008 when an agreement was signed became the so-called IPA funds (Instrument for Pre-Accession Assistance).
30. For all decisions see the OHR website online, http://www.ohr.int/?page_id = 1196, accessed 20 January 2018.
31. The EUFOR mission was in 2012 scaled down to 600 soldiers (Christopher Bennett, 2016, p. 216).
32. Bosniaks celebrate 1 March as the ‘Day of Bosnian Independence’, i.e. the day of the 1992 referendum, and with Croats also the ‘Day of Bosnian Statehood’ on 25 November as the historical creation of BiH in 1943.
33. Personal interview with Goran Šimić, 2015.
34. The WB and the WHO launched rehabilitation projects for Bosnian victims in 1996, but by 2002 these efforts were transferred to local NGOs (Maglajlić Holić & Rašidagić, 2007, pp. 157–158).
35. This term was used in ex-Yugoslavia. There were over 300 associations listed in the various registries across the country across 2016. Their vast majority gathered veteran organizations. The list is with the author.
36. For his guilty plea at the ICTY, see https://www.icty.org/en/content/dra%C5%BEen-erdemovi%C4%87, accessed 8 April 2019.
37. Prosecutor vs. Krstić, IT-98-33. See online at http://www.icty.org/case/krstic/4, accessed 9 May 2018.
38. The full list of cases can be found online here: https://www.icty.org/en/cases, accessed 24 March 2019.
39. ICTY, Rule 105 and 106, in Rules of Procedure and Evidence (IT/32), adopted on 14 March 1994.
40. In 2005, ICTY published a film of Serbian paramilitaries executing Bosniaks in Srebrenica, shaking the public opinion in Serbia (Gordy, 2013a).
41. Personal interview with Jakob Finci, 2015.
42. Council of Europe’s Treaty list for BiH can be accessed online, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/BOS?p_auth=YN7oPBL8, accessed 5 May 2019.
43. Personal interview with Jakob Finci, 2015.
44. In February 2017, Bosniak representatives resubmitted the case to ICJ but it was rejected on procedural grounds because the submission was not endorsed by the then President of the Presidency (Latal, 2017).
45. These are especially the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement; Public Administration Reform Strategy from 2006; Gender Action Plan from 2006; and the currently debated Programme for Improvement of Status of Women Victims of War Rape and Sexual Harassment and Torture in BIH, 2012–2016.

46. Personal interview with a victim leader, 2019. See also Clark (2017, pp. 160–165).

47. Personal interview with Jakob Finci, 2015.

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