

## Remembrance of Genocide in Bosnia and Herzegovina: Achieving Harmony in the Face of Discord?

**Fayyaz Ali**

LLM, Department of Law, University of Sindh

**Abdul Wadood**

LLB , PU, Lahore

### Abstract

The Office of the High Representative has been instrumental in harmonizing memorialization in Bosnia and Herzegovina with international law requirements. A prime example is the remembrance of the Srebrenica atrocity. Construction of the Srebrenica-Potočari Memorial and Cemetery was made feasible by the decision. enforced by the High Representative. The Memorial Center may never exist without him. Since Srebrenica is in Republika Srpska, since its founding in October 2000, the Memorial Center's symbolic mission has inspired many. Reuniting Bosnian Muslim refugees in Srebrenica reverses symbolically the effects of Wartime ethnic cleansing and genocide. The 2021 genocide denial ban is 127. Concerned, notwithstanding tensions since its imposition, it symbolizes an essential legislation. The law, not reconciliation, should be the aim. condition that enables reconciliation when political will increases motivated to succeed. A genocide denial prohibition protects and maintains the legal truth and ICTY legacy, providing a foundation for a more Future democratic memory building is possible. Alternatively, it gives a judicial system that may challenge institutional and societal approval denying and triumphing culture. In a democracy, multiple interpretations of history may coexist, but genocide denial and war glorifying should never ensue. criminals. Bosnian genocide denial humiliates victims and survivors, while War criminals are glorified rather than acknowledged. violence victims' pain.However, the 2021 statute punishing denial.

**Keywords:** Challenging issues,Genocide, law



## Introduction

There are still numerous significant problems in Bosnia and Herzegovina's dealing with the past in memorialization contexts three decades after the end of the 1992-1995 war. During the 1990s conflict, the Bosnian Serb Army killed over 8,000 Bosnian Muslim (Bosniaks) men and boys, and this was the worst genocide in Europe since the end of the Second World War. Genocide-related transgressions have been tried in this horror. It happened in the summer of 1995 around Srebrenica – a small municipality in northeastern Bosnia and Herzegovina, or 'Bosnia' as commonly referred to, is currently serving as a UN-safe area. Besides mass murders, ethnic cleansing, forced detention, torture, and rape, Bosnia and Herzegovina was also affected by other human rights abuses during the war. Indeed, the Bosnian war was incredibly violent, irresponsible, and, above all, charged with passion caused by the conflict over identity. This resulted in uprooting about two-thirds of the population (estimated at 100,000 people).

There have been some achievements in setting up accountability and trial of war criminals in the post-war situation. Based on these findings, it will be important to argue that the ICTY has a role in the development of reconciliation, justice delivery to the victims, and revisionist history prevention. This is done by establishing the legal truth of war events and bringing the offenders to justice. Nevertheless, nationalist oratory has been a constant in the public sphere for decades, insisting on the non-existence of war crimes, genocide in particular, and venerating convicted war criminals.

Another trend that has emerged in recent years has become even more acute – the denial of historical facts widely proven during wartime with the help of state institutions, authoritative lawmakers, and official envoys. This can be explained by disrespecting the judiciary and the laws, which should remain the cornerstones of any democracy. It also negates the most crucial European seven values and remains a significant barrier to creating permanent peace, stability, and reconciliation in the nation.

As it can be seen up to this point, Dayton Peace Agreement signed in 1995 failed to counter these post conflict developments. It divided Bosnia and Herzegovina into two distinct entities:



the Republika Srpska, which is almost wholly Serb, and the largely power-sharing B Cosniak-Croat Federation of Bosnia and Herzegovina, which is divided into ten cantons. Though this resolution brought an end to the conflict, it has also entrench ethnic cleavage and celebrate high level of mistrust amongst the ethnic groups. Reconciliation is additionally made difficult by the Constitution of the nation (as incorporated in the Dayton Peace Accords, Annex 4). Andrew Schaap points out that for one to reconcile, it must be done from the present in order to start over and to commemorate the new start with no possibility of repetition. There is also a need to reconstruct a new political “we”, or at least one must attempt to do so, as widely as possible. The 12th Bosnian Constitution does not include any of that “we” or the promise that it will not happen again. What it calls minorities or people who do not wish to define with an ethnic group it describes as ‘others’ while the three chief ethnic groups of Bosnia and Herzegovina it describes as ‘constituent peoples’. Thus the Constitution reaffirms ethnic cleavages rather than healing the society and divided societies beget divided memories along ethnic divides. They found that war in the 1980s in Bosnia and Herzegovina is remembered with three different ‘constituent memories’. These two theories are diametrically opposed,(percent)nationalistic, and can not be combined. Both of them sees its ethnic group as a suffering victim of past history and considers the war of the 1990 as a liberating one.

While leaving the office in July 2021, High Representative was able to enact an amendment to Bosnia and Herzegovina’s Criminal Code, which banned both genocide and war crimes denial, as well as the glorification of war criminals, hoping it would encourage the country’s residents to accept the newly matter of fact of the Bosnian War and the atrocities that defined it. The Office of the High Representative is an international organisation sui generis created for the purpose of implementing the civilian aspects of the Dayton Peace Agreement. The Bonn Powers, by which the High Representative acquires the power to make decisions having primacy over national laws and discharge public officials from their duties, were used in order to implement the amendment to the Criminal Code. Again, the changes to the Criminal Code were even more relevant since this special set of powers has not been exercised over the course of the last



decade to refrain from undermining Bosnia's sovereignty. The objective the next promulgation of the law was stated in an official press release as correcting a defect in a national legal system that left hate speech unaddressed by denying genocide, crimes against humanity and war crimes.

It presents an analysis of memorialisation of the 1992–1995 Bosnian War along with its most frightening crime of genocide in relation to the imposed prohibition of genocide denial. First, it locates the law that criminalises denial of genocide and other international crimes to the broader concept of memory laws. It then examines the nature and extent of its content, and the commotions and afterwards it prompted specifically in Republika Srpska, home of Srebrenica, comparatively. Accordingly, the article argues that a memory law that is external is inherently an ill-suited process for reconciliation in a society that has been in conflict and is deeply divided. On the other hand, it shows that the prohibition on genocide denial has ignited an internal conflict over memory that has precipitated the country's worst political and constitutional crisis since the end of the war in 1995. Such a situation required the Constitutional Court eventually at the state level. While the 2021 law prohibiting genocide denial has been discussed in previous studies for lack of proper drafting that hinders prosecutions on this basis, and its roll in not promoting inclusive societal discussion of past atrocities, this article contends that the imposed legislation 19 is a necessary and fundamental instrument. It operates as a universal legal reference to address the dangerous tendencies of genocide minimization and the celebration of war criminals in society by emulating memory laws of Western Europe to maintain judicial findings on the Bosnian War and ICTY progenitor. In this regard, the imposed law places victims of violence first so that the process of memorialization is linked with the culture of democracy and human rights. Aside from the main objectives presented in the article, the author also want to add to the genocide studies showing how the law may react to undertakings of denial of mass atrocities and to the ongoing discussion in legal scholarship concerning the permissibility of memory laws in liberal societies based on analyzing the Bosnian law criminalizing genocide denial.



Memory Laws and the Criminalization of the Past The vast family of memory laws includes prohibitive laws on the denial of genocide among other wars crimes. As the Council of Europe and the literature suggest this specific form of legislation refers to legal provisions that ‘establish state’s interpretations of significant historical events and support certain histories of the past’. However, it should be noted that this definition refers principally to national law but Sébastien Ledoux also points that the term ‘memory laws’ includes resolutions and declarations concerning the interpretation of historical events put forward by international and supranational bodies.

Nikolay Kopusov then goes further introducing the typology of punitive-memory laws. The first of them is the declarative laws that set the official recognition of past events, while themselves are often not normative in nature. It also includes laws that concern agencies or areas of interests today such as museum laws, monument laws, laws on history in state education or on acts of remembrance or commemorate days and symbols laws. This latter group of laws contains more rights and duties of the State and its citizen. On the other hand, punitive memory laws outlaw particular stories about the past: Holocaust and/or genocide denial or approval, war criminality and crimes against humanity. Kopusov identifies that punitive memory laws constitute the main part of the memory laws category, and non-punitive memory laws are marginal.

Now, all but one or two countries in Europe have their ‘punitive memory policies’. They first appeared in countries like Austria and Germany within the 1980s, and then they move to other WDs of Western Europe in the 1990s. It is also important to understand that punitive memory laws were also enacted in Central Eastern Europe in the 2000s and 2010s. The Gayssot Act of France effective from 1990 provided for the standard of the delivery of comparable legislation in European nations and has been used as a tenet for global treaties. With reference to the deeds contemplated in Article 6 of Charter of the International Military Tribunal (IMT) as schedule to Article 2 of the London Agreement of August 1945 (Nuremberg Tribunal), it even penalized the genocide of Holocaust, war and crimes against humanity. Specifically, with the



case of Gaysot Act the remit of the memory laws was extended to include the war crimes and crimes against humanity as defined in the international law whereas the primary purpose of such laws in 1980s was negationism of the Holocaust. Second, denial has been replaced by a broader formula due to the increase in punitive memory laws in Western Europe in the 1990s. This is the case since most of these laws also ban some concepts of trivialization and justification of the aforementioned offenses.

### **Bosnia's Genocide Denial Law: Scope and Contents**

The decision of the High Representative to ban the negation of genocide and other war crimes in Bosnia and Herzegovina is a punitive memory law that criminalizes certain speech about the past. Having been internationally applied, it is, however, different from the generalized understanding of memory laws, and therefore does not refer to state memories. The Office of the High Representative was forced to introduce the amendment to the Criminal Code from the above list due to the Bosnian Parliament's ten-year unsuccessful trail of attempts of adopting the punitive memory law. The further evidence of the original memory laws is seen in the imposed law as well. It has been integrated as a tool to ensure the nation remained an arena for the victims' memory and to help in the process of a call for truth, reconciliation and a stable and prosperous future for the country. In terms of content it complies with both the French Gassyout Act and the EU Framework Decision but it also goes further and covers the Criminal acts during the Bosnian War.

In particular, the amendment changed Article 145a of the Criminal Code of Bosnia and Herzegovina which sets penalties from three months to three years imprisonment for incitement to violence or hatred against a person or a group on the grounds of race, color, religion, descent or national or ethnic origin (para. 2). The following illustrations: a paragraph or para., is used for defining the object of the research or investigation – The given paragraph or 'para' stands for the kind of work the researcher or invesihtgator sets out to do. 3) introduces prison sentences ranging from six months to five years for individuals who publicly condone, deny, grossly trivialize, or attempt to justify a crime of genocide, crimes against humanity, or a

war crime when three conditions are met: The internationally recognized crimes include a) the crimes that are determined by a final decision in accordance with the Charter of the IMT attached to the 1945 London Agreement, the ICTY, the International Criminal Court or the court in Bosnia and Herzegovina; b) the offense is committed against a group of people or an individual of a group on the basis of race, color, religion, descent or national or ethnic origin; and c) the

### **What is best described as a tool to facilitate a reconciliation?**

One question is whether an externally inspired memory law can contribute to reconciliatory work in a society that is so polarised, as has been claimed by the Office of the High Representative. It would noted that the analysis of reconciliation remains mutation and riproduct today despite numerous investigations conducted in the field. It has sometimes been associated with the idea of reconciliation and with such words as coexistence and social reconstruction which imply that a component of forgiveness is not necessarily assumed. In this latter sense, reconciliation has been put more specifically as a “set of processes that involve restoration or creation of relationships with the other, after the trauma caused by gross human rights violations.” Also, it has been defined as a concept and a methodology, as well as a goal. It can be interpersonal; intergroup; between civilizations; or between people and state/ institutions. It aims at avoiding revision of the conflict back into violence and to enhance the achievement of a permanent and stable peace. Often, transitional justice practices like truth telling commissions or war crimes trials have been associated with reconciliation it is believed that since the frameworks of restorative and retributive justice are incorporated into TJ they lead to reconciliation.

Like memory laws that are internalized, exogenous memory laws can also be understood through these assumptions. To this effect James Hughes and Denisa Kostovicova have pointed out that there is a paradox of the external promotion of norms and the internal imposition of them. Also, Jasna Dragović-Soso has described the limited roles that outsiders can play in shaping domestic processes of addressing a traumatic recent past. For example, the declaration



issued in 2010, the Srebrenica declaration that was adopted by the Serbian Parliament as an apology for the 1995 genocide was not the starting point for change in Serbia's dealing with the past. This was so because it was implemented to meet the EU standards as a way of integrating the nation. While noting that the Bosnia and Herzegovina law prohibiting genocide denial is nearly identical to legislation in Western Europe, and was in effect passed, among other reasons, to support the concept of reconciliation, it seems highly unlikely that a memory law imposed by the international community can encourage reconciliatory politics for a divided Bosnia and Herzegovina.

### **Initiating a Memory Conflict**

The Bosniak politicians and the relatives of the victims have welcomed the criminalization of genocide denial. However, at the same time, it has also provoked a memory war with Republika Srpska, whose institutions have categorically refused the imposed legislation where there is no internal political will to address past injustices. The imposed law was immediately rejected by the Bosnian Serb leader, Milorad Dodik, as genocide would never have happened, and the law would bring the "final death blow" to Bosnia and Herzegovina. Besides, he threatened the dissolution of the country. He called on the Parliament of Republika Srpska to provide an "institutional answer" to the refusal of the denial prohibition that has been set. The National Assembly of Republika Srpska acted to counter this by passing the law on the non-implementation of the decision of the High Representative. Washington, it was decided here that the genocide denial prohibition would not be implemented in Republika Srpska, and the entity's authorities would not cooperate with Bosnian authorities in applying the declared decision. This has led to the legitimization of genocide denial and celebration of its perpetrators within the territory of Republika Srpska. Also, the new Criminal Code of the entity has been passed, setting prison terms of up to fifteen years for disrespecting Republika Srpska's symbols, independence, or territory or for calling it a "genocidal creation." This has been followed by numerous appeals from the leadership of the above entity to shut down the State-level institutions and to launch policies that would amount to de facto secession. In particular, the

entity has endeavored to disarm Republika Srpska's military and police forces to take control over the Bosnian Serb tax collection and the judicial system, all of which are contrary to the provisions of the Dayton Peace Agreement.

### **Conclusion**

This paper argues that the High Representative's decision to ban the denial of genocide and other war crimes in Bosnia and Herzegovina in mid-2021 as a way of reconciling the people has triggered more conflicts within the society. This conflict has led to the passing of memory laws that are illiberal in Republika Srpska and required that the state-level Constitutional Court step in. It is unrealistic to expect memory laws to favor reparation in a polarized society to the extent it is in the Balkans today, as the ICTY's decisions suggest. However, this does not lead to the conclusion that the international memory laws imposed from the international level cannot encourage the sequencing of memorialization processes on human rights and democracy. IHR is based on primary and secondary resources that require the adoption of memorialization policies in societies that have suffered massive human rights abuses. For example, the Durban Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance of 2001 speaks of memorialization as a strategy against the denial of justice and for the sustenance of peace. However, it is regulated by the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity of 2005, which formed the basis of the Basic Principles and Guidelines on the Right to a Remedy and the Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2006, according to which action should be taken to find the victims of violence; Office of the High Representative has been playing a role in overseeing the memorialization process in Bosnia and Herzegovina to meet international standards and criteria. The commemoration of the Srebrenica atrocity evidence this more than any other event since it means that there is an explicit recognition of a genocide that happened but one that is not to be repeated. When rendering his judgment, the High Representative made constructing The Srebrenica-Potočari Memorial and Cemetery feasible. Because

Srebrenica is located in Republika Srpska, it can be assumed that the Memorial Centre might not have been created without Radovanić's support.

Symbolizing the counteract of ethnic cleansing and genocide that had been during the war, the Memorial Centre has had a symbolic function since its launch in October 2000, encouraging many Bosnian Muslim refugees to return to Srebrenica. The 2021 Prohibition of Genocide Denial Act is a sorely needed law, even if conflict has emerged about the law. In other words, rather than conceptualizing the legal process as a means towards achieving reconciliation, the legal process should be conceived in a context where reconciliation requires another and different type of political will when the latter becomes more oriented towards achieving the goal. On the one hand, the law prohibiting the denial of genocide protects and encodes the legal truth and archive of ICTY, thus creating the condition from which a democratic construction of memory might be launched in the future. At the same time, it sets a legal basis that might be equally effective in neutralizing the institutional and social normalization of triumphalism and denialism culture. It is proper to have different attitudes toward the past in a democratic society, but what is not acceptable is to deny genocide and admiration for war criminals. The recognition of war criminals in Bosnia and Herzegovina puts them at the center of attention, whereas genocide minimization is humiliating for victims and survivors instead of addressing their pain.

On the other hand, the 2021 law, which seeks to punish the denial of genocide and other international crimes, is a part of vitiative memory culture comparable to the punitive memory laws in Western Europe. It also continues the reinforcement of the international legal requirement for the state to make denial of genocide illegal. This obligation is drawn, for example, from the UN Human Rights Committee, which has a committee made of independent experts who are in charge of overseeing the ICCPR of 1966), stating that criminal prosecution has to be pursued for the public denial of international offenses even if it is considered as inciting to violence and racial hatred and the Genocide Convention and Direct and public incitement to perpetrate genocide is also penalized.



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