

Faraway, so close: victims of enforced disappearance in Bosnia and Herzegovina and the rights to know the Truth, Justice and Reparation.

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Faraway, So Close: Victims of Enforced Disappearance in Bosnia and Herzegovina and the Rights to Know the Truth, Justice and Reparation.

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1. Introduction

The conflicts in the former Yugoslavia have been characterised by the perpetration of atrocities and gross human rights violations, including massacres, torture, rape and other forms of sexual violence, and enforced disappearance. War left a legacy of thousands of victims and, overall, a torn society. This grim scenario naturally prompted the quest for justice, truth and reparation. Almost 25 years after the end of the conflicts, it is time for a stocktaking, to assess whether such demands have been satisfied, which obstacles were encountered, and what remains to be done.

This contribution will focus on the situation in Bosnia and Herzegovina (hereinafter, “BiH”) concerning victims of enforced disappearance.² The choice of centring the analysis on BiH and enforced disappearance is due to the fact that the different measures and actions undertaken over the years in this country with regard to the complex violation at stake are numerous and varied. Such diversity (also in terms of outcome) offers valuable insights for the study of the interplay between truth, justice and measures of reparation. The study of the BiH case is instrumental also to analyse the interaction between domestic and international responses in the domain of transitional justice, and how these two levels could be mutually reinforcing in order to overcome potential impasses.

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² In this article, pursuant to Art. 2 of the International Convention on the Protection of All Persons from Enforced Disappearance (ICPED), enforced disappearance is considered to be “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. Moreover, pursuant to Art. 24, para. 1, ICPED, victim means “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”.

From the outset, it must be observed that the results obtained in BiH with regard to three of the main “pillars” of transitional justice, namely truth, justice and reparations, vary greatly. On the one hand, BiH has an unprecedented and outstanding record in terms of missing persons³ whose mortal remains have been located, exhumed, identified and returned to the families. According to the data collected and published by the International Commission on Missing Persons (hereinafter, “ICMP”), around 23,000 persons of an estimated 31,500 reported missing as a consequence of the conflict in BiH have been accounted for. This amounts to more than 70%.⁴ It has been held that “no other post-conflict country has achieved such a high rate of *resolving* cases of missing persons, which has been one of the most successful aspects of BiH’s post-war recovery”.⁵

The identification rate in BiH is undeniably a success and it is crucial in terms of upholding the right to know the truth of relatives with regard to the fate and whereabouts of their loved ones.⁶ It may however be contended that the right to know the truth goes beyond this – yet fundamental – aspect and encompasses also establishing the circumstances of the disappearance and the progress of investigations on the gross human rights violations and crimes under international law at stake.⁷ Moreover, it has a collective dimension, pursuant to which society at large is entitled to know the truth on past events concerning the perpetration of heinous crimes and the underlying circumstances that enabled their perpetration.⁸ Whether BiH can be regarded as a “success story” from this angle is more

³ The notion of “missing person” is markedly broader than that of “enforced disappearance”. Pursuant to the operational definition adopted by the International Committee of the Red Cross (ICRC), missing persons are “individuals of whom their families have no news and/or who, on the basis of reliable information, have been reported missing as a result of an armed conflict – international or non-international – or of other situations of violence or any other situation that might require action by a neutral and independent body. This includes natural catastrophes, disasters and the context of migration” (*Q&A: The ICRC’s engagement on the Missing and their Families*, in *International Review of the Red Cross, Special Issue on The Missing*, Vol. 99 (2) No. 905, 2017, p. 536; and Art. 2(a) of the ICRC Model Law on the Missing, 2009, available at <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>).

⁴ International Commission on Missing Persons (ICMP), *Missing Persons from the Armed Conflict of the 1990s: A Stocktaking*, Sarajevo, 2014, available at: https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf, p. 7 and 21.

⁵ *Ibid.*, p. 11 (emphasis added).

⁶ Art. 32 of the Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 establishes as a general principle that “[...] the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives”.

⁷ In this sense, Art. 24, para. 2, of the ICPED establishes that “each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”. See also, among others, Naftali, *La construction de "droit à la vérité" en droit international*, Bruylant, 2017.

⁸ In this sense, see, among others, Working Group on Enforced or Involuntary Disappearances (WGEID), *General Comment on the Right to the Truth in Relation to Enforced Disappearance*, UN Doc. A/HRC/16/48 of 26 January 2011, para. 39 (preamble of the General Comment); Principle 2 of the Set of Principles for the

questionable. Similarly, when it comes to “justice”, despite some notable achievements, in the case of BiH, the balance cannot be considered entirely positive and the same holds true with regard to “reparations”. Adding to the analysis also the fourth “pillar” of transitional justice, namely “guarantees of non-recurrence”,⁹ including measures aimed at the preservation of memory, the result of an overall assessment of the experience in BiH is even more troublesome. It is therefore legitimate to analyse the interaction between the main pillars of transitional justice in cases of enforced disappearance and to evaluate whether, to label a case as “resolved”, it is enough to identify and return the person’s mortal remains to his or her family, especially bearing in mind the societal long-lasting consequences of the phenomenon, coupled with impunity.

This article will concisely describe the main features of the perpetration of enforced disappearance in the context of the conflict in BiH. It will then analyse the first responses provided, while the conflict was still ongoing, essentially in terms of truth and justice and with a prominent role played by international actors. Subsequently, the pertinent initiatives and actions undertaken, the main achievements and the obstacles encountered at the domestic level in the aftermath of the conflict will be illustrated, along with the deadlock reached by the end of the first decade of the XXI century. The fourth section of the article will describe the ensuing victims’ attempts to maintain transitional justice measures concerning enforced disappearance on the national political agenda and to overcome the impasse by turning to international human rights mechanisms and institutions, either through the lodgement of complaints or the submission of reports and other advocacy activities. Some conclusive remarks will be delivered with a view at outlining the lessons learned and the remaining challenges.

2. Background

Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1 of 8 February 2005, recommended by Commission of Human Rights Resolution 2005/81 of 21 April 2005; and European Court of Human Rights (ECtHR), Case *El-Masri v. the Former Yugoslav Republic of Macedonia*, judgment of 13 December 2012, para. 191. See also Naqvi, *The Right to the Truth in International Law: Fact or Fiction?*, in *International Review of the Red Cross*, No. 862, 2006, pp. 245-273.

⁹ For a comprehensive study on the subject, see Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence, *Report on Guarantees of Non-recurrence*, UN Doc. A/HRC/30/42 of 7 September 2015. Art. 24, para. 5(d), of the ICPEP establishes that the right to obtain reparation for victims of enforced disappearance covers, among other forms of reparation also “guarantees of non-repetition”. Indeed, the relationship between the notion of “guarantees of non-recurrence” and that of “guarantees of non-repetition” enshrined in Art. 30(b) of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts calls for further analysis. However, this goes beyond the scope of this contribution.

On 6 March 1992, BiH, formerly one of the six federal States constituting the Socialist Federal Republic of Yugoslavia (hereinafter, “SFRY”), declared independence. One month later, on 6 April 1992, the European Community recognized BiH as an independent State. The latter was officially admitted as a member of the United Nations on 22 May 1992 and of the Council of Europe on 24 April 2002.

Its struggle for independence was marked by an armed conflict between various parties from, within and outside BiH, and was primarily fought between the Bosnian governmental forces on one side, and the Bosnian Serb forces (*Vojaska Republike Srpske*) and the Yugoslav National Army (*Jugoslovenska Narodna Armija*) on the other. The conflict was characterised by atrocities: thousands of civilians were killed, concentration camps were set up, more than two million human beings were forced to internally displace or to seek refuge abroad, and thousands of women were subjected to rape or other forms of sexual violence.

On 14 December 1995, the General Framework Agreement for Peace in BiH (also known as the “Dayton Peace Agreement”) put an end to the hostilities. Based on the Dayton Peace Agreement, BiH consists of two semi-autonomous entities, the Federation of BiH and the Republika Srpska. A special status was granted to the Brčko District in Northern BiH.

At the end of the conflict, the number of people reported missing ranged between 25,000 and 31,500.¹⁰ In several cases, they were victims of enforced disappearance.¹¹

A first wave of enforced disappearances occurred during the “ethnic cleansing” operations in the spring and summer of 1992.¹² A second wave of enforced disappearances occurred in Bosnian Krajina between May and August 1992, most prominently in the region of Prijedor. The military attack on the town of Prijedor began on 30 May 1992 and was characterised by mass killings, enforced disappearances and other methods of “ethnic cleansing”. In Herzegovina, most of the enforced disappearances occurred during the summers of 1992 and 1993 respectively. The last and

¹⁰ See *supra* note 3.

¹¹ On the notion of enforced disappearance and that of missing person and the relationship between the two, see *supra* notes 1 and 2 respectively. See also ECtHR, Case *Palić v. Bosnia and Herzegovina*, judgment of 15 February 2011, paras. 32-33.

¹² Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, UN Doc. E/CN.4/1995/37 of 12 January 1995, para. 3. Hereinafter “Expert Report No. 1”.

most notorious wave of enforced disappearances occurred in eastern BiH after the fall of UN-declared “safe areas” of Srebrenica and Žepa in July 1995. Allegedly, the great majority of the persons reported missing, including those victims of enforced disappearance, were eventually killed and their bodies were buried in mass graves across the territory of BiH.¹³

3. The First Attempts to Establish the Truth and Obtain Justice

In the face of the magnitude of the tragedy and the desperate quest of thousands of relatives of disappeared persons, the first attempts to provide meaningful answers mostly in terms of establishing the truth and holding perpetrators accountable were undertaken while the conflict was ongoing, with a prominent role played by international actors.¹⁴ At this initial stage, reparations – and even less guarantees of non-recurrence – were obviously not even part of the “equation” yet.

In the first years of the conflict, the International Committee of the Red Cross (hereinafter, “ICRC”), through the various Tracing Offices of the Red Cross BiH and its Central Tracing Agency, was the main actor dealing with the registration of data on missing persons.¹⁵ At the same time, separate State commissions to trace missing persons were set up.¹⁶ This multiplicity of stakeholders involved in activities directed at collecting tracing requests and assisting relatives of missing persons has not always proved to be effective. On the contrary, it has often been a source of confusion for relatives, who felt the lack of a stable and credible interlocutor and were forced to engage in lengthy and complicated bureaucratic demarches, with frequent instances of overlapping or duplication and, in general, scarce results.¹⁷

¹³ Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, UN Doc. E/CN.4/1996/36 of 4 March 1996, paras. 1 and 74-78. Hereinafter: “Expert Report No. 2”.

¹⁴ For a comprehensive overview (updated at the beginning of 1997) see Report by Mr. Manfred Nowak, Expert Member of the WGEID, *Special Process on Missing Persons in the territory of the former Yugoslavia*, UN Doc. E/CN.4/1997/55 of 15 January 1997, paras. 18-48. Hereinafter “Expert Report No. 3”. See also ICMP, *Missing Persons from the Armed Conflict of the 1990s: A Stocktaking*, *supra* note 3, pp. 26-30.

¹⁵ The ICRC established a field presence in BiH in 1991 and remained in the country throughout the conflict. See ICMP, *Missing Persons from the Armed Conflict of the 1990s: A Stocktaking*, *supra* note 3, p. 27. For the list of people registered as missing by the ICRC during the conflict in BiH and still unaccounted for, see: <https://familylinks.icrc.org/bosnia/en/pages/search-persons.aspx>.

¹⁶ For a summary, see ICMP, *Missing Persons from the Armed Conflict of the 1990s: A Stocktaking*, *supra* note 3, pp. 27-28.

¹⁷ Some instances are: the State Commission of BiH for the Tracing of Missing Persons; the Republika Srpska Office for Tracing Detained and Missing Persons; the Federation Commission for Missing Persons; the Office for the Exchange of Prisoners and Missing Persons of the Croatian Side of the Federation of BiH; the State Commission of the Republika Srpska for the Exchange of Prisoners of War and Missing

However, while lodging tracing requests in BiH, relatives were also transmitting the information and seeking the assistance of international human rights mechanisms. Hence, already in 1992, over 6,000 cases of disappearance occurred in the SFRY were reported to the United Nations Working Group on Enforced or Involuntary Disappearances (hereinafter, “WGEID”).¹⁸

In view of the thousands of atrocities being perpetrated, also bearing in mind that in several cases the persons registered as missing were actually victims of heinous crimes, including enforced disappearance, on 25 May 1993, the UN Security Council passed resolution 827 establishing the International Criminal Tribunal for the former Yugoslavia (hereinafter, “the ICTY”), headquartered in the Hague. The latter issued its first indictment in 1994 and the first trial commenced in 1996, while the first verdict was rendered in 1997. The ICTY had primacy over domestic courts and could take over national investigations and proceedings at any stage in the interest of justice. In this vein, local prosecutors were required to submit case files to the ICTY for review and no person could be arrested on suspicion of war crimes unless the ICTY Office of the Prosecutor had received the case file beforehand and found it to contain credible charges. The ICTY concluded its activities in 2017, having indicted 161 individuals, 90 of which were convicted. The Statute of the ICTY did not contain any explicit reference to enforced disappearance. Inevitably, the issue emerged during the trials, but it was never analysed in a comprehensive manner and the number of convictions for this specific crime (eventually dealt with as a crime against humanity, in the form of “other inhumane acts”), vis-à-vis the actual magnitude and scope of the phenomenon, remained strikingly low.¹⁹

As it happens in cases of enforced disappearance, the quest for accountability is complementary to that for establishing the truth on the fate and whereabouts of the victim. They are strictly interrelated and should be mutually reinforcing. Accordingly, while the Security Council opted for the creation of the ICTY, in 1994, the United Nations

Persons; the State Commission of BiH for gathering Facts on War Crimes; the Croatian government Commission for Detained and Missing Persons; the UN Office of the High Representative; the ICMP; the ICRC; the BiH Red Cross; the Federation BiH Red Cross; the Republika Srpska Red Cross; the International Police Task Force (ITPF); the BiH Research and Documentation Centre; the organization Physician for Human Rights; the Association for the Promotion of the Ludwig Boltzmann Institute of Human Rights; the Finnish Experts Team; the Expert Group on Exhumations and Missing Persons; and the Joint Forensic Expert Commission on Exhumation.

¹⁸ WGEID, *Annual Report for 1992*, UN Doc. E/CN.4/1993/25 of 7 January 1993, para. 6.

¹⁹ International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Kupreškić et al.*, IT-95-16, Trial Chamber, Judgment, 14 Jan. 2000, para. 566; and *Prosecutor v. Blagojević & Jokić*, IT-02-60, Trial Chamber Judgment, 17 Jan. 2005, para. 653.

Commission on Human Rights decided to establish the Special Process on Missing Persons as a joint mandate of strictly humanitarian and non-accusatory nature of the Special Rapporteur on the situation of human rights in the territory of the SFRY and the WGEID. Mr. Manfred Nowak (then member of the WGEID) was appointed as the expert in charge of the Special Process. In 1995, in its resolution 1995/35 entitled “Special Process dealing with the problem of missing persons in the territory of the former Yugoslavia” the Commission on Human Rights transformed the Special Process into an independent mandate. The mandate of the Special Process was meant to end “*when the fate and whereabouts of the missing persons have been clearly established*”.²⁰ Furthermore, it was specified that “all cases of missing persons in any part of the former Yugoslavia are subject to the Special Process, i.e. also cases resulting from a situation of armed conflict, both of an international and non-international character. *The target group of the Special Process is, therefore, much broader than the ‘disappeared persons’ dealt with by the Working Group and defined in the preamble to the Declaration on the Protection of All Persons from Enforced Disappearance.* In particular, not only civilians but also combatants involved in an armed conflict are considered. Therefore, the Special Process uses the wider term ‘missing persons’. In principle, the Special Process deals with all cases of missing persons, regardless of whether the perpetrators are in effect connected to government authorities or not. Only cases that are clearly the result of common crime are excluded”.²¹ Nevertheless, the Special Process concluded that “most of the allegations can be classified as enforced disappearance in the narrow sense of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance”.²²

Up to the end of 1995, the Special Process essentially functioned as a channel of communication between NGOs or the relatives of the disappeared persons, regardless of whether the victims were combatants or civilians, and who the forces allegedly responsible for their disappearance were, with a view to establishing the fate and whereabouts of the disappeared. Most of the work though was conducted through written communications, consultations in Geneva, and with the assistance of the High Commissioner's human rights field offices. The expert undertook only three missions to the field. Furthermore,

²⁰ See Expert Report No. 1, *supra* note 11, para. 10 (b), emphasis added. In Expert Report No. 2, *supra* note 12, it was reiterated that “the task of the special process terminates when the whereabouts of the missing persons are located and confirmed by the source” (para. 6).

²¹ *Ibid.*, paras. 10 (c), (d) and (e), emphasis added. It is worth noting that in the three reports of the Special Process the terms “missing” and “disappeared” are used interchangeably.

²² See Expert Report No. 1, *supra* note 11, para. 45; and Expert Report No. 2, *supra* note 12, para. 83.

in 1996, the expert travelled to BiH for a longer period of time to coordinate activities with other international stakeholders and, among other things, to monitor the process of exhumations.

After the conclusion of the Dayton Peace Agreement, 1996 was a crucial year for the launch of a plethora of initiatives directed at the promotion of truth and justice, especially with regard to missing persons, including victims of enforced disappearance. As already mentioned above, in 1996 the ICTY commenced its first trial.²³ In the same year, the ICMP was established at the initiative of US President Bill Clinton. Headquartered in Sarajevo, it was mandated to secure the cooperation of governments to locate persons missing from the conflicts in the SFRY. The ICMP supported other institutions working on the subject of missing persons, performing the DNA testing to facilitate the identification of disappeared people, and essentially enabling the remarkable result of accounting for the fate and whereabouts of more than 70% of the missing.²⁴

Annex 7 to the Dayton Peace Agreement referred to the issue of missing persons and stated that the parties to the conflict should provide information through the tracing mechanisms of the ICRC on all persons unaccounted for and cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of those missing. In 1996, the ICRC established a Working Group on Missing Persons (chaired by the ICRC itself and composed of representatives of the parties to the conflict in BiH). Such Group aimed at bringing on board all those involved in tracing missing persons and serving as a channel through which tracing requests were submitted to the authorities and the corresponding answers were communicated. Bearing in mind the regional scope of the conflicts in the Balkans, besides the Working Group on Missing Persons, a Sub-Committee on Regional Cooperation, co-chaired by the ICRC and the ICMP, was established with the aim to deal with missing persons in the countries of the SFRY.

Tracing activities were also performed by the Federation of BiH Office for Tracing Missing and Captured Persons, the State Commission for Tracing Missing Persons, and the Republika Srpska Office for Tracing Missing Persons. The division of tasks among the mentioned organs was not always clear and instances of overlapping and conflicts were registered.

²³ *Supra* section 1.

²⁴ *Supra* section 1.

Pursuant to Annex 6 to the Dayton Peace Agreement, a Human Rights Chamber, composed of 14 judges was established in March 1996 and functioned until 31 December 2003. Four members were appointed by the Federation of BiH, two by the Republika Srpska and the remaining eight were internationals appointed by the Committee of Ministers of the Council of Europe. The Human Rights Chamber was mandated to consider alleged violations of human rights, as provided for in the European Convention on Human Rights (hereinafter, “ECHR”) and the Protocols thereto, and alleged discriminations arising in the enjoyment of the rights and freedoms provided for in the ECHR and 15 other treaties listed in the Appendix to Annex 6 to the Dayton Agreement. The Chamber could receive applications by referral from the Ombudsperson or on behalf of an applicant or directly from any party to Annex 6, or from any person, NGO or group of individuals claiming to be the victim of a violation by a party or acting on behalf of alleged victims who were deceased or disappeared. The Human Rights Chamber could only receive applications concerning matters which were within the responsibility of one of the parties to Annex 6 to the Dayton Agreement and which occurred or continued after 14 December 1995. The Chamber could issue decisions on whether the facts before it indicated a breach by the party concerned of its obligations under the Dayton Agreement and on “what steps shall be taken by the party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), and provisional measures” (Art. XI, para. 1). Although it had a limited competence *ratione temporis*, the Human Rights Chamber delivered several decisions on cases of enforced disappearance, usually finding violations of Arts. 3 (prohibition of torture) and 8 (right to respect for private and family life) of the ECHR with regard to the relatives of disappeared persons.²⁵ In these cases, the Human Rights

²⁵ See Human Rights Chamber for BiH, Decision on Admissibility, *Josip, Božana and Tomislav Matanović v. Republika Srpska*, 13 September 1996 (Case No. CH/96/1); Decision on the Admissibility, *Ratko Grgić v. Republika Srpska*, 5 February 1997 (Case No. CH/96/15); Decision on the Merits, *Ratko Grgić v. Republika Srpska*, 5 August 1997 (Case No. CH/96/15); Decision on the Merits, *Josip, Božana and Tomislav Matanović v. Republika Srpska Republic*, 11 July 1997 (Case No. CH/96/1); Decision on the Admissibility, *Džemal Balić v. Republika Srpska*, 10 September 1998 (Case No. CH/97/74); Decision on Admissibility and Merits *Ando and Esma Palić v. Republika Srpska*, 11 January 2001 (Case No. CH/99/3196); Decision on Admissibility and Merits *Selimović (Srebrenica cases) and others v. Republika Srpska*, 7 March 2003; Decision to Strike Out, Case *Ibisević and 1804 others v. Republika Srpska*, 3 June 2003 (Case No. CH/01/7604); Decision on Admissibility and Merits *Čebić v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, 4 July 2003 (Case No. CH/98/668); Decision on Admissibility and Merits *Pašović, Nikšić and Burić v. Republika Srpska*, 7 November 2003 (Cases No. CH/01/8569, CH/02/9611, CH/02/9613, CH/02/11195, CH/02/11391); Decision on Admissibility and Merits *Popović v. the Federation of Bosnia and Herzegovina*, 7 November 2003 (Case No. CH/02/10074); Decision on the Admissibility and the Merits *Smajić and others v. Republika Srpska*, 5 December 2003 (Case No. CH/02/8879); Decision on the Admissibility and the Merits *Jovanović v. the Federation of Bosnia and Herzegovina*, 5 December 2003 (Case No. CH/02/9180); Decision on Admissibility

Chamber ordered the respondent concerned to “take all necessary steps to ascertain the whereabouts or fate of the applicants and to secure their release if still alive”²⁶ and to “carry out without delay a full investigation and bring to justice those found to be responsible”.²⁷ In certain cases, the Human Rights Chamber also awarded compensation to cover the mental suffering of relatives and the non-pecuniary damage endured by the disappeared person.²⁸ Once the Human Rights Chamber finalized its mandate in 2003, its functions were transferred to the Human Rights Commission within the Constitutional Court of BiH, which also delivered several judgments referring to enforced disappearance.²⁹

On 26 March 1997, Mr. Nowak resigned from his functions in the UN Special Process on missing persons “because of lack of support by the international community for his efforts to clarify cases of disappearances by all available means, including exhumations of mortal remains”.³⁰ Subsequently, through resolution 1997/57, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the territory of the SFRY to act on behalf of the United Nations in dealing with the question of the missing in BiH.

In 1997, the WGEID decided that “for the time being cases of disappearance which occurred in the Republic of Croatia and in BiH until the date of the entry into force of the Dayton Peace Agreement on 14 December 1995 *will not be dealt by the Working Group* and, consequently, the Working Group will not report to the Commission on Human

and the Merits *Husković and others v. the Federation of Bosnia and Herzegovina*, 22 December 2003, (Case No. CH/02/12551); Decision on Admissibility and the Merits *Mujić and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/10235); Decision on Admissibility and the Merits *M. Č. and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/9851); and Decision on Admissibility and the Merits *Malkić and others v. Republika Srpska*, 22 December 2003 (Case No. CH/02/9358). See *Jurisprudence of the Human Rights Chamber for Bosnia and Herzegovina Collection* (Wolf Legal Publishers, 2011). For an analysis of selected cases dealing with enforced disappearance, see Citroni, Scovazzi, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, Martinus Nijhoff Publishers, 2007, pp. 224-243.

²⁶ Among others, Human Rights Chamber for BiH, Case *Josip, Božana and Tomislav Matanović*, *supra* note 24 para. 63.

²⁷ Among others, Human Rights Chamber for BiH, Case *Avdo and Esma Palić*, *supra* note 24, para. 89(a).

²⁸ For instance, in the case *Avdo and Esma Palić*, *supra* note 24, the Human Rights Chamber for BiH ordered the respondent party to pay 15,000 KM to the wife of the disappeared person by way of compensation for her mental suffering and, in respect of her husband, by way of compensation for non-pecuniary damage, 50,000 KM (para. 90). In the case *Selimović and others*, *supra* note 24, concerning Srebrenica, the Chamber ordered the Republika Srpska to make a collective compensation award to benefit all the family members of the persons missing from Srebrenica since July 1995 and to make a lump sum contribution to the Foundation of the Srebrenica-Potočari Memorial and Cemetery for the collective benefit of all the applicants and the families of the victims of the Srebrenica events in the total amount of 4 million KM, to be used in accordance with the Statute of the Foundation (paras. 211-219).

²⁹ *Infra* section 4.

³⁰ See Expert Report No. 3, *supra* note 13, para. 21.

Rights about these cases. With respect to cases in other successor States of the former Yugoslavia and cases which occurred in Croatia and BiH after 14 December 1995, the Working Group will examine these cases in accordance with its methods of work”.³¹ In its annual report for 1998, the WGEID referred to the subject of enforced disappearances occurred in BiH, clarifying that, during the period under review, it had not received any newly reported cases occurred after the entry into force of the Dayton Peace Agreement.³² In the two subsequent annual reports, the WGEID indicated that no new information or comments were received from BiH.³³

The Special Rapporteur of the Commission on Human Rights on the situation of human rights in BiH, the Republic of Croatia and the SFRY included in his reports to the Commission a concise reference to the issue of “missing persons” in BiH. He generally focussed on “exhumations and identifications” and limited his considerations to the advancement of such process.³⁴ No reference was made to the rights of the relatives of victims³⁵ and to whether BiH authorities were fulfilling their international obligations with regard to the right to truth, the carrying out of thorough, prompt, impartial and independent investigations and the prosecution of perpetrators nor with regard to the adoption of adequate measures of reparation. In the report released by the Special Rapporteur in January 2001, there was no further reference to the subject of missing persons in BiH.³⁶ Since then, for almost a decade no United Nations Special Procedure addressed the subject of victims of enforced disappearance in BiH,³⁷ while United Nations Treaty Bodies included succinct recommendations on the matter in their concluding observations on BiH around 2005.³⁸

³¹ WGEID, *Annual Report for 1997*, UN Doc. E/CN.4/1998/43 of 12 January 1998, para. 22.

³² WGEID, *Annual Report for 1998*, UN Doc. E/CN.4/1999/62 of 28 December 1998, paras. 51-53.

³³ WGEID, *Annual Report for 1999*, UN Doc. E/CN.4/2000/64 of 21 December 1999, para. 131; and *Annual Report for 2000*, UN Doc. E/CN.4/2001/68 of 18 December 2000, para. 117.

³⁴ See *Reports of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in BiH, the Republic of Croatia and the Federal Republic of Yugoslavia*, UN Doc. A/53/322 of 11 September 1998 (paras. 32-33); UN Doc. A/53/322/Add.1 of 30 October 1998 (para. 11); UN Doc. E/CN.4/1999/42 of 20 January 1999 (para. 28); UN Doc. A/54/396-S/1999/1000 of 24 September 1999 (paras. 63-65); and UN Doc. E/CN.4/2000/39 of 28 December 1999 (paras. 25-26).

³⁵ A general reference to the “need” to know the fate of their loved ones of relatives of the missing was inserted by the Special Rapporteur in UN Doc. A/53/322, *supra* note 33, para. 32.

³⁶ See *Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, UN Doc. E/CN.4/2001/47 of 29 January 2001; and UN Doc. E/CN.4/2001/47/Add.1 of 22 March 2001.

³⁷ On the visit to BiH conducted by the WGEID in 2010 see *infra* section 5.

³⁸ See Committee against Torture (CAT), *Concluding Observations on BiH*, UN Doc. CAT/C/BIH/CO/1 of 15 December 2005, para. 20; and Human Rights Committee (HRC), *Concluding Observations on BiH*, UN Doc. CCPR/C/BIH/CO/1 of 22 November 2006, para. 14.

Hence, after an initially proactive approach, international actors progressively limited their role, ideally shifting the responsibility to BiH authorities to eventually uphold their obligations in terms of truth, justice and reparations. At the same time, international human rights mechanisms took some years before assessing whether BiH authorities adopted the necessary measures to abide by their international obligations.

The gradual assumption of responsibility by domestic authorities is a necessary passage in any transitional justice setting which requires the adoption of adequate legislative reforms, a thorough vetting process, as well as comprehensive capacity-building programmes and institutional strengthening. BiH adopted several measures in this regard, although the results eventually achieved – and illustrated in the following section – may cast doubts on their effectiveness and on the soundness of the rule of law and of the institutions in the country.

4. Bringing It Home: the “Second Generation” of Responses

Besides the above-mentioned numerous - and fragmented - activities undertaken to trace missing persons, for several years, domestic authorities mainly focussed on the adoption of legislation aimed at providing socio-economic support to former combatants and, to a certain extent, to victims of war. The measures adopted (usually in the form of monthly pensions) can be assimilated to social allowances rather than to reparations. Pursuant to the mentioned legislation, veterans are entitled to a better treatment as compared to civilians and the amounts awarded vary significantly depending on the place of residence of the victim.³⁹ To have access to these rather modest monthly pensions, relatives of disappeared persons were obliged to declare their loved ones dead, even when they had not established their fate and whereabouts.⁴⁰ This has not only been the source of additional emotional distress, but it also paved the way to unwarranted consequences with regard to the determination of the applicable criminal legal framework and statutes of limitation for criminal proceedings.⁴¹ Besides this flawed scheme of social allowances, no national programme of reparations has ever been adopted in BiH.

³⁹ See *infra* section 5: international human rights bodies, including the HRC, the CAT, the CED and the WGEID found that this situation amounts to a form of discrimination.

⁴⁰ The Non-Contentious Procedure Act of 23 March 1989 was in force in the Federation of Bosnia and Herzegovina until 28 January 1998 and in Republika Srpska until 15 May 2009; the Non-Contentious Procedure Act of 20 January 1998 for the Federation, amended in 2004 and 2005; and the Non-Contentious Procedure Act of 7 May 2009, for Republika Srpska.

⁴¹ See Citroni, *The Pitfalls of Regulating the Legal Status of Disappeared Persons Through Declaration of Death*, in *Journal of International Criminal Justice*, Vol. 12, No. 4, 2014, pp. 787-803.

In general, between the end of the conflict and the first half of the years 2000, BiH authorities did not adopt significant measures to address the plight of victims of enforced disappearance.

A major legislative development was the adoption of the Law on Missing Persons (hereinafter, “LMP”), entered into force on 17 November 2004.⁴² As all the initiatives undertaken that explicitly refer to missing persons, this law is relevant also for victims of enforced disappearance insofar as the reason for going missing is, in fact, that the person concerned was subjected to this particular crime.

The LMP contains several provisions on the identification of missing persons and the termination of such status.⁴³ Art. 3 of the LMP establishes that “families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence or, if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains”. State authorities remain under an ongoing obligation to search for and identify the missing, as well as to investigate on the circumstances and cause of the death and location of burial of the missing person and to return the mortal remains (Art. 4).

In an attempt to rationalise the domestic institutional response vis-à-vis the issue of missing persons, including victims of enforced disappearance, Art. 7 of the LMP provided for the establishment of the Missing Persons Institute (hereinafter, “MPI”) as the new body in charge of dealing with the issue, mandated to resolve the fate of missing persons from BiH through locating the disappeared, exhuming and safeguarding human remains, examining and identifying, collecting, processing and protecting information.⁴⁴ The MPI was meant to take over all the responsibilities, staff and budgets of the previously existing

⁴² Official Gazette of BiH No. 50/04. An unofficial English translation of the Law on Missing Persons can be found at: http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp_en.pdf.

⁴³ Pursuant to Art. 2, para. 1, of the LMP, “missing” is a “person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former FRY”. A missing person can be considered “identified” only when “during the process of identification, it has been reliably determined that the mortal remains correspond to the specific person’s physical, hereditary, or biological characteristics, or if the missing person appears alive” (Art. 2, para. 7). Art. 9 of the LMP provides that “the status of missing person is terminated on the date of identification, and the process of tracing the missing person is concluded. In the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated”.

⁴⁴ In December 2011, the ICRC handed over to the Red Cross Society of BiH its responsibility for the future collection of requests for tracing missing persons, to be processed and forwarded to the MPI.

tracing authorities at the entity level.⁴⁵ The MPI was also entrusted with the collection of new tracing requests and cooperation with the relevant authorities and judicial bodies, including the ICTY.

Pursuant to Art. 21 of the LMP, the MPI is in charge of creating and maintaining the “Central Records of Missing Persons in BiH” (hereinafter, “CEN BiH”), which should include all records previously collected or kept by other institutions. Pursuant to the LMP, the CEN BiH should have been completed within a year from the establishment of the MPI. More than a decade later, the CEN BiH is yet to be finalised.

Art. 11 of the LMP envisaged further measures of financial support in the form of monthly pensions in favour of relatives of missing persons.⁴⁶ Pursuant to Art. 15, the institution in charge of providing the said financial support was meant to be a Fund for Support to the Families of Missing Persons of BIH (hereinafter, “the Fund”). At the time of writing, i.e. more than 15 years after the entry into force of the LMP, the Fund does not exist.

Notably, under the LMP, access to social welfare measures for relatives of disappeared persons is conditional on the entry of the name of victims in the – currently non-existent – CEN BiH. This, coupled with the failure to set up the above-mentioned Fund, *de facto* places relatives across the country in a cul-de-sac and this situation has been denounced by associations of relatives of disappeared persons in BiH as a mockery and identified as a source of concern by several international human rights mechanisms.⁴⁷ As an additional source of worry, pursuant to Art. 27, para. 1, of the LMP, however, three years after the completion of the CEN BiH, all those inscribed in the database will automatically be registered as dead, without necessarily seeking the consent of the family and even when their fate and whereabouts remain unknown.⁴⁸

⁴⁵ Representatives from Republika Srpska have left the MPI and on 6 June 2008 have formed a parallel structure on the entity level named the Operative Team of Republika Srpska for Finding Missing Persons. Eventually, the latter merged with the Coordination Team for Research of War Crimes to form a new body called the Republic Centre for Researching War Crimes and Searching for Missing Persons. See ICMP, *Missing Persons from the Armed Conflict of the 1990s: A Stocktaking*, *supra* note 3, p. 42.

⁴⁶ Other relevant provisions of the LMP are: criteria to financial support (Art. 12); determining the amount of financial support (Art. 13); termination of the right to financial support (Art. 13); and procedure for regulating the right to financial support (Art. 16); and decision on establishing the right to financial support (Art. 17).

⁴⁷ See *infra* section 5.

⁴⁸ Art. 9 of the LMP provides that “in the event that a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated”.

Hence, while the adoption of the LMP and the establishment of the MPI can certainly be regarded as significant achievements, the implementation of the law and the actual functioning of the MPI are not entirely satisfactory.

As mentioned above in section 3, in 2004, the Human Rights Commission within the Constitutional Court of BiH replaced the Human Rights Chamber, and it received several applications lodged by relatives of disappeared people who alleged that the described situation entailed a violation of their fundamental rights. In its decisions, mostly delivered between 2005 and 2008 (hence after the entry into force of the LMP and the creation of the MPI), the Human Rights Commission within the Constitutional Court indeed found violations of Arts. 3 and 8 of the ECHR with regard to relatives of disappeared people.⁴⁹ Notably, it observed that in BiH existed special conditions concerning the inefficiency of the relevant institutions because of which the applicants were relieved from exhausting domestic remedies, as “no specialized institution on enforced disappearance in BiH seems to be operating effectively”.⁵⁰ The Human Rights Commission within the Constitutional Court did not deal with the matter of compensation, as it considered the issue to be covered by the “financial support” to be provided by the Fund. Given that the latter has not been established yet, applicants have never received adequate redress for the violations suffered and this, *per se*, could be regarded as a severe form of re-victimization. In its decisions, the Human Rights Commission within the Constitutional Court ordered “the parties referred to in Art. 15 of the LMP”⁵¹ to provide for operational functioning of the MPI and for the establishment of the Fund and the completion of the CEN BiH within 30 days from the adoption of the decision concerned. The persistent lack of implementation of these measures shows a worryingly low enforcement rate of the decisions of the highest judicial body of the country, thus somehow undermining the trust

⁴⁹ Human Rights Commission within the Constitutional Court of BiH, Case *M. H. and others* (Case No. AP-129/04), judgment of 27 May 2005; and Case *Selimović and others* (Case No. AP 1226/05), judgment of 23 February 2006. See also Case *Jele Stjepanović and others* (Case No. AP 36/06), judgment of 16 July 2007; Case *Leka and others* (Case No. AP-1226/05), judgment of 23 February 2006; and Case *Association of Family of Missing Persons and Association of Families of Missing Persons and City Organization of Camp Inmates Istočno Sarajevo and others* (Case No. AP – 228/04), judgment of 13 July 2005.

⁵⁰ Human Rights Commission within the Constitutional Court of BiH, Case *M. H. and others*, *supra* note 48, paras. 37-40. At para. 39 the Court noted that “[...] there is no specialized institution at the level of Bosnia and Herzegovina that operates efficiently, its task being conductance of impartial investigations concerning persons who went missing during the war”.

⁵¹ Council of Ministers of BiH, government of the Federation of BiH, government of the Republika Srpska, and government of Brčko District of BiH.

of relatives of disappeared persons in particular, and of society more in general, towards the authorities.

Pursuant to Art. 74, para. 6, of the Rules of Procedure of the Constitutional Court of BiH, the latter can render a ruling in which it establishes that a previous decision has not been duly implemented. Such ruling shall be transmitted to the Prosecutor's Office of BiH, responsible for criminally prosecuting those who do not enforce the decisions of the Human Rights Commission within the Constitutional Court. However, this process has proved inefficient. Even in those cases where the Constitutional Court issued a non-implementation ruling,⁵² the Prosecutor's Office of BiH has not taken any action, at least in cases concerning enforced disappearance.⁵³ As it will be illustrated below in section 5, this situation motivated the submission of several individual applications to international human rights bodies.

While the measures mentioned in the previous paragraphs (and their implementation, or lack thereof) are mostly directed at the establishment of the truth on the fate and whereabouts of disappeared persons and the provision of some support to their relatives, they are not relevant in the pursuit of accountability of those responsible for enforced disappearance.

In this regard, as part of the ICTY's completion strategy, in 2005 War Crimes Chambers were set up within the Court of BiH (hereinafter, "the War Crimes Chamber"), with primacy over other courts in BiH with regard to conflict-related crimes, including enforced disappearance. A total of eight cases involving 13 persons indicted by the ICTY was referred to national courts in the Balkans, including the War Crimes Chamber. Besides the mentioned cases, the competence of the War Crimes Chamber encompassed also those whose investigations the ICTY had not completed; those initially investigated by local courts; and those against whom an investigation began after March 2003.⁵⁴

⁵² See for instance Case AP 36/06 from July 2007, where the Court failed to deliver the judgment on due time for the eventual referral to the Prosecutor's Office. See also Constitutional Court of BiH, Decision of 27 May 2006 on the Failure to Implement the Decision rendered on 13 July 2005 on the Case AP 228/04; and the Decision of 18 November 2006 on the Failure to Implement the Decision rendered on 23 February 2006 on the Case AP 1226/05.

⁵³ On this subject see Bičakčić, *Constitutional Court and the Bonn Power – The State in the Rift between Human Rights and International Obligations*, in Puls Demokratije, 2007, available at: <http://www.pulsdemokratije.net/index.php?id=348&l=en>; and http://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English.

⁵⁴ Ivanišević, *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, International Center for Transitional Justice, 2008, available: <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>.

Over the years, the War Crimes Chamber convicted several persons of crimes against humanity, although no decision deals exclusively with enforced disappearance.⁵⁵

In view of the high number and complex nature of the cases the War Crimes Chamber must look into, on 29 December 2008, a National War Crimes Strategy was adopted.⁵⁶ Pursuant to the said strategy, the War Crimes Chamber would deal with the most complex cases (i.e. mass crimes) as a matter of priority within 7 years and other crimes would be dealt within 15 years from the adoption of the strategy. The prosecution of “most complex crimes” should have been completed by the end of 2015, but this was not the case.

The delayed implementation of the strategy, coupled with a progressive cut of the available budget and human resources hindered the activity of the War Crimes Chamber, as well as the trust of victims towards this institution. The creeping feelings of debasement and mistrust increased in the subsequent years in the face of a general trend of reducing the sentences of persons convicted of war crimes in the name of a rather ill-conceived interpretation of the *lex mitior* principle.⁵⁷

In an attempt to inscribe the described measures with a more comprehensive transitional justice strategy, in 2010, under the auspices of the United Nations Development Programme (hereinafter, “UNDP”) the process of drafting a National Strategy on Transitional Justice was launched. The working document eventually adopted, meant to

⁵⁵ See, among others, War Crimes Chamber, Decision, *Željko Jukić* (S1 1K 00918312), First Instance Verdict 15 January 2014 and Second Instance Verdict, 3 March 2015; Decision, *Veselin Vlahović* (S1 K 004659 13KRZ), First Instance Verdict, 29 March 2013 and Second Instance Verdict, 5 February 2014; Decision, *Dronjak Ratko* (X-KR-08/684), First Instance Verdict, 1 June 2012 and Second Instance Verdict 3 February 2015; Decision, *Savić Krsto* (X-KRZ-07/400), First Instance Verdict, 24 March 2009 and Second Instance Verdict, 11 April 2011; Decision, *Bastab Predrag and Višković Goran* (X-KR-05/122), First Instance Verdict, 5 February 2010 and Second Instance Verdict, 26 April 2011; Decision, *Rodić Dragan* (X-KR-09/648-1), First Instance Verdict, 26 October 2010; Decision, *Lelek Željko* (X-KRZ-06/202), First Instance Verdict, 23 May 2008 and Second Instance Verdict 12 January 2009; Decision, *Perković Stojan* (X-KR-09/662), First Instance Verdict, 24 December 2009; Decision, *Veselinović Rade* (X-KR-05/46), First Instance Verdict, 30 June 2009; and Decision, *Damjanović Dragan* (X-KRZ-05/51), First Instance Verdict, 15 December 2006 and Second Instance Verdict, 13 June 2007.

⁵⁶ The integral text is available at: http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf.

⁵⁷ See *infra* section 5: international human rights mechanisms, including the HRC, the CED and the WGEID unanimously expressed serious concern at this trend. See, among others, De Sanctis, *The Impact of the ECtHR's Judgment in Maktouf-Damjanović on Accountability and Punishment for War Crimes in Bosnia-Herzegovina*, in EJIL:Talk!, 12 November 2013, available at: <https://www.ejiltalk.org/the-impact-of-the-ecthrs-judgment-in-maktouf-damjanovic-on-accountability-and-punishment-for-war-crimes-crimes-in-bosnia-herzegovina/>.

cover the years from 2012 to 2016,⁵⁸ was presented to the Parliamentary Assembly. However, while the timespan that should have been covered elapsed, the National Strategy has never been adopted due to harsh obstructionism.

After some considerable achievements, initiatives to promote truth, justice and reparations for victims of enforced disappearance during the conflict entered a stalemate, while authorities – supported by international actors – showed a growing wish to eventually “wrap up” and archive the legacy of the conflict. Transitional justice *per se* is in fact about effectively confronting the past in order to be able to live a different future. However, for the transition to be effective and stable, certain conditions must be met and it is crucial to reflect about what are the indispensable prerequisites to “turn the page”.

Arguably – and to a certain extent understandably – BiH was a “late-bloomer” in terms of domestic responses to victims of enforced disappearance. Unfortunately, it seems that its “spring” was also short-lived. Towards the end of the first decade of the XXI century, victims, who had already been struggling for almost 15 years by then, felt that, after several achievements, they were stuck. On the one hand, the human, financial and technical resources assigned to the domestic institutions (be they judicial or with a more humanitarian mandate, such as the MPI) mandated to discharge a gargantuan task commenced being progressively, but steadily, cut. On the other, the legislation adopted and the favourable verdicts obtained remained unimplemented, while perpetrators convicted of war crimes saw their sentences being lowered. Victims were confronted with growing obstructionism and weak political will. The impression was that there was a general gentle, but firm, push to accept what had already been achieved and eventually move on.

5. Knocking on International Doors: Attempts to Keep Truth, Justice and Reparations on the Agenda and Reaffirm the State’s Obligations

Faced with the above-described situation and fearing that their demands for truth, justice and reparation were at risk of remaining unheard and eventually being forgotten, around the end of the first decade of the years 2000, several relatives of victims of enforced disappearance and their representative associations decided to turn to international human rights mechanisms, submitting reports and lodging individual applications. The

⁵⁸ The integral text is available at:

http://www.nuhanovicfoundation.org/user/file/2013_transitional_justice_strategy_bih_-_new.pdf.

underlying idea was to reaffirm that more needed to be done and this was not a whim, but actually amounted to State's international obligations.

A first significant comeback was that of the WGEID. As described in section 3 above, the WGEID had been closely monitoring the situation in BiH through the Special Process until 1997, then leaving the subject of missing persons during the conflict to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in BiH, the Republic of Croatia and the SFRY, who kept an eye on it until the beginning of the years 2000. In the subsequent years, United Nations Special Procedures in general, and the WGEID in particular, did not closely monitor the progress – or lack thereof – in terms of truth, justice and reparations in BiH.

Towards the end of the years 2000, the WGEID received reports by NGOs flagging out the existence of flaws in the transitional justice process. It therefore requested and obtained an invitation to visit the country. The mission took place in June 2010, with the purpose to learn about the efforts made by BiH to address cases of enforced disappearance and examine lessons learned and good practices. In its report on the visit to BiH, the WGEID praised the immense progress made in BiH, but it affirmed that much remained to be done to achieve the right to the truth, the right to justice and the right to reparation for the disappeared and their families.⁵⁹ The report contains a comprehensive assessment of the measures adopted by BiH authorities. The WGEID identified as main sources of concern the ongoing claims by victims and groups to have been subjected to discrimination; the failure to fully implement the LMP, to complete the CEN BiH and to set up the Fund; the lack of adequate financial, human and technical resources for the MPI; the delays in the implementation of the National War Crimes Strategy and the prevailing impunity for perpetrators of enforced disappearance; as well as the failure to adopt the National Transitional Justice Strategy.⁶⁰ In particular, the WGEID referred having “met with several victims who expressed various concerns and who sometimes felt left aside by the official institutions”.⁶¹ Accordingly, the WGEID issued rather detailed recommendations to BiH, requesting the latter to provide it with a

⁵⁹ WGEID, *Report on the Visit to BiH*, UN Doc. A7HRC/16/48/Add.1 of 28 December 2010, para. 70.

⁶⁰ *Ibid.*, paras. 71-91.

⁶¹ *Ibid.*, para. 90.

timetable showing the steps it intended to take to implement the said recommendations within 90 days from the date of presentation of the report to the Human Rights Council.⁶²

Arguably, the report of the WGEID contained a comprehensive roadmap for BiH to overcome the existing impasse and to abide by its international obligations with regard to truth, justice and reparations vis-à-vis victims of enforced disappearance. Unfortunately, when the WGEID issued its follow-up report on the status of implementation of such recommendations, it registered only minor progresses and essentially reaffirmed its concern at the same issues already detected during the mission.⁶³

Relatives of disappeared persons and their representative associations, as well as international NGOs working on the subject, engaged also in the submission of alternative reports to United Nations Treaty Bodies, in view of the periodical exam of BiH. The HRC and the CAT expressed their concern at the same issues already identified by the WGEID and formulated similar – and unfortunately similarly non-implemented – recommendations.⁶⁴

Accordingly, while awaiting to see the recommendations issued by the WGEID, the CAT and the HRC duly implemented, some relatives of disappeared persons decided to lodge complaints to international human rights bodies seeking the recognition of the violations suffered and to obtain reparation. Some decided to submit their applications to the European Court of Human Rights (hereinafter, “ECtHR”) and some others to the HRC.

On 15 February 2011, the ECtHR delivered its judgment on the case *Palić v. Bosnia and Herzegovina*, thereby setting its rather restrictive jurisprudential approach in cases of enforced disappearance perpetrated during the conflict in BiH.⁶⁵ The applicant (wife of a person subjected to enforced disappearance in 1995) claimed violations of BiH’s positive obligations pursuant to Arts. 2 and 5 of the ECHR with regard to her husband, and of Art. 3 of the ECHR with regard to herself because of the authorities’ reactions to her quest for information. The ECtHR rejected all the applicant’s claims, declaring that none of the provisions invoked had been violated. To reach this conclusion, the ECtHR

⁶² *Ibid.*, para. 91.

⁶³ WGEID, *Follow-up Report on BiH*, UN Doc. A/HRC/27/49/Add.2 of 8 September 2014, paras. 24-27, 29-32 and 35-38.

⁶⁴ CAT, *Concluding Observations on BiH*, UN Doc. CAT/C/BIH/CO/2-5 of 19 November 2010, paras. 12, 18 and 24; and HRC, *Concluding Observations on BiH*, UN Doc. CCPR/C/BIH/CO/2 of 21 November 2012, paras. 7-9 and 12.

⁶⁵ ECtHR, Case *Palić*, *supra* note 10.

affirmed that “while domestic authorities made slow progress in the years immediately after the war, they have since made significant efforts to locate and identify persons missing as a consequence of the war and combat the impunity”.⁶⁶ The ECtHR quoted the vetting process conducted between 1999 and 2002, the setting up of the MPI and the War Crimes Chambers, along with the adoption of the National War Crimes Strategy and it considered that “the domestic legal system should have become capable of dealing effectively with disappearances and other serious violations of international humanitarian law by 2005”.⁶⁷ Praising all these initiatives, the ECtHR held that in the specific case the investigation had been effective, despite it admittedly was at a standstill since 2006,⁶⁸ and that the authorities’ reactions vis-à-vis Ms. Palić’s struggle and suffering could not be regarded as inhumane or degrading.⁶⁹ Two judges did not agree with the majority, affirming that, in their view, the procedural requirements of Art. 2 of the ECHR were not complied with by national authorities, who failed to carry out a prompt and effective investigation into the disappearance of the applicant’s husband.⁷⁰ The partially dissenting opinion suggests that the approach undertaken by the ECtHR is not free from controversies, and the finding of international responsibility very much depends on where one places the yardstick to declare whether the State fulfilled its obligations.

Moreover, it is noteworthy that, somehow, the *Palić* case is one of a kind and can hardly be considered as representative of the situation of all relatives of disappeared persons in BiH. Notably, the case had already been submitted to the Human Rights Chamber, which awarded pecuniary compensation to Ms. Palić.⁷¹ The latter also submitted a complaint to the Human Rights Commission within the Constitutional Court of BiH and obtained two favourable decisions.⁷² Moreover, in 2006 two *ad hoc* commissions to investigate her husband’s case were established,⁷³ and ascertained the circumstances of the enforced disappearance of Mr. Palić, also confirming the identity of the two suspected perpetrators (at the time living in Serbia), against whom an international arrest warrant was issued (but never executed).⁷⁴ The second *ad hoc* commission could also establish that Mr. Palić had

⁶⁶ *Ibid.*, para. 51.

⁶⁷ *Ibid.*, para. 70.

⁶⁸ *Ibid.*, paras. 64-65 and 67.

⁶⁹ *Ibid.*, para. 75.

⁷⁰ See the joint partially dissenting opinion of Judges Bratza and Vehabović attached to the ECtHR judgment in the case *Palić*.

⁷¹ *Supra* section 3 and notes 24 and 48.

⁷² ECtHR, Case *Palić*, *supra* note 10, paras. 18 and 20.

⁷³ *Ibid.*, paras. 21 and 24.

⁷⁴ *Ibid.*, paras. 23 and 25.

eventually been killed and the likely location of his mortal remains. In 2009, the spoils of Mr. Palić were in fact retrieved, exhumed, identified through DNA,⁷⁵ and eventually returned to his spouse, who could ensure his burial with military honours on the grounds of a Mosque in Sarajevo.⁷⁶

Even bearing in mind these peculiarities, as observed earlier, the findings of the ECtHR in the *Palić* case are not above dispute. It should therefore be arguably even more difficult to apply the Court's reasoning and reach similar findings in other cases of enforced disappearance perpetrated during the conflict where the fate and whereabouts of the victim concerned remain unknown, investigations are still ongoing or have not even been formally opened, and relatives have not received any compensation, while the decisions they may have obtained at the domestic level remain unimplemented (which, in fact, is the situation in which hundreds of relatives of victims of enforced disappearance found themselves trapped in).

Unfortunately, when confronted with cases that fit in this description, the ECtHR did not delve upon the differences with the *Palić* case and applied the criteria set forth in that judgment, thus declaring the new applications manifestly ill founded, *de facto* closing Strasbourg's door to relatives of victims of enforced disappearance during the conflict in BiH.⁷⁷ The ECtHR explicitly affirmed that the key question it sought to answer was "whether the domestic authorities have done all that could be reasonably expected of them in the circumstances".⁷⁸ The ECtHR declared itself satisfied with the efforts undertaken by BiH authorities and, to a certain extent, by international actors such as the ICTY, and found the responses given in terms of truth, justice and reparations sufficient.

In particular, the ECtHR held that "[...] the respondent State's procedural obligation under Article 2 could be discharged through its contribution to the work of the ICTY, given that the ICTY had primacy over national courts and could take over national investigations and proceedings at any stage in the interest of international justice".⁷⁹ The ECtHR did not attach any particular consideration to the fact that the proceedings before the ICTY referred in general to the atrocities committed in the area where the applicants'

⁷⁵ *Ibid.*, para. 28.

⁷⁶ *Ibid.*, para. 29.

⁷⁷ ECtHR, Case *Fazlić and others v. Bosnia and Herzegovina*, decision of 3 June 2014; and Case *Mujkanović and others v. Bosnia and Herzegovina*, decision on 3 June 2014.

⁷⁸ ECtHR, Case *Fazlić and others*, *supra* note 76, para. 35.

⁷⁹ *Ibid.*, para. 36.

loved ones were subjected to enforced disappearance, but no perpetrator was actually held accountable for that specific crime with regard to those specific victims. Indeed, the ECtHR noted that “it is evident that not all of the direct perpetrators of the many crimes committed within the context of the ethnic cleansing of the Prijedor area have been punished”,⁸⁰ and acknowledged that “it must be frustrating for the applicants that potential suspects have been named, but that further steps have not been taken yet”.⁸¹ However, the ECtHR held that Art. 2 of the ECHR “cannot be interpreted so as to impose a requirement on the authorities to launch a prosecution irrespective of the evidence available”,⁸² and then switched its attention to the alleged perpetrators, warning that “a prosecution, particularly on such a serious charge as involvement in mass unlawful killings, should never be embarked upon lightly as the impact on a defendant who comes under the weight of the criminal justice system is considerable, being held up to public obloquy, with all the attendant repercussions on reputation, private, family and professional life”.⁸³ This was enough to persuade the ECtHR that “the investigation was effective in the sense of *being capable of leading to the identification and punishment of those responsible* for the disappearance and death of the applicants’ relatives”.⁸⁴ The conclusion appears overly generous, bearing in mind that, even at the time of writing, no person has actually been convicted – neither by the ICTY nor by any domestic court – for the enforced disappearance and killing of any of the applicants’ relatives. The ECtHR further dismissed the applicants’ claims that they did not have access to information on the investigation or whether trials may be forthcoming, declaring that the procedural obligation pursuant to Art. 2 of the ECHR “does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step”.⁸⁵

The findings of the ECtHR not only contradict the conclusions reached by the WGEID and the United Nations Treaty Bodies already recalled above, but are also at odds with those of the HRC on individual communications concerning cases of enforced disappearance perpetrated in BiH,⁸⁶ thus generating a significant jurisprudential

⁸⁰ *Ibid.*, para. 37.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.* (emphasis added).

⁸⁵ *Ibid.*, para. 38.

⁸⁶ HRC, Case *Prutina, Zlatarac, Kozjica, Ćekić v. Bosnia and Herzegovina*, views of 28 March 2013; Case *Durić v. Bosnia and Herzegovina*, views of 16 July 2014; Case *Selimović and others v. Bosnia and Herzegovina*, views of 17

discrepancy.⁸⁷ In its views on individual complaints on this subject, the HRC found violations of Arts. 6, 7, and 9, read in conjunction with Art. 2, para. 3, of the International Covenant on Civil and Political Rights (hereinafter, “ICCPR”) with regard to the disappeared persons, and of Art. 7, read alone and in conjunction with Art. 2, para. 3, of the ICCPR with regard to the authors of the communications.⁸⁸ On certain occasions, it also found a violation of Art. 24, para. 1, of the Covenant.⁸⁹ The HRC recalled that, pursuant to Art. 2, para. 3, of the Covenant, BiH is under an obligation to provide the authors of the communications with an effective remedy and it spelled out a number of measures to be taken by the State in this regard. In particular, the HRC requested BiH to continue its efforts to establish the fate and whereabouts of the disappeared persons concerned; to continue its efforts to bring to justice those responsible for the crimes concerned by the end of 2015, as required by the National War Crimes Strategy; to abolish the obligation for family members to declare their missing relatives dead to benefit from social allowances or any other forms of compensation; and to ensure adequate compensation. Furthermore, the HRC requested BiH to ensure that investigations into allegations of enforced disappearances are accessible to the relatives of the disappeared, and to publish its views and have them widely disseminated in the local languages.

While it is certainly remarkable that, when assessing whether domestic authorities have done all that could be reasonably expected of them in the circumstances, the HRC reached the opposite conclusion to the ECtHR and declared BiH internationally responsible, indicating the corresponding reparations, it must also be stressed that, at the time of writing, the only measure that BiH has implemented is the translation of the HRC’s views

July 2014; Case *Hero v. Bosnia and Herzegovina*, views of 28 October 2014; and Case *Kožljak v. Bosnia and Herzegovina*, views of 28 October 2014; Case *Rizvanović v. Bosnia and Herzegovina*, views of 21 March 2014; Case *Ičić v. Bosnia and Herzegovina*, views of 31 March 2015; Case *Hamulić and Hodžić v. Bosnia and Herzegovina*, views of 30 March 2015; Case *Kadić v. Bosnia and Herzegovina*, views of 5 November 2015; Case *Mandić v. Bosnia and Herzegovina*, views of 5 November 2015; and Case *Lale and Blagojević v. Bosnia and Herzegovina*, views of 17 March 2017.

⁸⁷ In this sense, see, Nowak, *Enforced Disappearances in Bosnia and Herzegovina – Recent Developments in International Jurisprudence*, in *Legal Journal of Law, issue in Honour of Dr. Rona Aybay*, 2014, pp. 2751-2768. For a different and less critical assessment of the ECtHR’s jurisprudence on cases of enforced disappearance in BiH, see Chernishova, Radnić, *Enforced Disappearances in the Practice of the European Court of Human Rights: Seeing the Tree and the Forest*, in *Human Rights Law Journal*, Vol. 38, No. 1-6, 2018, pp. 17-19.

⁸⁸ HRC, Case *Prutina and others*, *supra* note 85 para. 9.8.

⁸⁹ In particular, in its views on the case *Rizvanović*, the HRC held that “to oblige families of disappeared persons to have the family member declared dead in order to be eligible for compensation while the investigation is ongoing makes the *availability of compensation dependent on a harmful process, and constitutes inhumane and degrading treatment in violation of article 7 read alone and in conjunction with article 2, paragraph 3, of the Covenant*” (Case *Rizvanović*, *supra* note 85, para. 9.6, emphasis added).

in the local language and their publication on the website of the Ministry for Human Rights and Refugees.⁹⁰

Hence, even if victims who lodged their complaints to the HRC obtained a certain degree of satisfaction by seeing their suffering acknowledged and their allegations upheld, eventually they found themselves anew confronted with the lack of implementation of the measures indicated and could not manage to overcome the overall stalemate they are stuck in.⁹¹

Since when relatives of victims of enforced disappearance in BiH and NGOs commenced consistently “knocking” on the doors of international human rights mechanisms through the submission of alternative reports or individual applications, the progress in the responses given in the country in terms of truth, justice and reparations has been very limited.⁹² As a sign of genuine commitment, on 30 March 2012, BiH ratified the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter, “ICPED”) and on 13 December 2012 it recognised the competence of the Committee on Enforced Disappearances (hereinafter, “CED”) to receive and examine individual and inter-State communications. On 26 January 2015, BiH submitted its report on the measures taken to give effect to its obligations under the ICPED and on 14 October 2016, the CED issued its concluding observations.⁹³

The CED welcomed “the very high rate of locating and identifying persons reported missing as a consequence of the war and the recent steps taken to accelerate investigations. It notes, however, that *the fate and whereabouts of about one third of the 30,000 persons* reported missing in the State party as a consequence of the war *remain unknown* and notes also that many of those persons might have been victims of enforced disappearance”.⁹⁴ The CED expressed its concern at “the slow pace of exhumations and identifications and at the

⁹⁰ With the notable exception of the *Kadić* case, where the mortal remains of Mr. Ermin Kadić were located in October 2013 and identified and returned to the family for burial in July 2014. In this regard, see HRC, *Follow-up Progress Report on Individual Communications*, UN Doc. CCPR/C/121/R1 of 16 November 2017, section 3.

⁹¹ In its assessment of the level of implementation of its recommendations on individual communications, the HRC found that the actions taken by BiH do not address the situation under consideration and consequently assigned a “C”. See, among others, HRC, *Follow-up Progress Report on Individual Communications*, *supra* note 89, section 3.

⁹² Notably, in May 2015, the Criminal Code of BiH was amended and Art. 190-A, concerning the crime of enforced disappearance was added. Nevertheless, Criminal Codes at the entity level remain at odds with international law requirements in this regard.

⁹³ Committee on Enforced Disappearances (CED), *Concluding Observations on Bosnia and Herzegovina*, CED/C/BIH/CO/1 of 14 October 2016.

⁹⁴ *Ibid.*, para. 17 (emphasis added).

insufficient budget allocated to the Prosecutor's Office of Bosnia and Herzegovina and the lack of sufficient forensic experts in the State party. The Committee is concerned that challenges, including politicization, have slowed down the verification process of data compiled in the Central Records of Missing Persons".⁹⁵

The CED seems to revert the angle from which the issue of exhumations and identifications is usually looked at. In fact, the attention is generally centred on the "two thirds" among missing people whose mortal remains have been found and identified, while the CED refers to the other "one third". This counters, or at least relativizes, the predominant narrative that focusses on the rate of success (which is undeniably outstanding), rather concentrating on the situation of those "left behind", who, for one reason or the other, were not benefitted by the achievements and progress made. The number of these people is in the thousands and this calls for further reflection on the soundness of the foundations of reconciliation and on whether – as implied by the ECtHR in its judgments – enough has been done and it is time to move on.

Besides, in its concluding observations, the CED identified the same pitfalls already pinpointed by other international human rights mechanisms, including the lack of budget and adequate technology of the MPI,⁹⁶ the non-establishment of the Fund, the discriminatory legislation concerning social allowances for victims of war, and the absence of a national programme on reparations for victims of enforced disappearance.⁹⁷ With regard to the prosecution of perpetrators of war crimes, including enforced disappearances, the CED expressed its dissatisfaction at the large backlog of cases and its grave concern that the reopening of war crimes and genocide cases has led to a drastic reduction of sentences and that convicted criminals have been released pending retrial, which has resulted in fear, insecurity and re-victimization of some individuals and a lack of trust in the justice system.⁹⁸ Furthermore, the CED noted with concern the existence of legislative proposals that would allow pardon for persons convicted of the crimes of genocide, war crimes and crimes against humanity after serving three-fifths of the sentence.⁹⁹ This proposal is indicative of a troublesome emerging trend, that would bring

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, para. 19.

⁹⁷ *Ibid.*, para. 37.

⁹⁸ *Ibid.*, para. 21.

⁹⁹ *Ibid.*, para. 25 (b).

the attempts to “turn the page” over past events at a new level, casting shadows on the fourth “pillar” of transitional justice, that is guarantees of non-recurrence.

In 2017, both the HRC and the CAT examined again the situation in BiH. In their respective concluding observations,¹⁰⁰ they reiterated the previous findings and recommendations, thus indirectly confirming that transitional justice and, in particular, the responses with regard to truth, justice and reparations seem to have reached a stop, irrespective of the fact that the process is arguably incomplete and victims continue their struggle. Knocking at international doors proved successful for maintaining the subject on the agenda, but, at present, the recommendations obtained through the submission of alternative reports and even individual applications remain unimplemented and, overall, the transitional justice process can only be regarded as an “unfinished endeavour”.¹⁰¹

In the face of a seemingly chronically stalled transitional justice process, international major actors are in the process of “pulling out” from BiH: in 2016, the ICMP moved its headquarters from Sarajevo to The Hague and, in 2017, the ICTY closed,¹⁰² while donors are shifting their attention and funds to other subjects or geographical areas.

All in all, both domestic authorities and international stakeholders seem increasingly eager to embrace the ECtHR’s assessment of the BiH experience and declare that outstanding results have been achieved and domestic authorities have done all that could be reasonably expected of them, thus being now time to move on. Relatives of victims of enforced disappearance in BiH do not follow the herd.

6. Concluding Remarks

After 25 years of struggle, both at the domestic and international levels, fatigue is taking its toll on relatives of victims of enforced disappearance in BiH and their hopes to learn the truth on the fate and whereabouts of their loved ones and to obtain justice and reparations are gradually fading. In fact, more and more relatives of victims of enforced

¹⁰⁰ CAT, *Concluding Observations on BiH*, UN Doc. CAT/C/BIH/CO/6 of 28 November 2017, paras. 26-27; and HRC, *Concluding Observations on BiH*, UN Doc. CCPR/C/BIH/CO/3 of 23 March 2017, paras. 15-20.

¹⁰¹ In the same sense see, among others, Commissioner for Human Rights of the Council of Europe, *Report on the Visit to BiH in June 2017*, CommDH(2017)28 of 7 November 2017, paras. 8-45; and *Post-war Justice and Durable Peace in the former Yugoslavia*, 2012, available at: http://www.coe.int/t/commissioner/Source/prems/Premis14712_GBR_1700_PostwarJustice.pdf.

¹⁰² In October 2018, the Office of the Prosecutor of the ICTY and the ICRC signed a memorandum of understanding on cooperation in the search for missing persons. See <https://www.irmct.org/en/news/office-prosecutor-and-icrc-sign-memorandum-understanding-cooperation-search-missing-persons>. The role of the MPI in this context remains unclear.

disappearance are dying without having ever achieved any of the former. While it is undeniable that outstanding results have been accomplished in BiH, it is equally indisputable that hundreds of people did not enjoy the benefits of the transitional justice process and, today more than ever, they feel marginalised and somehow discriminated. The progress made and the results achieved in some domains, made many relatives of victims of enforced disappearance feel so close to the fulfilment of their rights. Yet, they remain faraway. This arguably undermines the possibility to achieve lasting reconciliation and durable peace. All the more so, bearing in mind that, given the features of the conflicts in the Balkans, the subject of enforced disappearance cannot be examined and effectively tackled without taking into account a general regional perspective.¹⁰³ In this domain, progress was made, for instance in terms of judicial cooperation,¹⁰⁴ but significant obstacles remain.

If one were to draw any lesson learned from the BiH experience, the first one would be that adequately dealing with truth, justice and reparations for victims of enforced disappearance is a long journey. This must be acknowledged and taken into account from the outset, on the one hand, to manage expectations and fatigue over the time; and on the other hand, to secure political will and adequate human, financial and technical resources, as well as the engagement and support of international actors in the long term.

It is crucial to admit from the outset that truth, justice and reparations for victims of enforced disappearance cannot be guaranteed simultaneously, but they are indivisible, interrelated and interdependent.¹⁰⁵ To facilitate their effective interplay, prioritisation strategies can certainly be envisaged, but their timely implementation must be ensured and, to avoid any additional frustration, the overall process must be victim-centred, from its design, to implementation and evaluation. It is also essential to maintain that truth,

¹⁰³ WGEID, *Report on the Mission to Serbia and Kosovo*, A/HRC/30/38/Add.1 of 17 August 2015, paras. 7-18; *Report on the Mission to Montenegro*, A/HRC/30/38/Add.2 of 17 August 2015, paras. 6-17; and *Report on the Mission to Croatia*, A/HRC/30/38/Add.3 of 17 August 2015, paras. 7-18. See also CED, *Concluding Observations on Montenegro*, CED/C/MNE/CO/1 of 18 September 2015, para. 5 (c).

¹⁰⁴ Reference can be made to the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide between the prosecutors of Montenegro and the Prosecutors of Bosnia and Herzegovina (2014), Croatia (2006) and Serbia (2007), as well as the adoption – in Montenegro – of a law on international legal assistance in criminal matters (2014). Another relevant achievement was the 2014 Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses, signed by the Presidents of BiH, Croatia, Montenegro and Serbia.

¹⁰⁵ In this sense, see Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence, *Report on the Foundation of the Mandate and the Importance of a Comprehensive Approach that Combines the Elements of Truth-Seeking, Justice Initiatives, Reparations and Guarantees of Non-Recurrence in a Complementary and Mutually Reinforcing Manner*, UN Doc. A/HRC/21/46 of 9 August 2012.

justice and reparations for victims of enforced disappearance are State's international obligations and not menu items that can be chosen *à la carte*. In this realm, a thorough reconsideration of what "resolving" a case of enforced disappearance entails is in order. Locating, exhuming, identifying and returning mortal remains is a crucial step forward, but not enough to fulfil all the State's obligations at stake.

Actions undertaken to respond to relatives' claims for truth, justice and reparations should aim at being mutually reinforcing and not one at the expense of the others, always bearing in mind that transitional justice has a "fourth" pillar, i.e. guarantees of non-recurrence, without which the overall process would be incomplete and, most likely, doomed.

In this light, BiH's journey towards reconciliation is arguably not over yet, despite domestic authorities and international stakeholders' attempts to turn the page and more or less gentle invitations to relatives of victims of enforced disappearance to move on.