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SERIES ON TRANSITIONAL JUSTICE, Volume 3
MAKING THE TRANSITION

International Intervention,
State-Building and Criminal Justice
Reform in Bosnia and Herzegovina

Andy AITCHISON
ACKNOWLEDGMENTS

There is a long list of people who have made significant contributions throughout the project. Among these I owe a particular debt of thanks to the many individuals committed to supporting the ongoing development of criminal justice institutions in Bosnia and Herzegovina who took the time to share their experiences and views with me; to a wider circle of friends and supporters in Sarajevo, including Ramiz, Fatima, Orhan and Mirjana; to those at Cardiff who make the School of Social Sciences such a positive working environment, notably Mike Maguire and Trevor Jones, whose supervision allowed me to 'carry on' and Mike Levi who sent me back to Edinburgh; numerous colleagues at Edinburgh for intellectual and moral support; and Cardiff University and the Cardiff Caledonian Society for the funding that allowed me to conduct the research. Last, but far from least, I owe my thanks to Louise, who has been a remarkable and wonderful constant in times of upheaval.
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PREFACE

At the risk of being accused of being voyeuristic, one must admit that countries that have gone through a period of major conflict are of considerable interest to students of criminal justice. In the course of the conflict atrocities are often committed, which evoke strident calls for ‘justice’, both from the parties to the conflict and, increasingly, from the international community. Much can be learnt by studying these responses and the grand attempts by the international community to make use of ad hoc international criminal tribunals and, more recently, the International Criminal Court as mechanisms for bringing a measure of justice into dealing with the aftermath of the conflicts.

Equally interesting, however, is the impact that major conflict has on the national criminal justice apparatus of the society in which it takes place. The pattern is that legitimacy of the national criminal justice apparatus is undermined and its efficacy greatly reduced. This provides an opportunity for the international organisations, national governments and non-governmental organisations to assist by ‘engaging in capacity building’, while using the opportunity, often from the best of motives, to impose on the post-conflict society their idea about what criminal justice should entail.

The provision of such assistance is never a simple process. The tension between the internal old system and externally driven reforms often provokes substantive debates about underlying principles, which are avoided in less disputed systems. The reform process is influenced not only by the ideas and ideals of the aid-givers, but also by the relative political strength of the parties involved and, crucially, by the existing criminal justice system that may have continued to operate throughout the conflict. The careful student of criminal justice should pay particular attention to this last factor, for in the process of reconstruction much is revealed also about the pre-existing system and the claims that it made, and may continue to make, about embodying universal values of justice.

Dr. Andy Aitchison is that careful student of criminal justice. Bosnia-Herzegovina is the exemplar of a sophisticated society in which a pre-existing criminal justice system with a clear set of values (which were already under partial threat with the demise of Yugoslav socialism) was confronted, after a major conflict, by a large and diverse international aid effort. The focus on one country allows him to explore complex resultant interactions in considerable
depth. By conducting thorough empirical research into three major elements of criminal justice – the police, the courts and the prisons – and interviewing major international and local participants, he is able to show that the impact of outside intervention varies from element to element.

In all, the single country focus is a strength of this book. It allows detailed analysis of differences within Bosnia-Herzegovina. This reveals how the entities that comprise its complex political structure, both for ideological reasons and because of their varying abilities to absorb or resist outside influences, respond differently to pressure for change in their criminal justice systems. At the same time, it shows how the wider political objective of state-building remains a concern of the foreign donors, if not of the local politicians with their varying degrees of commitment to the promotion of criminal justice as an element of the development of a single national state. Moreover, while the substance of the book deals with a single country, there are more than enough references to other post-conflict societies, such as South Africa and Northern Ireland, where similar complex processes have played themselves out.

Making the transition should appeal to a range of audiences. Those with a particular interest in the recent history of the Balkans will learn from the thorough investigation of one key aspect of a post-conflict reconstruction process. ‘Experts’ on criminal justice reform should read it as a cautionary tale about the difficulties of introducing change into a society that already has a sophisticated, if much weakened, criminal justice system. The widest general audience, however, should be those who want to read it as a study of the elusive search for post-conflict justice, not only in the high profile international tribunals but also in the day to day operation of criminal processes at the national level.

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Prosecutor v Erdemović, IT-96–22-T, 29 November 1996.
Prosecutor v Jelavić, KPŽ-10/04 (The Court of Bosnia and Herzegovina, 4 November 2005).
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Prosecutor v Plavić, IT-00–39 & IT-00–40–1-S, 27 February 2003).
Prosecutor v Prce, KPV-13/04 (The Court of Bosnia and Herzegovina, 30 September 2004).
Prosecutor v Prce, KPV-17/04 (The Court of Bosnia and Herzegovina, 24 February 2006).
Prosecutor v Prce, KPŽ-20/06 (The Court of Bosnia and Herzegovina, 22 June 2006).
Prosecutor v Todorović and Rašević, X-KRŽ -06/275 (The Court of Bosnia and Herzegovina, 6 November 2008).
Rodić and three others v Bosnia and Herzegovina. 22893/05 (European Court of Human Rights, 27 May 2008).
Twenty five representatives of the RSNA, U26/01 (Constitutional Court of Bosnia and Herzegovina, 28 September 2001).
# ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ASDA</td>
<td>Party of Democratic Activists for a European BiH</td>
</tr>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
</tr>
<tr>
<td>BLRC</td>
<td>Brčko Law Revision Commission</td>
</tr>
<tr>
<td>BRD</td>
<td>Federal Republic of Germany</td>
</tr>
<tr>
<td>CEELI</td>
<td>American Bar Association Committee on East European Legal Initiatives</td>
</tr>
<tr>
<td>CIDA</td>
<td>Canadian International Development Agency</td>
</tr>
<tr>
<td>CPT</td>
<td>Committee for the Prevention of Torture and Inhuman or Degrading Treatment</td>
</tr>
<tr>
<td>DDR</td>
<td>German Democratic Republic</td>
</tr>
<tr>
<td>DFID</td>
<td>(United Kingdom) Department for International Development</td>
</tr>
<tr>
<td>DNS</td>
<td>Democratic People’s Alliance</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EUFOR</td>
<td>European Union Military Force in Bosnia and Herzegovina</td>
</tr>
<tr>
<td>EUPM</td>
<td>European Union Police Mission</td>
</tr>
<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
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<tr>
<td>GDS</td>
<td>Citizens Democratic Party</td>
</tr>
<tr>
<td>GFAP</td>
<td>General Framework Agreement for Peace</td>
</tr>
<tr>
<td>HDZ</td>
<td>Croat Democratic Union</td>
</tr>
<tr>
<td>HDZ 1990</td>
<td>Croat Democratic Union 1990</td>
</tr>
<tr>
<td>HJPC</td>
<td>High Judicial and Prosecutorial Council</td>
</tr>
<tr>
<td>HKDU</td>
<td>Croat Christian Democratic Union</td>
</tr>
<tr>
<td>HPB</td>
<td>Croat Right Bloc</td>
</tr>
<tr>
<td>HRHB</td>
<td>Croat Republic of Herceg Bosna</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>HSP</td>
<td>Croat Party of Rights</td>
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<tr>
<td>HSS</td>
<td>Croat Peasant Party</td>
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<tr>
<td>HVO</td>
<td>Croat Defence Council</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for Yugoslavia (International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the former Yugoslavia since 1991)</td>
</tr>
<tr>
<td>IEBL</td>
<td>Inter-entity Boundary Line</td>
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Abbreviations

IFOR  UN Implementation Force
IJC  Independent Judicial Commission
IPTF  UN International Police Task Force
JNA  Yugoslav People’s Army
JSAP  UN Judicial Systems Assessment Programme
JSG  Joint Steering Group
KM  Convertible Mark
LPA  Local Police Area
LPP  Local Policing Plan
LPS  Local Police Service
NDH  Independent State of Croatia
NHI  New Croat Initiative
NSDAP  German National Socialist Workers’ Party
NSRB  People’s Party, Working for Improvement
OHR  Office of the High Representative
OIC  Organisation of Islamic Countries
OZNA  Department for the Protection of the People
PAA  Police Administration Agency
PDP  Party for Democratic Progress
PIC  Peace Implementation Council
PIFWC  Person Indicted for War Crimes
RS  Republika Srpska
RSNA  Republika Srpska People’s Assembly
SAA  Stabilisation and Association Agreement
SAPS  South African Police Service
SBiH  Party for Bosnia and Herzegovina
SBS  State Border Service
SDA  Party for Democratic Action
SDP  Social Democratic Party
SDS  Serb Democratic Party
SFOR  NATO Stabilisation Force
SFRY  Socialist Federal Republic of Yugoslavia
SIDA  Swedish International Development Agency
SIPA  State Investigation and Protection Agency (formerly State Information and Protection Agency)
SNS  Serb People’s Alliance
SNSD  Alliance of Independent Social Democrats
SP  Socialist Party
SSAJ  Safety, Security and Access to Justice
Sud BiH  Court of Bosnia and Herzegovina
TI  Transparency International
VRS  Army of Republika Srpska