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**RESEARCH OF GENOCIDE VICTIMS,
WITH A SPECIAL EMPHASIS ON
BOSNIA AND HERZEGOVINA**

– Problems and Issues in Scientific Theory, Methods and Methodology –

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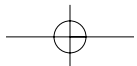
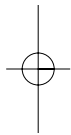
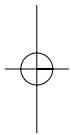
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Introductory remarks

Every country whose territory is the site of a war, and particularly one which falls victim to an act of aggression, as was the case with the Republic of Bosnia and Herzegovina, has the first-degree state interest and obligation to investigate and determine the roots, reasons, aims, spread, duration, scope and intensity of all forms of crimes against humanity and international law, i.e. the overall human victims and material destruction. Starting from this point, and having in mind the United Nations' "*raison d'être*", with the proclamation of "never again" repeated on multiple occasions after the Holocaust and the genocide in World War II, this obligation is of ever larger significance for a country where genocide was committed.

During and following genocides and other forms of crimes against humanity and international law committed after the Holocaust, whose victims have by and large been civilians, various forms of manipulation are carried out in relation to the character of conflict and the character of crimes, which, among other issues, also implies the problem of status and total number of victims. This phenomenon is accompanied by genocide denial, which most genocide scholars confirm to be the final stage of genocide. Therefore, we are not amazed by the hypocrisy of certain political subjects that deny, lessen, relativize and minimize genocide, while intending to – amongst other things – make a scientifically founded approach to research and the acquisition of scientific truths about the qualitative and quantitative markers of genocide impossible.

To research into the human victims and material losses, particularly crimes against persons and buildings protected by international humanitarian law, from the perspective of science theory and a methodological paradigm, and in accordance with the basic rules and demands of logical, scientific thought, is an extremely complex, difficult, longterm task. This

complexity is particularly obvious in the case of Bosnia and Herzegovina at the end of the 20th century, where the aggressors and their collaborationists have both during the aggression and after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accord, November 1-21, 1995), denied genocide and have undertaken various activities to completely conceal, relativize, minimize and falsify the truth on their crimes. Research so far has, apart from various scientifically founded works on the aggression against the Republic of Bosnia and Herzegovina, mostly been reduced to the discovery, identification and documentation of excess death victims. Unfortunately, some research and their results have contributed to the marginalization of victims of genocide and to an inappropriate trade in their number and status, opening up various speculations. From these reasons stem both the academic and the humane need for determining, identifying, forming, and defining objective criteria for scientific knowledge, and the establishment of a scientific truth on the victims, as part of the overall human and social knowledge, as well as human and social experience.

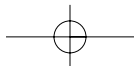
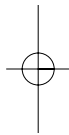
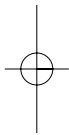
This work is based on two postulates:

- First, the research of victims of genocide and other forms of crimes against humanity is a complex, sensitive and responsible task of research, which determines and demands knowledge of the essence of the problem and of the subject of research, of the nature of research as well as the conscience and responsibility of all actors in the research;
- Second, only a valid, reliable, applicable project of scientific research can lead to objective and truthful results on these crimes, to be used as a theoretic and methodological basis for empirical research in science.

The meaning and content of the mentioned postulates has been illustrated through essential questions of scientific theory, theoretic and methodical methodology of empiric research, as well as through a critical scientific analysis of the non-scientific findings recorded on victims of genocide in Bosnia and Herzegovina.

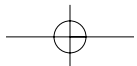
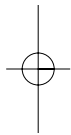
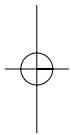
I am taking this opportunity to extend my particular gratitude to a variety of colleagues Yehonatan Alsheh and Mr. Muhamed Mesic, for their support in compiling the most important scientific theory works in the research of the Holocaust, genocide and other forms of crimes against humanity and international law, as well as for assistance in translating relevant sources and reference materials, in whole or in part, into the Bosnian language.

I also most sincerely thank my reviewers for their constructive suggestions and significant ideas.



PART ONE

**SCIENTIFIC AND THEORETIC POSTULATES
AND THE METHODOLOGICAL APPROACH
TO THE RESEARCH OF GENOCIDE VICTIMS**



*1. Postulates of Scientific Theory and Starting Points
in the Scientific Research of Genocide Victims*

The research into the total and integral scope of grave violations of international humanitarian law demands the determination of the overall number of victims of genocide and other forms of crimes against humanity and international law, and their naming, marking and precise definition, in order to discover and identify the historic truth in this field, which is a key basis to judicial and social justice. We mostly speak of grave violations of international humanitarian law, or rather, the most severe forms of crimes of relevance for the international community as a whole, whereas certain subjects – in particular, protected persons and objects – carry the bulk of the harsh consequences. The determination of the categories of victims, their status, the forms of crimes, and the manner of commission of crimes, as well as the definition of basic notions, must be based in relevant and currently applicable sources of international humanitarian law, the laws of war, and scientific findings, which demonstrate an authentic understanding of social and other phenomena by a majority of global academic authorities in law, demographics, history, military, social and political studies, and other fields of science. Therefore, while defining the basic concepts, we must rely on a combined, analytic-synthetic approach.

The categories of victims of genocide and other forms of crimes against humanity and international law, as well as their *status*, and the *forms of crimes* and the *modes of commission of crimes*, have been determined in relevant documents in the field of international humanitarian law:

1. VICTIMS – PROTECTED PERSONS AND PROTECTED OBJECTS

a) *CIVILIANS*

- **Killed individuals** (mass and individual killings)
- **Wounded individuals** (victims of grave bodily harm)
- **Prisoners Captives – camp inmates** (mass and individual imprisonment – concentration camps)
- **Prisoners** (mass and individual imprisonment – prisons)
- **Detainees** (mass and individual detention)
- **Raped and sexually harassed individuals**
- **Victims of forced transfers from one group to another**
- **Deported individuals**
- **Forcibly expelled individuals**
- **Transferred individuals**
- **Refugees**
- **Displaced persons**
- **Forcibly disappeared/missing persons**
- **Abducted individuals**
- **Sick individuals**
- **Tortured individuals**
- **Robbed individuals**
- **Victims of sniper attacks against on the civilian population**
- **Victims of severe mental harm**
- **Victims of shelling** (artillery and mortar shelling) **of civilian population and areas populated by civilians**

- **Enslavement**
- **Persecuted persons**
- **Forced laborers**
- **Individuals in “human shields”**
- **Persons used as hostages**
- **Victims of a deliberate imposition of difficult conditions of life calculated to bring about the full or partial physical destruction of the group** (victims of harsh conditions of living due to and during an armed conflict)
- **Victims of the use of prohibited methods of warfare**
- **Victims of the use of prohibited means of warfare**
- **Victims of the imposition of measures intended to prevent births within a group**
- **Increased mortality** (deaths due to harsh conditions of war)
- **Significantly and essentially reduced natural birth rate** (due to armed conflict)
- **Victims – members of international peacekeeping forces**
- **Victims – members of international humanitarian, medical, charity, and other organizations**
- **Other victims**

b) *MEMBERS OF THE ARMED FORCES*

- **Medical personnel**
- **Hospital and hospice personnel**
- **Clerical personnel**
- **Parlementaire**
- **Combatants – prisoners of war**

- **Combatants – wounded**
- **Combatants – sick**
- **Combatants – shipwrecked**
- **Combatants – missing**

c) *CIVILIAN OBJECTS*

- **Residential buildings**
- **Buildings necessary for use by population**
- **Buildings of humanitarian purpose**
- **Buildings of charity purpose**
- **Buildings of education, science and the arts**
- **Buildings of culture**
- **Buildings of civil defense**
- **Buildings of medical and social welfare**
- **Religious buildings**
- **Sports objects**
- **Economic objects** (excluding, explicitly, physically separate military industries)
- **Facilities of communal infrastructure**
- **Buildings and installations which contain dangerous natural forces**
- **The environment** /(Natural heritage)
- **Buildings of international peacekeeping forces**
- **Buildings of international humanitarian, medical, charity, and other organizations**
- **Other objects.**

2. VICTIMS – UNPROTECTED PERSONS AND MILITARY INSTALLATIONS

- a) *Combatants – killed in direct combat activities
(combat operations)*
- b) **MILITARY INSTALLATIONS – MILITARY
OBJECTIVES¹**

¹ *CHARTER OF THE UNITED NATIONS (1945); CHARTER OF THE NUREMBERG TRIBUNAL (1946); UNIVERSAL DECLARATION ON HUMAN RIGHTS OF DECEMBER 10, 1948; CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE OF DECEMBER 9, 1948; ŽENEVSKE KONVENCIJE O ZAŠTITI ŽRTAVA RATA OD 12. AUGUSTA 1949, Beograd, 1962; GENEVA CONVENTIONS AND ADDITIONAL PROTOCOLS OF AUGUST 12, 1949, International Committee of Red Cross, Geneva, printed in Bosnia and Herzegovina – no mention of date or place included; HUMANITARNO PRAVO, ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, Ministarstvo vanjskih poslova Bosne i Hercegovine and Nezavisni biro za humanitarna pitanja, Sarajevo, 1996; CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY (1968); DEFINITION OF AGGRESSION, adopted by UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3314 (XXIX) OF DECEMBER 14, 1974; CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE AND HUMILIATING PROCEDURES OR PUNISHMENTS (1987); EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH ACCOMPANYING PROTOCOLS of 1950; CONVENTION ON REFUGEES WITH ACCOMPANYING PROTOCOLS of 1951 and 1966; PROPISI O PRIMJENI PRAVILA MEĐUNARODNOG RATNOG PRAVA U ORUŽANIM SNAGAMA SFRJ, Naredba i Uputstvo, SSNO, Beograd, 1988; STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW IN THE FORMER YUGOSLAVIA (ICTY) OF 1991 – ANNEX TO SECURITY COUNCIL RESOLUTION 827 OF 25 May, 1993; RIMSKI STATUT MEĐUNARODNOG KRIVIČNOG SUDA od 17. jula 1998. (Official translation – Art. 2 of the Ratification Instrument) *Službeni glasnik Bosne i Hercegovine*, Sarajevo, 6. March, 2002; INTERNATIONAL CRIMINAL COURT, ELEMENTS OF CRIMES, UN. DOC. PCNICC/2000/1-ADD. 2 (2000); Dieter Fleck - Michael Bothe, THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS, Oxford, 2001; Patrick Daillier - Alain Pellet, DROIT INTERNATIONAL PUBLIC, Paris, 2002; I. Carey - W. Dunlap - I. Pritchard, INTERNATIONAL HUMANITARIAN LAW: THE ORIGINS, New York, 2003.; I. Carey - W. Dunlap - I. Pritchard, INTERNATIONAL HUMANITARIAN LAW: THE PROSPECTS, New York, 2006; I. Carey - W. Dunlap - I. Pritchard, - HUMANITARIAN LAW: THE CHALLENGES, New York, 2004; R. Provost, INTERNATIONAL HUMAN*

In terms of criminology, the categories and status of victims, but also the enumerated and other forms of crimes, as well as modes of commission of crimes against protected persons, must be seen in the light of criminal law, or rather, as interconnected, mutually conditioned, but also separate acts.

By determining all the categories of victims of genocide, their status, all forms of crimes and modes of their commission, and summing them up, we reach the total number of victims in a certain state and/or certain national, ethnic, racial or religious group as such. With this in mind, one must particularly take into account individuals that have been victims to various forms of crimes and modes of commission, which in the case of genocide is a certain social regularity, that the same victim has been included into two, three or more lists of victims, classified according to category, status, form and mode of commission of crimes, and its national identity, social origin, gender, and other markers, features, properties and characteristics. If the categories and status of victims are not defined, or are incorrectly defined, and if one or more forms of crimes are missing or have been dropped out – either deliberately or not – than that state is to be qualified as an evident reduction of the true, or factual number of victims which leads to, amongst other consequences, a wrong perception

RIGHTS AND HUMANITARIAN LAW, Cambridge, 2002; I. Charny, GENOCIDE – THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES, Hiroshima, 2004, p. 6; ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (EPIL), The Hague 1984-2006; G. Perazić, MEĐUNARODNO RATNO PRAVO, Beograd, 1966; OSNOVI PRAVA, *Udžbenik za vojne škole JNA*, SSNO, Beograd, 1979; Juraj Andrassi, MEĐUNARODNO PRAVO, *Školska knjiga*, Zagreb, 1978; Vladimir Đuro Degan, MEĐUNARODNO PRAVO, *Pravni fakultet*, Rijeka, 2000; Vojin Dimitrijević, LJUDSKA PRAVA, Beograd, 1997; Frederic De Mulinen, HANDBOOK ON WAR LAW FOR THE MEMBERS OF ARMED FORCES, *International Committee of Red Cross*, Geneva, 1987; THE INTERNATIONAL COMMITTEE OF THE RED CROSS, *International REVIEW of the Red Cross*, Volume 87, No. 857, Geneva, March 2005; Jack Donnelly, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE, 2nd edition, *Cornell University Press*, Ithaca, New York, 2003; ANNEX TO THE CONVENTION, LAWS AND CUSTOMS OF WAR ON LAND, The Hague, October 18, 1907, Art. 32; Vuko Gozde – Gučetić, *PARLAMENTAR*, VOJNA ENCIKLOPEDIJA, sv. 6, Beograd, 1973, p. 551.

of the scope and dimensions and, in an analogy, a wrong total number of victims.

The previously mentioned standpoints are best illustrated by genocide: the harshest form of crimes against humanity and international law. As is known and precisely defined by international law, genocide involves five elements of the crimes committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.²

As a subject of analytic research, genocide knows many diverse elements of crimes in which it manifests itself,³ and therefore, a serious approach to the research of its causes, aims, development, movement, changes, results and consequences, is of crucial importance. Unfortunately, most scholars, including courts (national and international) identify and equal genocide only to one of its elements, or rather to the killing of members of a group, whereby – with no basis or argument whatsoever – they exclude other acts of genocide, in particular the **inflicting serious bodily or mental harm** to members of the group.

² UNITED NATIONS, *CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE of 9 DECEMBER 1948*, Article 2; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, U.N. Doc. PCNICC/2000/1/Add. 2 (2000), Art. 6; THE INTERNATIONAL CRIMINAL TRIBUNAL FOR GRAVE VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF FORMER YUGOSLAVIA (hereinafter: ICTY), *STATUTE*, Article 4; RIMSKI *STATUT MEĐUNARODNOG KRIVIČNOG SUDA od 1998*, Official translation – Art. 2 of the Ratification Instrument), *Službeni glasnik Bosne i Hercegovine čl.6*, Sarajevo, 6. mart 2003, p. 22.

³ I. Charny, *GENOCIDE – THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES*, Hiroshima, 2004, p. 6; D. Feierstein, *EL GENOCIDIO COMO PRÁCTICA SOCIAL*, Buenos Aires, 2007, pp. 31-86.

Each and every one of the five mentioned acts, either separately or together, committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, constitutes genocide, which is legally primarily defined by its intent; therefore, we speak of a specific intent (*dolus specialis*). If the perpetrator has had the intent (*mens rea*) to destroy a national, ethnic, racial or religious group in whole or in part by a single act of genocide such as, e.g., inflicting of bodily harm (*actus reus*) and this is proven, then we can confirm that genocide has been committed.⁴

In every armed conflict, including the aggression against the Republic of Bosnia and Herzegovina at the end of the 20th century, the number of **wounded** persons (with serious bodily harm) habitually outnumbers the number of killed individuals by three to four times. Therefore, when researching, discovering and noting the overall number of victims, seriously injured persons who were inflicted upon serious bodily injuries with the intent to be destroyed, in whole or in part, being a member of a certain national, ethnic, racial or religious group as such, must never be excluded.

⁴ UNITED NATIONS, *CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE* OF 9 DECEMBER 1948.; ICTY, STATUTE, Article 4; RIMSKI STATUT MEĐUNARODNOG KRIVIČNOG SUDA OD 17. JULA 1998. (Official translation – Art. 2 of the Ratification Instrument), *Službeni glasnik Bosne i Hercegovine*, Art. 6, Sarajevo, 6 March 2003, p. 22.; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, U.N. Doc. PCNICC/2000/1/Add. 2 (2000), Art. 6.

2. *Categories of Victims*

Determining the *categories of victims* of genocide and other forms of crimes against humanity and international law is a fundamental postulate and basis upon which the process of acquiring scientific findings through scientific research is obtained.

The definition of the categories of victims is at the basis of a dichotomous classification between:

1. **Protected persons and protected objects, and**
2. **Unprotected persons and military objects/military objectives.**⁵

⁵ CHARTER OF THE ORGANIZATIONS OF UNITED NATIONS OF 1945; CHARTER OF THE NUREMBERG TRIBUNAL OF 1946; UNIVERSAL DECLARATION ON HUMAN RIGHTS OF 10 DECEMBER 1948; CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE OF DECEMBER 9, 1948; ŽENEVSKE KONVENCIJE O ZAŠTITI ŽRTAVA RATA OD 12. AUGUSTA 1949, Beograd, 1962; ŽENEVSKE KONVENCIJE OD 12. AUGUSTA 1949. I DODATNI PROTOKOLI, Međunarodni komitet Crvenog križa, Ženeva (printed in Bosnia-Herzegovina, no mention of date or place); HUMANITARNO PRAVO, ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, *Ministarstvo vanjskih poslova Bosne i Hercegovine* and *Nezavisni biro za humanitarna pitanja*, Sarajevo, 1996; CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY OF 1968; DEFINITION OF AGGRESSION, ADOPTED BY UN GENERAL ASSEMBLY RESOLUTION 3314 (XXIX) OF DECEMBER 14, 1974; CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE AND HUMILIATING PROCEDURES OR PUNISHMENTS OF 1987; EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH ACCOMPANYING PROTOCOLS OF 1950; CONVENTION ON REFUGEES WITH ACCOMPANYING PROTOCOLS OF 1951 AND 1966; PROPISI O PRIMJENI PRAVILA MEĐUNARODNOG RATNOG PRAVA U ORUŽANIM SNAGAMA SFRJ, Naredba i Uputstvo, SSNO, Beograd, 1988; STATUTE OF THE INTERNATIONAL TRIBUNAL FOR GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW IN THE TERRITORY OF FORMER YUGOSLAVIA OF

A **protected person** is every individual that enjoys the respect and protection of the Geneva Conventions and their Additional Protocols, or a person that, in the case of conflict, falls under the power of the opposing party. This includes:

- **Civilians** and the **civilian population**;⁶
- **Combatants – wounded, sick and shipwrecked** (wounded and sick combatants in the armed forces during the war and wounded, sick and shipwrecked combatants of the armed forces at sea);⁷

1993 – ANNEX OF SC Res. 827 of 25 May, 1993; RIMSKI STATUT MEĐUNARODNOG KRIVIČNOG SUDA OD 17. JULA 1998, (Official translation – Art. 2 of the Ratification Instrument) *Službeni glasnik Bosne i Hercegovine*, Sarajevo, 6 March 2002; INTERNATIONAL CRIMINAL COURT, ELEMENTS OF CRIMES, UN. DOC. PCNICC/2000/1-ADD. 2 (2000); Dieter Fleck - Michael Bothe, THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS, Oxford, 2001; Patrick Daillier - Alain Pellet, DROIT INTERNATIONAL PUBLIC, Paris, 2002; I. Carey - W. Dunlap - I. Pritchard, INTERNATIONAL HUMANITARIAN LAW: THE ORIGINS, New York, 2003; I. Carey - W. Dunlap – I. Pritchard, INTERNATIONAL HUMANITARIAN LAW: THE PROSPECTS, New York, 2006; I. Carey - W. Dunlap - I. Pritchard, INTERNATIONAL HUMANITARIAN LAW: THE CHALLENGES, New York, 2004; R. Provost, INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW, Cambridge, 2002; I. Charny, GENOCIDE – THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES, Hiroshima, 2004, p. 6; ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (EPIL), The Hague, 1984-2006; G. Perazić, MEĐUNARODNO RATNO PRAVO, Beograd, 1966; OSNOVI PRAVA, *Udžbenik za vojne škole JNA*, SSNO, Beograd, 1979; Juraj Andrassi, MEĐUNARODNO PRAVO, *Školska knjiga*, Zagreb, 1978; Vladimir Đuro Degan, MEĐUNARODNO PRAVO, *Pravni fakultet*, Rijeka, 2000; Vojin Dimitrijević, LJUDSKA PRAVA, Beograd, 1997; Frederic De Mulinen, HANDBOOK ON WAR LAW FOR MEMBERS OF ARMED FORCES, *International Committee of Red Cross*, Geneva, 1987, THE INTERNATIONAL COMMITTEE OF THE RED CROSS, *International REVIEW of the Red Cross*, Vol. 87, No. 857, Geneva, March 2005; Jack Donnelly, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE, 2nd Ed., *Cornell University Press*, Ithaca, New York, 2003.

⁶ FIRST ADDITIONAL PROTOCOL, Art. 48, Para. 1; Art. 50, Para. 1,2,3; Art. 51, Para 1-6.

⁷ FIRST GENEVA CONVENTION, Art. 4, 5, 7, 10, 12, 13, 14 et al.; SECOND GENEVA CONVENTION, Art. 1-3; 6, 7, 10-12 et al.; FOURTH GENEVA CONVENTION, Art. 1-3; 4, 13 and 16; FIRST ADDITIONAL PROTOCOL, Art. 10, Para. 1-2 and Art. 85, Para. 2; SECOND ADDITIONAL PROTOCOL, Art. 5, Para. 1 (a) and Art. 7, Para. 1 – 2.

- Combatants – prisoners of war;⁸

Members of the armed forces and other individuals listed in Art. 13 of the FIRST GENEVA CONVENTION and Art. 13 of the SECOND GENEVA CONVENTION “**who are wounded or sick**” and “**persons wounded, sick and shipwrecked at sea**“, enjoy respect and protection on all occasions and in all locations. They must not be deliberately attacked or exposed to combat operations (Arts. 12 and 13 of the FIRST and SECOND GENEVA CONVENTION; FIRST ADDITIONAL PROTOCOL, Art. 10, Para. 1; SECOND ADDITIONAL PROTOCOL, Art. 7, Para. 1) These persons must, at all times, “**be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.**“ (Ibid).

Reprisals against wounded, sick, shipwrecked and other persons protected by the FIRST and SECOND GENEVA CONVENTIONS are prohibited (FIRST GENEVA CONVENTION, Art. 46, SECOND GENEVA CONVENTION, Art. 47). Against persons which have carried out or ordered certain grave breaches (“**wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly**“), legal measures will be undertaken to provide for proper criminal sanction (FIRST GENEVA CONVENTION, Arts. 49-50; SECOND GENEVA CONVENTION, Arts. 50-51; FIRST ADDITIONAL PROTOCOL, Art. 11, Para. 2; SECOND ADDITIONAL PROTOCOL, Art. 8).

⁸ FIRST GENEVA CONVENTION, Art. 14; THIRD GENEVA CONVENTION, Art. 1-3; 4A, Para. 1, 2, 3 and 6; 5, 7, 12, 13, 15 et al.; FIRST ADDITIONAL PROTOCOL, Art. 45, Para. 1-3.

Wounded and sick combatants “**of a party in conflict which have fallen into the power of the opponent shall be considered prisoners of war, and rules of international law related to the prisoners of war shall apply to them**“ (FIRST GENEVA CONVENTION, Art 14).

Combatants which have been imprisoned (with or without surrender) *are prisoners of war* and shall not be subject to further attack. (THIRD GENEVA CONVENTION, Arts. 5, 13, 18, et al.; FIRST ADDITIONAL PROTOCOL, Art. 44).

Prisoner of war marks, by rule, every combatant which has fallen into the power of the opposing party (CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND, IV (*The Laws and customs of War on Land*), 1, Moscow, 2002; THIRD GENEVA CONVENTION, Art 4; ADDITIONAL PROTOCOL I, Art. 44).

- **Medical, hospital and religious personnel**, members of the armed forces;⁹
- **Combatants – missing in direct combat operations (military actions)**;¹⁰
- **Parlementaire**, members of the armed forces.¹¹

⁹ FIRST GENEVA CONVENTION, Arts. 3, 4, 5, 6, 7, 8, 10, 11, 19, 24-26 and 28-29; SECOND GENEVA CONVENTION, Arts. 6, 7, 9-12, 36-37 et al.; THIRD GENEVA CONVENTION, Art. 33; FOURTH GENEVA CONVENTION, Arts. 10, 18-20; FIRST ADDITIONAL PROTOCOL, Arts. 8, 12, 15, 21-31, 43, 44, and 85 Para. 2; SECOND ADDITIONAL PROTOCOL, Arts. 9-10. *Medical and religious personnel* “**will be treated with respect and protected and offered all aid available in the execution of their obligations...**” (SECOND ADDITIONAL PROTOCOL, Art. 9, Para. 1). *Medical personnel* “**exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances**” (FIRST GENEVA CONVENTION, Art 24). *Medical and religious personnel*, and medical units, are obliged to carry a sign of distinction (Red Cross, Red Crescent, et al.), “**which has to be respected in all opportunities and not used improperly.**” (SECOND ADDITIONAL PROTOCOL, Art. 12).

¹⁰ GENEVA CONVENTIONS (I – IV), *Common Article 3*; FIRST ADDITIONAL PROTOCOL, Arts. 32-33; SECOND ADDITIONAL PROTOCOL, Art. 8.; MEĐUNARODNI KRIVIČNI SUD, *STATUT*, Art. 7 (1) (i), *Službeni glasnik Bosne i Hercegovine*, No. 2, Sarajevo, March 6, 2002, pp. 21-24; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, UN Doc. PCNICC/2000/1/Add. 2 (2000), Art. 7 (i) (i); ZAKON O NESTALIM LICIMA BOSNE I HERCEGOVINE, *Službeni glasnik Bosne i Hercegovine*, No. 50, Sarajevo, November 9, 2004, pp. 5221-5225; DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE, UN General Assembly, UN DOC A/RES/47/133, December 18 1992; ICRC, ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, MISSING PERSONS AND THEIR FAMILIES: *Recommendations for drafting national legislation*, Geneva, 2003, p. 1. *Missing persons* enjoy not only the protection accorded to civilians and protected categories of combatants, but also a series of specific measures by which the sides in an armed conflict are responsible for additional protective measures targeted at clarifying the missing persons’ destinies, whereas their families are accorded special rights (Ibid).

¹¹ *ANNEX TO THE CONVENTION, LAWS AND CUSTOMS OF WAR ON LAND*, The Hague, October 18, 1907, Art. 32; Vuko Gozze - Gučetić, *PARLAMENTAR, VOJNA ENCIKLOPEDIJA*, sv. 6, Beograd, 1973, p. 551. A person is considered to be a *parlamentaire* (either a civilian or a member of the armed forces) when he has been authorized by one of the parties to a conflict to establish contact with the other, and move carrying

Protected persons, when in the power of a party in armed conflict, **“are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”**.¹²

Women must be **“especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”**.¹³

Children are also protected from **“any form of indecent assault”** and are to be treated with **“special respect”**.¹⁴

Taking the provisions on health, age, and gender into account, **“all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion”**.¹⁵

International humanitarian law protects the protected persons, whereas international criminal law sanctions the perpetrators, among others, of the following acts committed (in an armed conflict) as part of a widespread or systematic attack directed against the civilian population:

- Deliberate killing;

a white flag. The parlementaire and his suite enjoy full protection of their personality and they are inviolable during the execution of their duties, if they respect the rules of the law of war and the terms set by the other party to the conflict for potential reception. No deliberate fire may be opened against the parlementaire and his suite (flag carrier, translator, driver, signal officer and loudspeakers, trumpeter or drummer, etc.) (Ibid).

¹² FOURTH GENEVA CONVENTION, Art. 27, Para. 1. The rights of protected persons in occupied territory are inviolable (Ibid, Art. 47).

¹³ Ibid, Art. 27, Para. 2; FIRST ADDITIONAL PROTOCOL, Art. 76, Para. 1. Pregnant women and mothers with infants **who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.** (FIRST ADDITIONAL PROTOCOL, Art. 76, Para. 2).

¹⁴ FIRST ADDITIONAL PROTOCOL, Art. 77, Para. 1.

¹⁵ FOURTH GENEVA CONVENTION, Art. 27, Para. 2.

- Causation of serious bodily or mental harm;
- Deliberately inflicting conditions of life calculated to bring about its physical destruction of a group in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcible transfer of children from one group to another;
- Forced causation of major suffering or severe harm to the body, or mental or physical harm;
- Extermination (all measures which can cause extermination);
- Forced expulsion of civilian population (mass or individual);
- Deportation of civilian population;
- Transfer of civilians;
- Forced disappearances of persons;
- Torture, cruel or inhuman treatment and violence against human dignity, particularly humiliating and degrading procedures, including biological experiments;
- Acts or threats of violence, whose main aim is to terrorize the civilian population;
- Corporal (individual and collective) punishment;
- Mutilation, medical or scientific experiments or any other medical procedure not conditioned by the health status of the individuals in question and not in line with acceptable medical standards;
- Rape, forced prostitution, forced pregnancy, forced sterilization, sexual slavery or any other form of sexual violence;
- Arrest, imprisonment, detention, abduction or other forms of deprivation of (physical) liberty;
- Enslavement and slave trade, in all of its forms;
- Hostage taking;
- Acts of terrorism;
- Use of human shields;

- Persecution on grounds of political orientation, race, nation, ethnicity, religion, gender or cultural grounds;
- Retaliative measures;
- Killing and injuring individuals *hors de combat* (in non-combat situations);
- Forfeiting the right (of a protected person) to a fair and just trial;
- Forcing (a protected person) to serve in the armed forces of the opposing party;
- Reprisals (against protected persons and their property);
- Killing or injuring combatants who have laid down their arms or have been left without tools of defense, and have subsequently surrendered at mercy;
- Forced labor or labor without retribution;
- Other acts.¹⁶

Civilian objects, alongside protected persons, are also protected by international humanitarian law if and while they are not military

¹⁶ UNITED NATIONS, *CONVENTION ON PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE* OF DECEMBER 9, 1948; GENEVA CONVENTIONS, *Common Article 3*; FIRST GENEVA CONVENTION, Arts.: 8; 10; 12, Para. 2; 17, Para. 3; 28; 30; 32; 46; 49, Para. 4; 50; SECOND GENEVA CONVENTION, Arts.: 8; 10; 12, Para. 2, 36-37; 50, Para. 4; 51; THIRD GENEVA CONVENTION, Art.: 4, Para. 1; 8; 10; 13; 17, Para. 4; 21; 23, Para. 2; 32; 33, Para. 3; 34-36; 49, Para. 1; 50-69; 76, Para. 3; 86; 87 Para. 3; 89; 90; 93; 95; 102-108; 109-119; 122-123; 130; FOURTH GENEVA CONVENTION, Art.: 25, Para. 3; 27, Para. 1 and 2; 28; 32-34; 38, Para. 3, 40; 42; 43, Para. 1; 49; 51-52; 58; 66-75; 78; 95; 147; FIRST ADDITIONAL PROTOCOL, Arts.: 9; 11; 43; 57, Para. 7; 71, Para. 1; 75, Para. 2, 3 and 4; 76-77; 85, Para. 4; 105; 136-137; SECOND ADDITIONAL PROTOCOL, Art.: 4, Para. 2; 4, Para. 3 (b); 5, Para. 2 (a); 6, Para. 2; 7-8; 13, Para. 1 and 2; UNITED NATIONS, SECURITY COUNCIL, *RESOLUTION* 1034/1995, December 21, 1995; UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, *RESOLUTION* 1994/72, March 9, 1994; ICTY, Art. 1-5; MEĐUNARODNI KRIVIČNI SUD, *STATUT, Službeni glasnik Bosne i Hercegovine*, Sarajevo, March 6, 2003, Art. 5-8; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Arts. 6-8.

objectives. Protected objects include civilian objects, which **“cannot be subject to an attack or reprisal”**.¹⁷

Civilian objects are all those objects whose complete or partial destruction, occupation or neutralization, in the circumstances of their nature, location, purpose or use, do not contribute to military action and do not provide a military advantage, or rather, they represent **“all objects which are not military objects”**, meaning objects which are not **military objectives**. Therefore, attacks **“must strictly be limited to military objectives”**.¹⁸ In the implementation of military operations, **“one must permanently take care on sparing the civilian population, civilians, and civilian objects”**.¹⁹

In case there is doubt whether an object **“which is normally intended for civilian purposes, such as places of common prayer, houses or other residences or schools, is used in a way of providing an efficient contribution to a military action, will be considered not used in that way”**.²⁰

It is prohibited to attack: **(civilian) hospitals**²¹ and other (civilian) medical institutions and units; permanent institutions and mobile units of

¹⁷ FIRST ADDITIONAL PROTOCOL, Art. 20 and Art. 52, Para. 1. Parties in conflict must at all times distinguish between civilian objects and military objectives. Attacks may be only directed onto military objectives – they must not be directed against civilian objects (FIRST ADDITIONAL PROTOCOL, Art. 48).

¹⁸ FIRST ADDITIONAL PROTOCOL, Art. 52, Para. 1 and 2. *military objectives* include all objects **“which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”** (Ibid, Art. 52, Para. 2).

Military objectives are: **armed forces**, with the exception of medical and religious personnel and buildings; **institutions, buildings and positions** where armed forces or their materials are located (barracks, warehouses, armaments, positions, and others), as well as **other objects** which, by their nature, location, purpose or use efficiently contribute to the military operation, and whose complete or partial destruction, occupation or neutralization in conditions governing at the time would offer a certain obvious advantage (FIRST ADDITIONAL PROTOCOL, Art. 52).

¹⁹ Ibid, Art. 57, Para. 1.

²⁰ Ibid, Art. 52, Para. 3.

²¹ FOURTH GENEVA CONVENTION, Arts. 18-20.

medical services; medical vehicles; trains, sea and air vessels;²² transports of medications, medical material, food, clothes and religious items;²³ medical transports – medical vehicles;²⁴ hospital ships and coastal rescue craft (vessel lifeboats or lesser boats);²⁵ medical planes;²⁶ buildings and materials (equipment, supplies and means of transport) belonging to civil defense, and warehouses serving the civilian population.²⁷

It is prohibited to attack buildings, materials, and warehouses of mobile civilian medical institutions and units of armed forces,²⁸ medical units and institutions (fixed establishments or mobile medical units of Medical Service),²⁹ hospital vessels,³⁰ medical zones and sites,³¹ military hospital ships and lesser vessels,³² ship hospitals,³³ vessels authorized to transport medical materials,³⁴ medical planes³⁵ and medical transports.³⁶

It is prohibited to undertake any enemy activity against **objects of culture** (historical movements, works of art, or places of common

²² Ibid, Arts. 21-22; FIRST ADDITIONAL PROTOCOL, Art. 12, Para. 1 and 2, and Art. 23, Para. 1.

²³ FOURTH GENEVA CONVENTION, Art. 23.

²⁴ FIRST ADDITIONAL PROTOCOL, Art. 21.

²⁵ FIRST ADDITIONAL PROTOCOL, Art. 22.

²⁶ Ibid, Arts. 24-31.

²⁷ Ibid, Art. 61, Para. 3 and Art. 62, Para. 3.

²⁸ FIRST GENEVA CONVENTION, Arts. 33-34; SECOND ADDITIONAL PROTOCOL, Art. 11.

²⁹ FIRST GENEVA CONVENTION, Art.19; FIRST ADDITIONAL PROTOCOL, Art. 85 Para 2; SECOND ADDITIONAL PROTOCOL Art. 11 Para. 1-2.

³⁰ FIRST GENEVA CONVENTION, Arts. 20 and 46; SECOND GENEVA CONVENTION, Art. 47.

³¹ Ibid, Art. 21.

³² SECOND GENEVA CONVENTION, Arts. 22-25, 27, and 43.

³³ Ibid, Art. 28.

³⁴ Ibid, Art. 38.

³⁵ FIRST GENEVA CONVENTION, Arts. 35-36; SECOND GENEVA CONVENTION, Arts. 39-40.

³⁶ FIRST GENEVA CONVENTION, Art. 35; FIRST ADDITIONAL PROTOCOL, Art. 85, Para. 2; SECOND ADDITIONAL PROTOCOL, Art. 11, Para. 1-2.

worship which represent the cultural or spiritual heritage of a people)³⁷, then **objects of culture under general protection**³⁸ and **objects of culture under special protection**,³⁹ as well as residential and other civilian objects.⁴⁰

Historical monuments, works of art and religious objects which comprise the cultural or spiritual heritage of a people enjoy full protection.⁴¹ Namely, international law prohibits:

³⁷ FIRST ADDITIONAL PROTOCOL, Arts. 52-53 and 85, Para. 4 (d); SECOND ADDITIONAL PROTOCOL, Art. 16; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(ix); INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(ix). *Objects of culture are all objects which represent a high cultural value and serve the civilian population for the fulfillment of its cultural, educational, scientific, religious and sportive needs, as well as other civilian objects used for those purposes* (FIRST ADDITIONAL PROTOCOL, Art. 53; SECOND ADDITIONAL PROTOCOL, Art. 16; D. Fleck-M. Bothe, *THE HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICTS*, New York, 1999).

³⁸ *An object of culture under general protection represents an object of major significance for the cultural heritage of every nation, such as:*

a) **monuments of architecture, art or history, archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest;**

b) **buildings whose main and effective purpose is to preserve movable cultural property, such as museums, major libraries, archive treasuries, artifact depositories; and**

c) **centers containing a large number of non-transferable cultural artifacts** (*THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT OF 14 MAY 1954*, 1).

³⁹ *An object of culture under special protection represents an object of extreme value, such as*

a) **artifact depositories,**

b) **centers which contain non-transferable cultural artifacts, and**

c) **other cultural objects of very great importance** (*THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT OF 14 MAY 1954*, 1, 8).

⁴⁰ FIRST ADDITIONAL PROTOCOL, Arts. 52-53; SECOND ADDITIONAL PROTOCOL, Art. 16.

⁴¹ FIRST ADDITIONAL PROTOCOL, Art. 53; SECOND ADDITIONAL PROTOCOL, Art. 14.

“a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

b) to use such objects in support of the military effort;

c) to make such objects the object of reprisals.”⁴²

The destruction of movable and imovable goods, **“which, individually or collectively, belong to individuals, the state or public bodies, social organizations or collectivities, except when absolutely necessary for the execution of military operations”**, is prohibited.⁴³

It is prohibited to attack, destroy, remove or make unusable **objects necessary for the survival of civilian populations**, such as foodstuffs (food reserves), agricultural food production areas, crops, livestock, drinking water installations and reserves and irrigation plants, with the obvious intent to forfeit the right of the civilian population, or of the opposing party, to use these objects as necessary for their survival, regardless of the motive, **“either to starve the population or coerce them into leaving or with any other motive”**.⁴⁴

In an armed conflict, special care is necessary to **protect the environment** from long-term, widespread and severe damage. This protection includes the prohibition of the use of methods and means of warfare whose aim it is – or which can be expected – to cause such damage to the environment or harm the health or survival of the population. Reprisals against the environment are prohibited.⁴⁵

⁴² FIRST ADDITIONAL PROTOCOL, Art. 53 – *Protection of cultural objects and temples*.

⁴³ FOURTH GENEVA CONVENTION, Art. 33, Para. 3; 53 and 147; FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 6. *The destruction and expropriation of property*, **“not justified by military need and carried out in a widespread manner and in an impermissible and prolific way”**, represents a grave violation committed against the persons or goods protected by the *FOURTH GENEVA CONVENTION* (FOURTH GENEVA CONVENTION, Art. 147).

⁴⁴ FIRST ADDITIONAL PROTOCOL, Art. 54, Para. 2; SECOND ADDITIONAL PROTOCOL, Art. 14; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(xxv).

⁴⁵ FIRST ADDITIONAL PROTOCOL, Art. 35, Para. 3 and Art. 55, Para. 1-2; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(iv).

Buildings or installations which hold dangerous forces of nature back, i.e. dams, docks, nuclear power plants, may never be subjected to an attack, even if they are military objectives, if such an attack could cause the liberation of the dangerous forces and therefore cause major losses among the civilian population.⁴⁶

The parties to an armed conflict are prohibited from attacking, in any manner, **undefended places**⁴⁷, **hospital zones and areas of protection**⁴⁸, **neutralized zones**⁴⁹, **UN Safe Areas**⁵⁰, **open cities**⁵¹, as well as from

⁴⁶ FIRST ADDITIONAL PROTOCOL, Art. 56, Para. 1 and Art. 85, Para. 3 (c); SECOND ADDITIONAL PROTOCOL, Art. 15.

⁴⁷ FIRST ADDITIONAL PROTOCOL, Art. 59, Para. 1-7 and Art. 85, Para. 3 (d); INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2) (b) (v). Every party to the conflict can proclaim an inhabited place close to or within the zone of armed operations, whereas such a place – to be undefended – must fulfill following criteria:

- “a) **all combatants, mobile weapons and moveable military equipment must be evacuated;**
- b) immovable military installations or institutions must not be used for hostilities, in any way;**
- c) the authorities and population must not undertake any hostile acts;**
- d) no actions to support military operations whatsoever may be undertaken.”**

(FIRST ADDITIONAL PROTOCOL Art. 59, Para. 2).

⁴⁸ FIRST GENEVA CONVENTION, Art. 23; FOURTH GENEVA CONVENTION, Art. 14. “**In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, *hospital and safety zones* and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.**” (FOURTH GENEVA CONVENTION, Art. 14, Para. 1).

⁴⁹ FOURTH GENEVA CONVENTION, Art. 15. “**Any party to the conflict can, directly or through a neutral state or a certain humanitarian organization, propose, to the opposed side in the conflict, in the area where hostilities are taking place, the establishment of neutralized zones with the aim of indiscriminate protection of the following individuals:**

- (a) wounded and sick combatants and non-combatants;**
- (b) civilian persons not taking part in the hostilities and who, while living in those areas, do not carry out tasks of a military character“** (Ibid, Art. 15, Para. 1 (a) and (b)).

⁵⁰ S. Čekić- M. Kreso- B. Macić, GENOCID U SREBRENICI “SIGURNOJ ZONI“ UJEDINJENIH NACIJA, JULA 1995, *Institut za istraživanje zločina protiv čovječnosti i*

expanding of their armed operations into an area to which both parties

međunarodnog prava Univerziteta u Sarajevu, Sarajevo, 2000, pp. 43-72 and 297-313. The long discussion to establish UN “safe areas” in the Republic of Bosnia and Herzegovina, “**saved from any armed attack or any other hostile act**”, has been implemented through UN SC Res. 819 of April 16, 1993, adopted on the eve of the “Srebrenica crisis” (an armed offensive by regular armed forces of the Army of Yugoslavia and their collaborationists from ‘Republika Srpska’ against Kamenica, Cerska and Konjević Polje), in early 1993. On April 16th, the Security Council, referring to Chapter VII of the United Nations Charter, proclaimed the area of Srebrenica and its surroundings a *safe area*, “**which must be saved from any armed attack or any other hostility**“, and ordered the immediate withdrawal of the Greater Serbian aggressor and its collaborationists from the Srebrenica area (REZOLUCIJE VIJEĆA SIGURNOSTI UN O BOSNI I HERCEGOVINI, *Press centar AR BiH*, Sarajevo, 1995, pp. 62-64; S. Čekić, M. Kreso, B. Macić, paragraphs of pp. 43-72 and 297-313; ICTY, Trial Chamber Judgment KRSTIĆ, The Hague, August 2, 2001, Para. 18).

The United Nations Security Council has used the Resolution to, among other things, demand that “**the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military aims, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina**“ (Ibid.) Unfortunately, even this request by the Security Council is opposed to relevant documentation which clearly confirms that the Federal Republic of Yugoslavia is one of the aggressors against the Republic of Bosnia and Herzegovina, whose armed forces have directly taken part in genocide and other forms of crimes against humanity and international law.

Resolution 824 of May 6, 1993, apart from reiterating the statements from Resolution 819, also sees the Security Council demanding that “**any taking of territory by force cease immediately**”, proclaiming that “**the capital city of the Republic of Bosnia and Herzegovina, Sarajevo, and other such threatened areas, in particular the towns of Tuzla, Žepa, Goražde, Bihać, as well as Srebrenica, and their surroundings should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act**“. The Security Council of the United Nations has also proclaimed that, “**the following should be observed:**

(a) **The immediate cessation of armed attacks or any hostile act against these safe areas, and the withdrawal of all Bosnian Serb military or paramilitary units from these towns to a distance wherefrom they cease to constitute a menace to their security and that of their inhabitants to be monitored by United Nations Military Observers; (b) Full respect by all parties of the rights of the United Nations Protection Force (UNPROFOR) and the international humanitarian organizations to free and unimpeded access to all safe-areas in the Republic of Bosnia and Herzegovina and full respect for the safety of the personnel engaged in these operations**“ (REZOLUCIJE VIJEĆA SIGURNOSTI UN O BOSNI I HERCEGOVINI, *Press centar AR BiH*, Sarajevo, 1995, pp. 72-74; S. Čekić, M. Kreso, B. Macić, paragraphs of p. 307.)

have accorded the status of a **demilitarized zone**⁵².

In any armed conflict, it is prohibited to:

- Kill, injure or imprison opponents by resorting to perfidy;⁵³
- Starve (i.e. force hunger onto the population), as a method of warfare;⁵⁴
- Order that there may be no survivors, “to threaten an adversary therewith or to conduct hostilities on this basis”;⁵⁵
- Attack (murder) a person (enemy) unable to fight;⁵⁶
- Undertake unselective attacks “which target the civilian population or civilian objects, knowing that such an attack will cause

⁵¹ Vuko Gozze-Gučetić, *OTVORENI GRAD*, VOJNA ENCIKLOPEDIJA, Vol. 6, Beograd, 1973, p. 491. *An open city*, town or city on the basis of an agreement between the parties of the conflict, enjoys absolute protection from hostilities. An open city must not be defended and must be demilitarized. (Ibid.)

⁵² FIRST ADDITIONAL PROTOCOL, Art. 60, Para. 1-7 and Art. 85, Para. 3 (d). The proclamation and recognition of a demilitarized area needs to meet the same conditions set for undefended places. (Ibid, Art. 60, Para. 3.)

⁵³ FIRST ADDITIONAL PROTOCOL, Art. 37, Para. 1; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(xi). Examples of perfidious acts are:

“(a) **the feigning of an intent to negotiate under a flag of truce or of a surrender;**
(b) the feigning of an incapacitation by wounds or sickness;
(c) the feigning of civilian, non-combatant status; and
(d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.”
 (FIRST ADDITIONAL PROTOCOL, Art. 37, Para. 1).

⁵⁴ FIRST ADDITIONAL PROTOCOL, Art. 54, Para. 1; SECOND ADDITIONAL PROTOCOL, Art. 14; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(xx).

⁵⁵ FIRST ADDITIONAL PROTOCOL, Art. 40; SECOND ADDITIONAL PROTOCOL, Art. 4, Para. 1.

⁵⁶ FIRST ADDITIONAL PROTOCOL, Ibid, Art. 41, Para. 1 and Art. 85, Para. 3 (e); GENEVA CONVENTIONS, *Common Article 3*.

excessive loss of life, injury to civilians, or damage to civilian objects defined in Article 57, Paragraph 2 (a) (iii) of the *First Additional Protocol*”;⁵⁷

- “Transfer parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, by violating Article 49 of the *Fourth Geneva Convention*”;⁵⁸
- “Unjustifiably postpone repatriations of prisoners of war or civilians”;⁵⁹
- “Implement apartheid and other inhumane and degrading procedures which insult personal dignity on the basis of racial discrimination”;⁶⁰
- “Forfeit the right of protected persons or those mentioned in Article 85, Paragraph 2 of the *First Additional Protocol* to a fair and ordinary trial (remark by S. Čekić)”;⁶¹
- Order that there shall be no mercy, or terrorize the opponent with such a threat, or to conduct hostilities on this basis;⁶²

⁵⁷ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 4; Ibid, Art. 85, Para. 3 (b). Unselective attacks are: “(a) attacks not directed against a certain military object; (b) attacks in which a method or way of combat is used which can not be directed against a certain army object, or (c) attacks during which a method or mean of combat is used whose action cannot be delimited as provided by this protocol“ (FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 4).

Unselective attacks “in every such case“, by nature, “hit military objectives and civilian and civilian targets without distinction.“ (Ibid).

⁵⁸ FIRST ADDITIONAL PROTOCOL, Art. 85, Para. 4 (a); SECOND ADDITIONAL PROTOCOL, Art. 17; see.: FOURTH GENEVA CONVENTION, Art. 49, Para. 1-6; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(viii); INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(viii).

⁵⁹ FIRST ADDITIONAL PROTOCOL, Art. 85, Para. 4 (b).

⁶⁰ Ibid, Art. 85, Para. 4 (c).

⁶¹ Ibid, Art. 85, Para. 4 (e).

⁶² FIRST ADDITIONAL PROTOCOL, Art. 15; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(xx).

- Inappropriately use the recognized distinction symbols (the red cross, the red crescent, or the red lion and sun) and other emblems, signs or signals of protection, including the truce flag and protection emblem of cultural goods;⁶³
- Inappropriately use the distinctive signs, flags or uniforms of the United Nations;⁶⁴
- Use national emblems: “flags or military insignia, emblems or uniforms of neutral or other states not parties to the conflict”, or “flags, military insignia, emblems or uniforms of the opposing party during an attack, or in order to defend, initiate, protect or disturb military operations”;⁶⁵
- Disturb the swift and free transport of humanitarian aid (all relief, equipment and personnel transports);⁶⁶
- Employ prohibited ammunition;⁶⁷
- Employ “weapons, projectiles and materials and methods of warfare which cause superfluous injury or unnecessary suffering”;⁶⁸
- Employ weapons which, by their nature, are indiscriminate,⁶⁹ as well as poisons or poisonous weapons, nuclear weaponry, biological, chemical, flammable and blinding (laser) weapons and

⁶³ FIRST ADDITIONAL PROTOCOL, Art. 38, Para. 1; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(vii) - 1 and 4.

⁶⁴ FIRST ADDITIONAL PROTOCOL, Art. 38, Para. 2; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(vii) - 3.

⁶⁵ FIRST ADDITIONAL PROTOCOL, Art. 39, Para. 1-2; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(vii) - 2.

⁶⁶ FOURTH GENEVA CONVENTION, Art. 23; FIRST ADDITIONAL PROTOCOL, Art. 70, Para. 2 and 71, Para. 3.

⁶⁷ INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 8 (2)(b)(xix).

⁶⁸ FIRST ADDITIONAL PROTOCOL, Art. 35, Para. 2; ICTY, *STATUTE*, Art. 3.

⁶⁹ INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (2)(b)(xx).

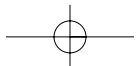
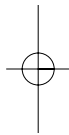
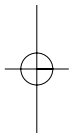
ammunition, landmines and other pressure-based anti-infantry weapons, as well as explosive projectiles, and other.⁷⁰

It is also prohibited to:

- Deliberately direct attacks against installations, materials, units or vehicles involved in humanitarian aid or a peacekeeping mission in accordance with the United Nations Charter;
- Attack personnel or objects involved in humanitarian relief or a peacekeeping mission;
- Attack or bombard, by any means, cities, villages, settlements or buildings which are not defended and which do not represent military objectives;
- Pillage cities or villages, even once they have been taken by means of attack;
- Pillage public or private property;
- Destroy, expropriate or appropriate property;
- Widely destroy or expropriate property when this is not justified by military need, and when this happens in a broad context, in an illegal, self-mannered way;
- Attack persons or buildings by using special signs determined by the Geneva Conventions.⁷¹

⁷⁰ INTERNATIONAL COMMITTEE OF THE RED CROSS, WEAPONS AND INTERNATIONAL HUMANITARIAN LAW, Geneva, 2006; INTERNATIONAL COMMITTEE OF THE RED CROSS, RULES OF INTERNATIONAL HUMANITARIAN LAW, Geneva, 2004; ICTY, *STATUTE*, Art. 3; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, 2000, Art. 8 (2) (a) (ii); 8 (2) (b) (xx); 8 (2) (b) (xvii); 8 (2) (b) (xviii); 8 (2) (b) (xix) (xx).

⁷¹ GENEVA CONVENTIONS (I – IV); INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, Art. 7 (1) (a) – 8 (2) (e) (xi)-2; ICTY, *STATUTE*, Art. 3.



3. Status of Victims

Apart from the categories of victims, it is of essential importance to determine their *status*. The fact that, due to the situations existing in armed conflicts and the nature of hostilities,⁷² it is difficult to determine the status of victims and make effective distinction between combatants and civilians, which led some authors to claim that this is not an issue of priority, but rather that the priority is the total number of victims.⁷³ However, the determination and the definition of the status of victims is a key issue in assessing the overall number of victims. This issue, amongst other things, is related to the crucial question and problem of strategic importance, which is related to the determination of the character of any armed conflict.

International conventions, as well as other relevant sources of body of norms of humanitarian law, distinguish only two notions related to the status of victims: *civilians* and *combatants*.

⁷² FIRST ADDITIONAL PROTOCOL, Art. 44, Para. 3.

⁷³ www.icj-cij.org/docket/files/91/10685.pdf?PHPSESSID=bfc893d9f7cf101f58fc2b3612b65f3, TESTIMONY BY JEAN-PAUL SARDON at the International Court of Justice, the Hague, on March 24, 2006. This was a topic discussed at the ICJ proceedings in the Application by the Republic of Bosnia and Herzegovina against Serbia and Montenegro. Joanna Korner, a British lawyer, and a member of the Bosnia-Herzegovina legal team, cross-examined Prof. Jean-Paul Sardon, a demographer, on the number of victims in Bosnia-Herzegovina between 1992 and 1995, and asked him to present his opinion on the status of victims. In relation to this, he claimed that there were difficulties in distinguishing civilians and combatants, **“because in some cases many of the people who got killed - at least, this is what I have read - were considered as soldiers, whereas there was in fact no evidence that they really were soldiers. Thus, I was not really interested in this distinction because, as far as I am concerned, I believe that this is not something that has the highest priority. The highest priority is to obtain a total number of victims, who caused the war, not to ascertain whether those victims were soldiers or civilians, and in what proportions”** Apparently, Sardon did not care about the status, but only about the overall number of victims. (Ibid).

The basis for the determination of the status of civilians (individuals or populations), and of the status of combatants, is contained in the First Additional Protocol:

- *A civilian* is every individual who does not belong to the armed forces and does not directly participate in armed combat, or rather, every individual who is not a combatant. Even combatants, when they do not take part in military activities, have the status of civilians. **In case of doubt whether a person is a civilian or not, this person shall be considered a civilian.**⁷⁴ All civilian individuals comprise the **civilian population**. The presence among the civilian population of individuals not included into the definition of civilians does not deny the population of its civilian character,⁷⁵ that is, the presence of combatants among civilians does not change its civilian character, as long as it stays predominantly civilian. The definition of civilians is broad, and includes individuals who have provided armed resistance at a certain time, as well as individuals who, at the time of the commission of a crime, were *hors de combat* (in non-combat situations).⁷⁶

- *A combatant* is every member of the armed forces (of a party to a conflict),⁷⁷ other than medical, hospital, and religious personnel, which

⁷⁴ THIRD GENEVA CONVENTION, Art. 4 A, Para. 1, 2, 3 and 6; FIRST ADDITIONAL PROTOCOL, Art. 48, 50 and 51; SECOND ADDITIONAL PROTOCOL, Art. 13, Para. 1-3; Noelle Higgins, THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW TO WARS OF NATIONAL LIBERATIONS, *Journal of Humanitarian Assistance*, New York, April 2004, p. 55; Linds Cameron, INTERNATIONAL HUMANITARIAN LAW AND THE REGULATION OF PRIVATE MILITARY COMPANIES, *Basel Institute on Governance*, Basel, February 2007, p. 9; Thomas B. Goehner, *INTERNATIONAL HUMANITARIAN LAW AND THE GENEVA CONVENTIONS*, *The American National Red Cross*, Washington, DC, 2006, p. 21.

⁷⁵ FIRST ADDITIONAL PROTOCOL, Art. 50, Para. 1, 2 and 3.

⁷⁶ ICTY, Trial Chamber Judgment in the case KRNOJELOVIĆ, Para. 56; ICTY, Trial Chamber Judgment in the case KUNARAC, Para. 425; ICTY, Trial Chamber Judgment in the case TADIĆ, Para. 638; ICTY, Trial Chamber Judgment in the case KUPREŠKIĆ, Para. 547-549; ICTY, Trial Chamber Judgment in the case BLAŠKIĆ, Para. 214; ICTY, Trial Chamber Judgment in the case JELISIĆ, Para. 54; ICTY, Trial Chamber Judgment in the case GALIĆ, Para. 143.

⁷⁷ FIRST ADDITIONAL PROTOCOL, Art. 43, Para. 2. “**The armed forces of a Party to a conflict**” according to the First Additional Protocol, “**consist of all organized**

takes part **directly** in the hostilities (“...they **have the right to participate directly in hostilities**”), which openly carries weapons and a permanent sign of distinction, is under direct command responsibility, and is not protected from attacks which is accorded to civilians.⁷⁸

armed forces, groups and units, which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.” (Ibid, Art. 43, Para. 1).

⁷⁸ FIRST ADDITIONAL PROTOCOL, Art. 43 and 44; SECOND ADDITIONAL PROTOCOL, Art. 13, Para. 3; THIRD GENEVA CONVENTION, Art. 4 and 19, Para. 2; FOURTH GENEVA CONVENTION, Art. 15, Para. 1a; INTERNATIONAL CRIMINAL COURT, *STATUTE*, Art. 8 (vi), as per: *Službeni glasnik Bosne i Hercegovine*, br. 2, Sarajevo, March 6, 2002, nos. 21 – 24; UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, UNITED STATES OF AMERICA v. SAMI AMIN AL-ARIAN *ET AL.*, No: 8 : 03-CR-77-T- 30-TBM, of April 21, 2005, Tampa (Florida) 2005, pp. 7-8; William Abresch, A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA, *Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series*, No. 4, New York, 2005, p. 18; David R. Rothwell, LEGAL OPINION ON THE STATUS OF NON-COMBATANTS AND CONTRACTORS UNDER INTERNATIONAL HUMANITARIAN LAW AND AUSTRALIAN LAW, Canberra, December 2004, p. 2.

For example, when speaking of the international armed conflict which happened in the Republic of Bosnia-Herzegovina at the end of the 20th century, this includes combatants from the Republic of Bosnia-Herzegovina (Bosniacs, Serbs, Croats, and others), the Federal Republic of Yugoslavia – Serbia and Montenegro (Serbs, Montenegrins, and others), the Republic of Croatia (Croats, Serbs, Bosniacs, and others), as well as Russia, Ukraine, Romania, Bulgaria, Greece, Saudi Arabia, Yemen, Kuwait, Algeria, Iran, and other countries. By excluding combatants from other countries from the overall count for the 1991-1995 period, who got killed in the territory of the Republic of Bosnia and Herzegovina, no (complete) findings on the overall number of victims may be presented.

Numerous nationals of neighboring countries have, according to available data, taken part in the aggression against Bosnia-Herzegovina, the genocide against the Bosniacs and other forms of crimes against humanity and international law. Data on this issue, in relation to the participation by nationals of Serbia, was given by the Republic of Serbia minister for labor and social welfare, Rasim Ljajić. With this in mind, he stated the interesting conclusion that “**approximately 400.000 Serbian citizens took part in the wars of the nineties**”, of which, according to him, “[as] **research demonstrates, 40% are direct participants in wars.**” (<http://www.danas.co.yu/20070811/hronika2.html>, *Predstavljen projekat pomoći osobama sa posttraumatskim stresnim poremećajem*, 10. august 2007.). This means that 160.000 Serbian citizens directly took part in these

International humanitarian law makes an essential distinction between those who are combatants and those who are not,⁷⁹ or rather, between civilians and combatants. The principle of distinction between civilians and combatants is of fundamental relevance and is important to international law in general. The overall development of international humanitarian law throughout history has been based on this distinction. The law recognizes only *civilians* and *combatants*, whereas combatants are members of armed forces who take **direct** part in armed conflict (...”**in an attack or in a military operation preparatory to an attack**”, or rather, “**take a direct part in hostilities**”), during legitimate armed operations.⁸⁰ From the perspective of the corpus of legal norms, the main distinction in inter-

warfs, meaning that these are combatants who had taken part in hostilities (in a war of conquest and aggression) on the territory and against other states where they had, among other things, committed genocide against the Bosniacs.

⁷⁹ A. Pellet, *DROIT INTERNATIONAL PUBLIC*, Paris, 2003, Paragraph 580; *INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS, World campaign for Human Rights, No. 13, Washington, DC, 2007, pp. 1-6*; William Abresch, *A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA, Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series, No. 4, New York, 2005, pp. 18*. The relevant factors on determining the perpetrator’s awareness of the victim’s status included, in the ICTY charges against Stanislav Galić, the following:

“(1) **the physical appearance of the victims, including their gender, age, physical condition, clothes and the character of the objects in their possession or close to them;** and

(2) the actions of the victims at the time they are killed or injured.” (ICTY, Trial Chamber Judgment in the case *Galić*, Para. 35).

⁸⁰ *FIRST ADDITIONAL PROTOCOL*, Art. 43, Para. 2 and 51, Para. 3; *SECOND ADDITIONAL PROTOCOL*, Art. 13, Para. 3; .: *МЕЖДУНАРОДНОЕ ПРАВО В ДОКУМЕНТАХ*, Москва 2001.; *UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, UNITED STATES OF AMERICA v. SAMI AMIN AL-ARIAN ET AL.*, No: 8 : 03CR77T-30-TBM of April 21, 2005, Tampa (Florida) 2005, pp. 3-8; *ROUNDTABLE ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW AND ITS RELEVANCE FOR THE INTEROPERABILITY OF ARMED FORCES*, Geneva, February 1-2, 2007, pp. 1-3.

As in every legal term, the “**direct participation in hostilities**” is subject to a variety of interpretations as there is no precise, authentic definition of that term and concept. Therefore, the International Committee of the Red Cross has in 2003 initiated a series of expert meetings to clarify the concept of **direct participation** in hostilities (THE INTERNATIONAL COMMITTEE OF THE RED CROSS, *International REVIEW of the Red Cross*, Volume 87, No. 857, Geneva, March 2005, p. 190).

national humanitarian law lies between *combatants* and civilians, and in that the **direct participation in armed operations is a key – crucial criterion** as to whether someone is a combatant or not, or rather, whether they are civilians or combatants.⁸¹

⁸¹ FOURTH GENEVA CONVENTION, Art. 15; FIRST ADDITIONAL PROTOCOL, Art. 43, Para. 2 and 51, Para. 3; SECOND ADDITIONAL PROTOCOL, Art. 13, Para. 3; R. Dupuy, ACTION HUMANITAIRE, in: HUMANITARIAN LAW OF ARMED CONFLICT, The Hague 1991, p. 71; Muhammed Badjaoui, LE CINQUANTIENIEME ANNIVERSAIRE DE LA CIJ: in RECUEIL DES COURS-COLLECTED COURSES, p. 30, The Hague, 1996; A. Pellet in: REVUE GÉNÉRALE DU DROIT INTERNATIONAL PUBLIC, p. 25, Ottawa/Paris, 1984; INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS, *World Campaign for Human Rights*, No. 13, Washington, DC, 2007, pp. 1 and 6; William Abresch, A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA, *Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series*, No. 4, New York, 2005, p. 18; Mark Davids “Max” Maxwell (Col., US Army), THE LAW OF WAR AND CIVILIANS ON THE BATTLEFIELD: ARE WE UNDERMINING CIVILIAN PROTECTION?, *Military Review*, September/October 2004, p. 18; THE INTERNATIONAL COMMITTEE OF THE RED CROSS, *International REVIEW of the Red Cross*, Volume 87, No. 857, Geneva, March 2005, pp. 190 i 198.

The biggest success in the history of international law has been the distinction between *combatants* and *civilians*, whose “**effect in mitigating the evils of war has been incalculable.**” (M. Maxwell, stated paper, p. 18). That statement was presented in 1911 by J. M. Spaight in his monumental study titled “WAR RIGHTS ON LAND” (London 1911, p. 37). However, to Spaight’s disappointment, only in the past fifteen years (at the end of the 20th and at the beginning of the 21st century) – on a genocidal basis – almost 1,5 million individuals have been executed, not to mention all the genocides since the beginning of the 20th century where research so far indicates that “**ninety percent of victims of all conflicts in the world are non-combatants**” (Tazreena Sajjad, ADDRESSING THE GRAY AREAS OF INTERNATIONAL HUMANITARIAN LAW, New York, 2001, p. 1), i.e. civilians.

By analyzing normative provisions of national legislation, which deal with the societal and legal protection of combatants and their families, we have noticed major drawbacks, as that body of norms doesn't include a valid definition of the combatant. Therefore, the question is rightly asked to how something - a social, perceived, formed reality, identified by an appropriate concept - be subject of discussion with no definition applied to it? A typical example is the national legislation of the former Socialist Federative Republic of Yugoslavia, and of Bosnia-Herzegovina (ZBIRKA PROPISA O OSNOVNIM PRAVIMA boraca, sa komentarom Zakona o osnovnim pravima vojnih invalida i porodica palih boraca, Beograd, 1984; *Službeni list Republike Bosne i Hercegovine* br. 2/92 and br. 13/94). In this case, one should not have "re-invent the wheel", but should have simply incorporated the valid definition from the applicable international humanitarian law, thus relieving any doubts as to the definition of the aforementioned concepts.

According to the rules of international humanitarian law, attacks against the civilian population and individual civilians are prohibited. The IV chapter of the *First Additional Protocol*, titled “**Civilian population**” (Articles 48 to 58), advances the legal protection of civilians and of the civilian population provided for by the Geneva conventions, by directing the parties in a conflict to respect and protect civilians during hostilities.⁸² Article 51(2) of the First Additional Protocol prohibits subjecting **civilians and the civilian population** to an attack. “**Civilian population as such, as well as individual civilians shall not be attacked**”.⁸³ The First and Second Additional Protocols **prohibit acts or threats of violence, whose primary aim is to spread terror among the civilian population**.⁸⁴

Article 51(6) of the First Additional Protocol explicitly prohibits “**attacks against the civilian population or civilians by way of reprisals**”.⁸⁵ This prohibition is based on the principle of protection of civilians and civilian population. This provision explicitly confirms the rule that civilians must enjoy **general protection from hostilities**. **The prohibition of attacks against civilians stems from the basic principle in international law, the principle of distinction, by which every party to a conflict must, at all times, “in order to ensure respect for and protection of the civilian population and civilian objects”, distinguish civilian objects and military objectives and, in accordance**

⁸² FIRST ADDITIONAL PROTOCOL, Arts. 48-58. Art. 51, Para. 1 of the First Additional Protocol clearly states that the “**civilian population and individual civilians shall enjoy general protection from the dangers arising from military operations**”. In order to give effect to this protection, “**additional rules, which complete other applicable rules of international law**” must be respected at all times. Instruments of international law, which determine rules for the protection of civilians include, among others, the CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND, IV - *The Laws and Customs of War on Land*, and the *FOURTH GENEVA CONVENTION* (IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF AUGUST 12, 1949).

⁸³ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 2.

⁸⁴ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 2; SECOND ADDITIONAL PROTOCOL, Art. 13, Para. 2.

⁸⁵ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 6 and Art. 85, Para. 3 (a).

with this, only direct their military operations against military objects (targets)”.⁸⁶

Article 48 of the First Additional Protocol proclaims the principle of distinction between civilians and combatants as its basic rule. The International Court of Justice has, in its **Advisory Opinion on the Legality of Nuclear Weapons**, confirmed that the principle of distinction, and the principle of protection of the civilian population, are **“key principles contained in texts which make the corpus of international law”**, and pointed out that **“states must never make civilians the targets of their attacks...”**.⁸⁷

Civilians and the civilian population enjoy protection from an attack only as long as they are civilians, or rather, **“unless and for such time as they take a direct part in hostilities.”**⁸⁸

Because of the nature of their action during armed conflicts, *combatants* cannot enjoy the rights which civilians enjoy – i.e. they do not enjoy protection from attack. Combatants and other individuals directly involved in hostilities are considered legitimate military objectives. The status of combatant does not only make persons legitimate military objectives, but it also gives them the right – in legitimate military operations – to kill or wound other combatants or individuals involved in hostilities, as well as entitles them to a certain special treatment beyond military operations, i.e. in the case of surrender, captivity or injury.⁸⁹

⁸⁶ FIRST ADDITIONAL PROTOCOL, Art. 48.

⁸⁷ INTERNATIONAL COURT OF JUSTICE, *REPORT 1996*, ADVISORY OPINION ON THE LEGALITY OF THE THREAT TO USE OR USE OF NUCLEAR WEAPONS, Para. 78.

⁸⁸ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 3; SECOND ADDITIONAL PROTOCOL, Art. 13, Para. 3; ICTY, Trial Chamber Judgment in the case GALIĆ, Para. 48. The ICTY Trial Chamber in the Kupreškić case describes the following: **“The protection of civilian and civilian objects provided by modern international law may cease entirely or be reduced or suspended [...] if a group of civilians [...] takes up arms and engages in fighting against the enemy belligerent, they may be legitimately attacked by the enemy belligerent whether or not they meet the requirements laid down in Article 4(A)(2) of the Third Geneva Convention of 1949.”** (ICTY, Trial Chamber Judgment, GALIĆ, Para. 48).

⁸⁹ FIRST ADDITIONAL PROTOCOL, Art. 41, Para. 1 and 2.

In accordance with this, without sanctions and with legitimate means, *legitimate* combatants have the right to take the life of an enemy combatant during hostilities.⁹⁰

A legitimate combatant enjoys immunity from criminal prosecution for legitimate combat operations against legitimate targets during an armed conflict. The legal immunity of *legitimate combatants* is a “doctrine rooted in the customary laws of war, which prohibit the criminal prosecution of combatants for their legitimate armed operations carried out during armed conflict against legitimate military objectives.”⁹¹

Combatants, according to international law, and in order to secure the protection of civilians (“in order to strengthen protection of civilian population against hostile activities”), “**are obliged to distinguish themselves from civilians**”. According to Article 44 of the *First Additional Protocol to the Geneva Conventions dated August 12, 1949, on Protection of Victims of International Armed Conflicts*, this distinction **must** (only) exist during an exactly specified period, i.e. “**during each military engagement, or a military deployment preceding the launching of an attack**”. In armed conflicts, when “**due to the nature of the enemy attack**” **armed combatants cannot be distinguished from the civilian population, “they shall retain their status as combatants, provided that, in such situations, they carry their arms openly”**.⁹² **Before and after that, com-**

⁹⁰ William Abresch, A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA, *Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series*, No. 4, New York, 2005, p. 18.

⁹¹ UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, UNITED STATES OF AMERICA v. SAMI AMIN AL-ARIAN AND OTHERS, No: 8 : 03-CR-77-T-30-TBM, of April 21, 2005, Tampa (Florida) 2005, p. 3. The concept of *legitimate combatant* was first developed by the Annex to the Rules of the Convention between the United States of America and other forces related to the laws and customs of war on land (Annex to the Hague Convention), signed by the United States of America on October 18, 1907 (Ibid, p. 4).

⁹² FIRST ADDITIONAL PROTOCOL, Art. 44, Para. 3; ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, II, Sarajevo, 1996, p. 501; INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS, *World Campaign for Human Rights*, No. 13, Washington, DC, 2007, p. 6; William Abresch, A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA,

batants need not distinguish themselves from the civilian population. This means that they can **switch between their civilian and combatant status**, whereas the circumstances in the moment of commission of a crime are of key importance in the determination of the status category of the victim.⁹³

In accordance with Article 43 (“Armed forces”) of the First Additional Protocol, any combatant **“who is found in the power of the opposing party, becomes a prisoner of war”**,⁹⁴ and is protected by the rules of

Center for Human Rights and Global Justice Working Paper Extrajudicial Executions Series, No. 4, New York, 2005, p. 18.

Recognizing, however, **“that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:**

(a) **During each military engagement, and**

(b) **During such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.**“ (FIRST ADDITIONAL PROTOCOL, Art. 44, Para. 3).

⁹³ ICTY, Trial Chamber Judgment in the case *BLAŠKIĆ*, Para. 214.

⁹⁴ FIRST ADDITIONAL PROTOCOL, Art. 44, Para. 1. According to Art. 4 of the Third Geneva Convention, *Prisoners of War*, **“are persons which belong to one of the following categories, and which have fallen in the power of the opponent:**

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:

(a) **that of being commanded by a person responsible for his subordinates;**

(b) **that of having a fixed distinctive sign recognizable at a distance;**

(c) **that of carrying arms openly;**

(d) **that of conducting their operations in accordance with the laws and customs of war.**

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power (...)

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.” (THIRD GENEVA CONVENTION, Art. 4, Para. 1, 2, 3 and 6.)

international law.⁹⁵ Prisoners of war are in the power of the opposing party, **“but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them”**.⁹⁶ Prisoners of war **“must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach”** of the *Third Geneva Convention*. No prisoner of war **“may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.”** Prisoners of war **“must at all times be protected, particularly against all acts of violence or intimidation, against insults and public curiosity”**. Furthermore, **“measures of reprisal against prisoners of war are prohibited”**.⁹⁷

Combatants who are involved in military operations in an armed conflict which is not international in character, **“who have laid down their arms, as well as persons incapable of fighting due to sickness, injury, deprivation of freedom, or for any other cause”**, are protected by the Common Article 3 of the *Geneva Conventions*.⁹⁸

⁹⁵ THIRD GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949; FIRST ADDITIONAL PROTOCOL, Art. 45.

⁹⁶ THIRD GENEVA CONVENTION, Art. 12, Para. 1.

⁹⁷ Ibid, Art. 13; FIRST ADDITIONAL PROTOCOL, Art. 20. The *Statute* of the International Criminal Court also prohibits **“killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion.”** (MEĐUNARODNI KRIVIČNI SUD, *STATUT*, čl. 8(vi), as per: *Službeni glasnik Bosne i Hercegovine*, br. 2, Sarajevo, March 6, 2002, pp. 21-24).

⁹⁸ UNITED NATIONS, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, NEPAL, *Investigations into violations of international humanitarian law in the context of attacks and clashes between the Communist Party of Nepal (Maoist) and Government Security Forces, Findings and recommendations*, January-March 2006, p. 8; ŽENEVSKE KONVENCIJE O ZAŠTITI ŽRTAVA RATA OD 12. AUGUSTA 1949, Beograd, 1962; ŽENEVSKE KONVENCIJE OD 12. AUGUSTA 1949. I DODATNI PROTOKOLI, *Međunarodni komitet Crvenog križa* (printed in Bosnia-Herzegovina – no mention of date or place); HUMANITARNO PRAVO, ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, *Ministarstvo vanjskih poslova Bosne i Hercegovine*, and *Nezavisni biro za humanitarna pitanja*, Sarajevo, 1996.

In the context of the consideration of the status of victims who, according to the applicable legal norms and the position represented by the International Committee of the Red Cross, are *civilians*, certain authors/researchers/scientists have come to claim that they do not deserve the protection attributed to civilians in international humanitarian law, because they provide a direct contribution to the armed conflict (*eg.*, a cook in a military command; a civilian working in an ammunition factory; a member of the armed forces killed during an absence of leave; a civilian who provides his own truck in order to transport weapons to the frontlines, then any form of arts or creative work which contributes to efficient armed combat, *et al.*). Yet, as there are no “quasi-combatants” known to international humanitarian law (or “semi-combatants”, “half-civilians”), one cannot speak of certain civilians who are more “civilian” than others. This is an impermissible interpretation because it is not in accordance with the spirit of civilian protection according to international humanitarian law,⁹⁹ by which a person is only then deprived of the protection attributed to civilians when it “**takes direct part in the hostilities**”.¹⁰⁰ It would, therefore, be absurd to automatically consider every form of support to armed conflict a direct participation in the hostilities.

⁹⁹ ROUNDTABLE ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW AND ITS RELEVANCE FOR THE INTEROPERABILITY OF ARMED FORCES, Geneva, February 1-2, 2007, pp. 3 and 5; David R. Rothwell, LEGAL OPINION ON THE STATUS OF NON-COMBATANTS AND CONTRACTORS UNDER INTERNATIONAL HUMANITARIAN LAW AND AUSTRALIAN LAW, Canberra, December 2004, p. 2; ICRC, DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW, *Report prepared by the International Committee of the Red Cross*, Geneva, September 2003, p. 8; William Abresch, A HUMAN RIGHTS LAW OF INTERNAL ARMED CONFLICT: THE EUROPEAN COURT OF HUMAN RIGHTS IN CHECHNYA, *Center for Human Rights and Global Justice Working Paper Extra-judicial Executions Series*, No. 4, New York, 2005, p. 18; ŽENEVSKE KONVENCIJE O ZAŠTITI ŽRTAVA RATA OD 12. AVGUSTA 1949, Beograd, 1962; ŽENEVSKE KONVENCIJE OD 12. AVGUSTA 1949. I DODATNI PROTOKOLI, *Međunarodni komitet Crvenog križa, Ženeva* (printed in Bosnia-Herzegovina – no mention of date or place); HUMANITARNO PRAVO, ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, *Ministarstvo vanjskih poslova Bosne i Hercegovine*, and *Nezavisni biro za humanitarna pitanja*, Sarajevo, 1996.

¹⁰⁰ FIRST ADDITIONAL PROTOCOL, Art. 51, Para. 3

Research practice has shown that certain researchers, ignoring the legal dogmatism of international humanitarian law, have used the term **soldier** *en lieu* of combatant, whereas when debating and assessing the status of victims, they distinguish **civilians and soldiers**, that is, a **civilian and military status of victims (civilian and military victims)**.¹⁰¹ Such understanding does not contribute to the understanding of the fundamental distinction between the two status categories which certain authors have used to denote them.

The use of the term **soldier**, contrary to international law and the explicit provisions of the Geneva Conventions and their Additional Protocols leads, *inter alia*, to confusion and to completely false research results. If every member of the armed forces is treated as a **soldier**, and then *ipso facto* as a combatant, without determining whether he was killed in direct military operations or not, the proportion of combatants in the overall victim count is increased in an unnatural and methodologically incorrect fashion.¹⁰² In this case, many civilians have been treated as “**soldiers**”, and thus as combatants, which means that the number of combatants has been increased in relation to civilians, and vice versa the number of civilians decreased in relation to combatants, which does not correspond to the facts of social reality and often leads in scientific investigation to wrong conclusions on the nature of the conflict being researched,¹⁰³ and simultaneously provides amnesty to a large number of war criminals. In the thus determined overall victim count according to the status criterion, the quantitative relation between combatants and civilians is always larger on the side of the combatants.

¹⁰¹ E. Tabeau and J. Bijak, WAR-RELATED DEATHS IN THE 1992.-1995. ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of population*, Springer, 2005.

¹⁰² D. Munoz-Rojas – J. J. Fresard, ORIGINES DU COMPORTEMENT DANS LA GUERRE: COMPRENDRE ET PREVENIR LES VIOLATIONS DU DIH, in: FAITS ET DOCUMENTS/ICRC, pp. 182-183, Geneva, 2004.

Munoz-Rojas and Fresard consider that this discussion in the ICRC, must “**doubtlessly be the subject of profound debate**” (Ibid, p. 183).

¹⁰³ M. Mešić, THE FACE OF THE NEIGHBOR: COEXISTENCE, LEGALITY AND SOCIAL JUSTICE IN POST – GENOCIDE BOSNIA, SEGUNDO ENCUENTRO INTERNACIONAL ANÁLISIS DE LAS PRACTICAS SOCIALES GENOCIDAS, De Europa a América Latina y mas allá: la continuidad de las prácticas sociales genocidas, Universidad Nacional de tres de Febrero, Buenos Aires, 2007.

Simultaneously, the practice of **retroactive status determination** is also of interest. Namely a country – a victim of an aggression, genocide, or other forms of crimes against humanity and international law, is – without exception – in a state of chaos¹⁰⁴ which, on the one hand, makes the normal functioning of society and social processes impossible, and on the other hand, increases the sense of human solidarity and the need to take care of one another,¹⁰⁵ particularly among those who are direct victims of crimes, or rather, who have lost their loved ones in armed conflict. The meeting of the population's needs is limited in scope, marked by impeded communications, a destroyed economic infrastructure, and the relative lack of legal and factual safety.

The families of killed combatants (particularly those killed in the fight for freedom and survival) have certain advantages in terms of welfare rights and certain financial provisions.¹⁰⁶ Therefore, there is a practice by which, due to extremely harsh living and economic conditions, **killed civilians have been legally recorded as (killed) members of the armed forces**, implying their status of *fallen combatants*, even though not all members of the armed forces are combatants. For example, tens of thousands of civilians murdered in genocidal acts throughout Bosnia-Herzegovina at the end of the 20th century, particularly civilians executed in the UN Safe Area of Srebrenica in July 1995, were posthumously accorded the status of combatants – retroactively by the State, in order to meet their families' existential demands to a certain extent. The retroactively recognized status does not change the historic fact that, in essence,

¹⁰⁴ Daniel Rigney, *THE METAPHORICAL SOCIETY: AN INVITATION TO SOCIAL THEORY*, Lanham, 2001, p. 63.

¹⁰⁵ “**Even in economically developed societies, the appearance of war or natural disasters brings about solidarity and mutual aid... Whenever economic and social conditions are construed in such way that individual survival is extremely questionable without reciprocal support, informal mechanisms of solidarity appear on their own.**” (Marcel Fachamps, *SOLIDARITY NETWORKS IN PRE-INDUSTRIAL SOCIETIES: RATIONAL PEASANTS WITH A MORAL ECONOMY*, in: *Economic Development and Cultural Change*, No. 41, October 1992, pp. 148-149).

¹⁰⁶ ICRC, *ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, MISSING PERSONS AND THEIR FAMILIES: Recommendations for drafting national legislation*, Geneva, 2003, p. 1.

these are civilians, and these were **civilians** at the time of their execution, nor does this stand in any relation to the genocidal motive of their murder, which has happened before their social status was accorded (and recognized as such). From the legal and factual perspective this is an illicit act, because when determining the status of victims (civilian – combatant), their specific true condition at the time of commission of the crime – execution of victims – has not been taken into account. Numerous victims who were civilians at the time of their execution, for the mentioned reasons, with the absolute impossibility of them having any say whatsoever over the issue, were accorded the status of combatants.

The consequences of this **illegitimate**¹⁰⁷ act upon the determination of the status category and number of victims are **disastrous**, because they favor those who, exaggerating the proportion of combatants in the overall victim count, **reach scientifically inadmissible conclusions on the nature of the armed conflict**, or rather, on the gravity of the crimes committed. This phenomenon must be – the sooner, the better – subjected to due scientific study.

Another specifically important question is that of determining – discovering, identifying, assessing forced disappearances in the overall victim count. Certain quasi-forms of research which present and include data on “the killed and missing” include, among other things, the theoretical and methodological error, because the overall victim count makes no difference between the killed and missing persons, in which case it is impossible to find out what the total number of the **killed** and the total number of the **missing** victims is.

When determining the overall count of victims, it is absolutely permitted and appropriate to exclude **forced disappearances** from it. In analogy, a proposal for a (probable) solution of the problem is reflected in the inclusion of victims of forced disappearances into the status category of **civilians**, and in the inclusion of the members of armed forces which disappear during direct armed operations into the status category of **combatants**, or a protected category of members of the armed forces.

¹⁰⁷ Apart from violating provisions of national legislation which provides for the particulars in the status of all members of the armed forces, status forgery also violates explicit provisions of international humanitarian law.

4. Forced Disappearances

Speaking of victims of genocide, we must divert special attention to **the missing**, or in terms of international criminal law, **forced disappearances or missing persons**.¹⁰⁸ The norms of international law, apart from the status categories of civilians and combatants, or combatants and civilians do not recognize a separate status of **the missing**.

Forced disappearance is prohibited by international humanitarian law and international human rights law. The development of the debate on the forced disappearances of persons began as early as in 1978, with the General Assembly of the United Nations Resolution 33/173 of the, “**deeply concerned by reports from various parts of the world relating to enforced or involuntary disappearances of persons**”.¹⁰⁹

The Declaration on the Protection of All Persons from Enforced Disappearance, adopted in the UN General Assembly on December 18, 1992, uses the term **enforced disappearance** in its title and content, defining it as an act which in any case represents a “**violation of human dignity**”. Forced disappearances are, according to this document, opposed to the aims of the Charter of the United Nations because, amongst other things, they impose suffering and represent **hard and serious violations of human rights and fundamental freedoms**, proclaimed

¹⁰⁸ Arts. 32-34 of the FIRST ADDITIONAL PROTOCOL determine the conduct of parties to an armed conflict related to missing persons, i.e. their identification and the exhumation of their post-mortem remains. (FIRST ADDITIONAL PROTOCOL, Art. 32-34)

¹⁰⁹ UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION ON DISAPPEARED PERSONS*, A/RES/33/173, December 20, 1978.

in the Universal Declaration on Human Rights, and confirmed and developed by international instruments in the field.¹¹⁰

The United Nations, particularly the organ in charge of considering individual cases of violations of human rights (the Human Rights Committee) have condemned the policy and practice of enforced disappearances on various occasions.¹¹¹ The European Court of Human

¹¹⁰ UNITED NATIONS, *DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE*, DOC. A/RES/47/133, December 18, 1992, Art. 1. Any act of *forced disappearance* “**places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.**” (Ibid, Art. 1).

No order or instruction of any public authority “**may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.**” (Ibid, Art. 6).

No conditions whatsoever (threat of war, condition of war, internal political instability and other public danger) “**may be invoked to justify enforced disappearances**” (Ibid, Art. 7). Any person deprived of their liberty “**shall be held in an officially known place of detention and, in conformity with national law, be brought before a judicial authority promptly after their detention.**” (Ibid, Art. 10).

Victims of acts of forced disappearances and their families shall, according to the mentioned declaration, “**obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.**” (Ibid, Art. 19).

The prohibition of forced disappearances, according to the mentioned Declaration, also contains the obligation to process this form of crime against humanity and international law (Ibid, Art. 13).

¹¹¹ UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION*, No. 46/242, August 25, 1992; UNITED NATIONS, COMMISSION FOR HUMAN RIGHTS, *RESOLUTION*, No. 1994/72, March 9, 1994; UNITED NATIONS, SECURITY COUNCIL, *RESOLUTION*, No. 1034/1995, December 21, 1995; UNITED NATIONS, GENERAL ASSEMBLY, *Resolution*, No. 50/193/1995, December 22, 1995. Further see the following decisions of the Human Rights Committee: *E. Quinteros Almeida and the Eastern Republic of Uruguay* (CCPR/C/19/D/107/1981, July 21, 1981); *Bleier and the Eastern Republic of Uruguay* (CCPR/C/16/D/30/1978, March 29, 1982), as well as *Bautista de Aureliana and the Republic of Columbia* (CCPR/C/31/D/563/1993).

Rights has done the same on various occasions.¹¹²

The International Committee of the Red Cross has used the term **enforced disappearance(s)** over the past 30 or so years. This question was at the center of debates at many international Red Cross/Red Crescent meetings, after which several important documents were adopted.

A forced disappearance, according to a *Resolution* by the International Committee of the Red Cross of 1981, comprises “**violations of basic human rights, including the right to life, freedom and personal security; the right not to be subjected to torture, cruel, inhumane or degrading treatment; the right not to be arbitrarily arrested or detained, and the right to a fair and public trial**”.¹¹³ Five years later, in 1986, an (international) Conference of the Red Cross has condemned “**every attempt which leads to enforced or involuntary disappearance of individuals or groups of individuals**”.¹¹⁴ The Plan of Action for 2000-2003, adopted in 1999, at the 27th Conference of the International Federation of the Red Cross and Red Crescent, demanded from all parties

Appalled “by the continuing reports of widespread, massive and grave violations of human rights perpetrated within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina, including reports of summary and arbitrary executions, forced disappearances, torture, rape...”, the General Assembly of the United Nations, by Resolution 46/242, of August 25, 1992, *has condemned* the mass violations of human rights and international humanitarian law (UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION*, A/RES/46/242, dated August 25, 1992, *THE SITUATION IN BOSNIA AND HERZEGOVINA*).

The Human Rights Commission (1994), the Security Council and the General Assembly of the United Nations (1995) have condemned forced disappearances in “the former Yugoslavia” (Ibid). The General Assembly of the United Nations has, in 2000, condemned forced disappearances in Sudan (UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION*, No. 55/116/200, December 4, 2000).

¹¹² EUROPEAN COURT OF HUMAN RIGHTS, in cases: *Kurt versus Republic of Turkey* (Case –24276/94, Judgment of May 25, 1998); *Tas versus Republic of Turkey* (Case –24396/94, Judgment of November 14, 2000); *The Republic of Cyprus versus Republic of Turkey Case –25781/94, Judgment – May 10, 2001*) et al.

¹¹³ ICRC, XXIV INTERNATIONAL CONFERENCE OF THE RED CROSS – 1981, *RESOLUTION II*

¹¹⁴ ICRC, XXV INTERNATIONAL CONFERENCE OF THE RED CROSS – 1986, *RESOLUTION XIII*

in armed conflicts to undertake efficient measures and ensure that “**strict orders are given out leading to the prevention of all grave breaches of international humanitarian law, including... forced disappearances**”.¹¹⁵

Forced disappearances were also at the center of debate at the 28th (December 2-6, 2003) and then at the 30th International Conference of the Red Cross and Red Crescent on November 26-30, 2007.¹¹⁶ The annual reports of the Red Cross also describe forced disappearances.¹¹⁷

The *Inter-American Convention on Forced Disappearances of Persons* defines it as an “**act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.**”¹¹⁸

Forced disappearances are not mentioned by the ICTY Statute. Nevertheless, in the *Kupreškić case* in 2003, having in mind the fact that forced disappearances consist of various violations of human rights and that they are prohibited by the United Nations General Assembly Declaration on Protection of All Persons From Enforced Disappearance, as well as the Inter-American Convention on Forced Disappearances of Persons, the tribunal took the position that **forced disappearances** may be characterized as a crime against humanity. Therefore, the ICTY

¹¹⁵ ICRC, XXVII INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT – 1999, *RESOLUTION I*.

¹¹⁶ *IMPLEMENTATION ON GENERAL OBJECTIVE 1 OF THE AGENDA FOR HUMANITARIAN ACTION: RESPECT AND RESTORE THE DIGNITY OF PERSONS MISSING AS A RESULT OF ARMED CONFLICT OR OTHER SITUATIONS OF ARMED VIOLENCE AND OF THEIR FAMILIES*, Doc. 30IC/07/10.1.1/REV1, Geneva, 2007.

¹¹⁷ INTERNATIONAL COMMITTEE OF THE RED CROSS, *ANNUAL REPORT 2006*, Geneva, 2006.

¹¹⁸ *INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS*, June 9, 1994, Belem (Brasil).

has concluded that forced disappearances fall under “**other inhumane acts**” provided in Article 5 (i) of the Statute.¹¹⁹

According to the (*Rome Statute* and *Elements of Crimes* of the International Criminal Court, the systematic practice of **enforced disappearances** represents a **crime against humanity**, when committed as a part of a systematic attack against civilian population. These documents define forced disappearances in a way which includes arrest, detention or kidnapping of one or more persons with the consent, support or approval by the state or a political organization, whereas the victim – in every case – is submitted to the power of the opposing party in armed conflict which refuses to acknowledge such deprivation of liberty or offer information on the destiny and location of these persons, with the aim of denying them legal protection.¹²⁰

Twenty years after the its Resolution on forced disappearances,¹²¹ the UN General Assembly prepared a draft of a *Convention* (1998), which was supported in 2002 by the *Resolution* of the UN Human Rights Commission,¹²² whereas the *Convention* was adopted in 2006, as the first resolution of the newly formed UN Human Rights Council.¹²³

¹¹⁹ ICTY, Trial Chamber Judgment in the case KUPREŠKIĆ.

¹²⁰ MEĐUNARODNI KRIVIČNI SUD, *STATUT*, Član 7.(1)(i), *Službeni glasnik Bosne i Hercegovine* br. 2, Sarajevo, March 6, 2002, pp. 21-24; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, UN Doc. PCNICC/2000/1/Add.2(2000), Art. 7 (i) (i). **The enforced disappearance of a person**, according to the ICC, includes “**the arrest, detention or abduction of a person by or with the authorization, support or acquiescence of a state or political organization, followed by a refusal to acknowledge such deprivation of liberty, or by the refusal to inform on the destiny or whereabouts of these persons, with the aim of removing them from legal protection in the course of a longer period of time.**” (Ibid).

¹²¹ UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION ON DISAPPEARED PERSONS*, 33/173, December 20, 1978.

¹²² UNITED NATIONS, COMMISSION FOR HUMAN RIGHTS, *RESOLUTION ON THE QUESTION OF ENFORCED OR VOLUNTARY DISAPPEARANCE*, 2002/41, April 23, 2002.

¹²³ UNITED NATIONS, GENERAL ASSEMBLY, *INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE*, December 20, 2006.

According to the *International Convention for the Protection of All Persons from Enforced Disappearance*, enforced disappearances comprise (are understood 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.”**¹²⁴

We are surprised by the fact that the **Law on Missing Persons of Bosnia-Herzegovina** of November 9, 2004,¹²⁵ uses a completely different definition, which seems contrary to the standards proposed by international humanitarian law. Rather than referring to enforced disappearance or enforced disappearance of a person, this law uses the term **missing persons**.¹²⁶ However, as we can only hardly imagine an “unforced” disappearance of persons in conditions of armed conflict, particularly in the case of genocide, we are surprised that the Parliamentary Assembly of Bosnia and Herzegovina does not use the term **forced disappearance**, even though it belongs to the dogmatic canon of international criminal law. Even more so, as two and four years respectively after the

¹²⁴ Ibid, Art. 2.

¹²⁵ As the result of an initiative from the missing persons’ families associations in Bosnia-Herzegovina, the Council of Ministers of Bosnia-Herzegovina had, in May 2003, formed a workgroup with the task to draft a Law on missing persons. The workgroup was chaired by the Ministry of Human Rights and Refugees, and its members included representatives of the governments of both entities and of the Brčko District, of the entity commissions for missing persons, of the ICRC and of the International Commission for Missing Persons (ICMP). The Draft law was adopted by the Parliament of Bosnia-Herzegovina in October 2004, and a month later, the law came into force (ZAKON O NESTALIM LICIMA BOSNE I HERCEGOVINE, *Službeni glasnik Bosne i Hercegovine*, br. 50, Sarajevo, November 9, 2004, pp. 5221-5225).

¹²⁶ A **missing person**, according to the mentioned November 9, 2004 law, is “a person on whom the family has no news and/or has been registered, on the basis of reliable information, as missing as a result of the armed conflict which happened in the territory of the former Socialist Federative Republic of Yugoslavia” (ZAKON O NESTALIM LICIMA BOSNE I HERCEGOVINE, *Službeni glasnik Bosne i Hercegovine* br. 50, Sarajevo, November 9, 2004, Art. 2, pp. 5221-5225).

Rome Statute and Elements of Crimes of the International Criminal Court had been adopted, even the Presidency of Bosnia-Herzegovina, “after it had received the approval from the Parliamentary Assembly of Bosnia and Herzegovina, pursuant to Decision No. PS 1/02, dated January 17, 2002”, and pursuant to Article 5, subparagraph 3.d) of the Constitution of Bosnia and Herzegovina, at its 123rd session of February 5, 2002, passed *the Decision on Ratification of the Rome Statute of the International Criminal Court, Rome, July 17, 1998*,¹²⁷ which defines **forced disappearances** and expressly lists them among crimes against humanity, committed (in armed conflict) as part of a widespread or systematic attack directed against civilians.

Unfortunately, the definition of missing persons in the Law on Missing Persons of Bosnia and Herzegovina completely fails to mention two important elements included in the definitions of forced disappearances in the Inter-American Convention on Forced Disappearances, the ICC Statute, and the International Convention on the Protection of All Persons from Enforced Disappearance, namely:

- Firstly, the arrest, detention, abduction or any other form of deprivation of liberty, and,
- Secondly, the political subject – the state, a political organization or party which, just as in the case of genocide, provides the most direct contribution, enables, organizes, instigates, supports and organizes the mentioned acts, in a targeted, systematic, purposeful way.

International humanitarian law, particularly the *1949 Geneva Conventions Relative to the Protection of Victims of Armed Conflict* and the

¹²⁷ *Službeni glasnik Bosne i Hercegovine*, br. 2, Sarajevo, March 6, 2002, pp. 21-24.

The *ELEMENTS OF CRIMES* are an obligatory document of legal interpretation for the ICC Statute. The fact that the “Elements of Crimes” are a recent document indicates that, among other things, they represent the most current international legal dogmatic findings in the field of international criminal law. Given that we are referring to internationally relevant acts and categories of victims, their status, the forms of crimes and their methods of commission, we are obliged to seek all rules, concepts, definitions, meanings, and elements in international law; a fact which, in this case, had been ignored by Bosnia-Herzegovina.

1977 *First and Second Additional Protocols*,¹²⁸ as well as international human rights law, in their norms and their content, attempt “**to ensure that forced disappearances do not happen**”. In a more concrete form, international humanitarian law provides that the parties in armed conflict must undertake all necessary measures to clarify the destiny of missing persons,¹²⁹ and that the families have the right to know the destiny of their loved ones,¹³⁰ which, in particular, requires the discovery of the location of their remains.

¹²⁸ I-IV GENEVA CONVENTIONS; FIRST AND SECOND ADDITIONAL PROTOCOLS.

¹²⁹ FIRST GENEVA CONVENTION, Arts. 19-20; SECOND GENEVA CONVENTION, Arts. 16-17; THIRD GENEVA CONVENTION, Arts. 122-125; FOURTH GENEVA CONVENTION, Arts. 26 and 136-141; FIRST ADDITIONAL PROTOCOL, Arts. 32-33; UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION 3220/1977*; UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, *RESOLUTION 60/2002*; EUROPEAN PARLIAMENT, *RESOLUTION ON MISSING PERSONS IN CYPRUS, P6-TA (2007) 0081, March 15, 2007*; 1995; COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY, *RECOMMENDATION 1056*.

Numerous international acts support the right of the missing persons' families to know of their relatives' destinies. For example, UN GA Res. 3220 (XXIX), of 1977, describes that “**the wish to discover the destiny of relatives, missing in armed conflict, is a basic human need which needs to be met in the largest possible measure.**” (UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION 3220 (XXIX)*, 1974).

The United Nations General Assembly, in Resolution 3220 (XXIX) of 1974, has invited the parties to armed conflicts, “**regardless of their character, setting, or time-frame**”, to provide information on missing persons (UNITED NATIONS, GENERAL ASSEMBLY, *RESOLUTION*, No. 3220 (XXIX), 1974). The *Resolution on Missing Persons* of the Human Rights Commission of the United Nations, No. 2002/60, of 2002, confirms that “**every party in armed conflict, as soon as circumstances allow it, and at latest after the termination of the hostilities, begin searching for persons marked by the other side as missing.**” (UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, *RESOLUTION ON MISSING PERSONS*, No. 2000/60).

¹³⁰ FIRST ADDITIONAL PROTOCOL, Art. 32. A formal framework defined in such a way must ensure various preventive measures which would allow these principles to be implemented. With this in mind, it is necessary – amongst other things – to undertake measures of providing all members of armed forces with identification cards and ensure the security and physical integrity of all who no longer take part in the hostilities, particularly persons deprived of their liberty, then to register all individuals in the risk zone, etc. (ICRC, ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, MISSING PERSONS AND THEIR FAMILIES, *Recommendations for drafting national legislation*, Geneva, 2003, p. 1).

Civilian victims of forced disappearances doubtlessly maintain the **status of civilians** and enjoy protection as accorded by the provisions on civilians, whereas **members of armed forces missing in direct armed conflict operations (missing combatants)** enjoy protection based on the provisions on **prisoners of war**.¹³¹

So far experience and scientific findings demonstrate that the largest number of missing civilians and/or members of armed forces registered as missing in direct military operations (i.e. missing combatants) have been

In armed conflicts – of an international or national character – numerous families **“suffer enormous pain once their relatives go missing, and carry out desperate measures to locate them”**. Families of missing persons are often not able to rebuild a normal life, not even years after the armed conflict has stopped. International humanitarian law, with its measures which aim at limiting the effects of armed conflict and prevent the forced disappearances of persons, implies the right of families to find out of their loved ones’ destinies. With this in mind, **“authorities must undertake all measures to prevent disappearances of persons, and ensure proper conduct in relation to the consequences once disappearances do happen”**. Given its mandate provided by the international community, the International Committee of the Red Cross has continuously been trying to ensure **“that people do not disappear in situations of armed conflict or internal violence, as well as to clarify the destiny of those who meet such a fate”** (ICRC, ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, MISSING PERSONS AND THEIR FAMILIES: *Recommendations for drafting national legislation*, Geneva, 2003, pp. 1-2, 11 et al.; DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE, UN GA UN DOC A/RES/47/133, December 18, 1992, Art. 1, 6, 7, 9 and other).

Families which expect information on the destiny of their loved ones **“have specific material, financial, psychological and legal needs and often require assistance from the authorities and various organizations.”** Apart from that, **“in addition to the emergency steps that must be taken to provide for material needs, the legal status of those reported missing must be determined so as to clarify the legal situation of these families and make it possible, where necessary, to hold funeral ceremonies according to local traditions and practice.”** (Ibid).

¹³¹ Throughout the world, and particularly so in the United States of America, **prisoners of war** and combatants **missing in action** (POW/MIA) are defined identically (REPORT OF THE SELECT COMMITTEE THE ON POW/MIA AFFAIRS UNITED STATES SENATE, *Report 103-1, 103-1d Congress 1st Session*, January 13, 1993; LEGAL ASSISTANCE ITEMS, in: *THE ARMY LAWYER*, No. 1, 1973, p. 15). As an illustration, Sergeant Matt Maupin, whose imprisonment marked its third anniversary on July 9, 2007, and who in accordance with the Geneva Conventions and international law is a **prisoner of war**, is treated by his government as a **POW/MIA** (PERIMETER REPORT, journal *Vietnam and All Veterans of Brevard*, July 2007, p. 1).

murdered, which is also characteristic of the Bosnia-Herzegovina case, at the time of aggression and genocide, at the end of the 20th century. Essentially, none of these persons are unfortunately any longer alive.¹³² However, the Law on Missing Persons of Bosnia and Herzegovina provides that “**persons registered as missing between April 30, 1991 and February 14, 1996, whose status has been verified by the Central Register of Missing Persons of Bosnia and Herzegovina**”, as of November 17, 2007, are considered *deceased*.¹³³ The mentioned qualification demonstrates a completely failed reading and interpretation of missing persons, which, from a perspective of historic realities, is factually wrong and false, and from the moral aspect, inadmissible and unacceptable.

¹³² LEGAL ASSISTANCE ITEMS, in: *THE ARMY LAWYER*, No. 1, 1973, p. 15; ZAKON O NESTALIM LICIMA BOSNE I HERCEGOVINE, *Službeni glasnik Bosne i Hercegovine*, br. 50, Sarajevo, November 9, 2004, pp. 5221-5225.

¹³³ ZAKON O NESTALIM LICIMA BOSNE I HERCEGOVINE, *Službeni glasnik Bosne i Hercegovine*, br. 50, Sarajevo, November 9, 2004, pp. 5221-5225.

5. Forms of Crimes and Methods of Commission of Crimes

One of the important and very subtle questions in the context of researching genocide victims is the question of determination of **forms of crimes** and **the methods of commission of crimes**. The forms and methods belong to the elementary, fundamental categorical concepts. The mentioned terms have to be defined from the perspectives of the perpetrators, victims, and their mutual relations.

Starting from the method of commission and the forms of crimes, **the method** comprises deliberate, organized, systematic, targeted, and purposeful acts and means, undertaken by various subjects in achieving their planned intentions or goals, whereas **forms** comprise procedures in carrying out concrete acts and applying concrete means.

Having in mind the research of genocide victims, **the forms of crimes** are understood as direct and/or indirect manifestations of obvious and evidently possible, or rather probable, simple, complex, and grave range of consequences for the victims of crimes, which have been created applying certain methods, acts, means and procedures by the perpetrators of crimes.

In the process of identification, discovering and confirming the forms and methods, we can use the questions: **what** happened – for the form, and **how** it happened – for the method.

In an analogy to the presented positions, and the given operational definitions of the terms of **form of crime** and **method of commission**, we can notice that they are mutually dependent, conditioned by one another, but there is also an obvious link and relation between the **forms** and **methods of the results of the committed crimes** and the methods and

- Starvation
- Expulsion into refuge
- Displacement
- Forced disappearance
- Abduction
- Persecution
- Extermination
- Burning
- Use as “human shield”
- Forced labor
- Faked executions
- Whipping/flogging/hitting
- Enslavement
- Forced false testimony
- Severing, breaking or removing organs or other body parts
- Denial of medical assistance
- Starvation by deprivation of basic life needs (water, food, hygiene, sleep, and other)
- Increased mortality of population
- Decreased natural growth of population
- Other.¹³⁴

¹³⁴ *UNITED NATIONS CHARTER, 1945; STATUTE OF THE NUREMBERG TRIBUNAL, 1946; UNIVERSAL DECLARATION ON HUMAN RIGHTS, DECEMBER 10, 1948; CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, DECEMBER 9, 1948; ŽENEVSKE KONVENCIJE O ZAŠTITI ŽRTAVA RATA OD 12. AVGUSTA 1949, Beograd, 1962; ŽENEVSKE KONVENCIJE OD 12. AVGUSTA 1949. I DODATNI PROTOKOLI, Međunarodni komitet Crvenog križa, Ženeva (printed in Bosnia-Herzegovina – no mention of place or date); HUMANITARNO PRAVO, ŽENEVSKE KONVENCIJE I DODATNI PROTOKOLI, Ministarstvo vanjskih poslova Bosne i Hercegovine and Nezavisni biro za humanitarna pitanja, Sarajevo,*

- **Methods of commission**, having in mind the definition presented above, are understood as ways by which the consequences of crimes have been brought about, starting with the procedures and means used, which we define as a synthetic and integral criterion on the basis of which we can classify them as follows:

1996; *CONVENTION ON THE NON-LIMITATION OF WAR CRIMES AND CRIMES AGAINST HUMANITY (1968)*; *DEFINITION OF AGGRESSION*, as per UN GA Res. 3314 (XXIX) OF DECEMBER 14, 1974; *CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE AND HUMILIATING PROCEDURES OR PUNISHMENTS (1987)*; *EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH ACCOMPANYING PROTOCOLS (1950)*; *CONVENTION ON REFUGEES WITH ACCOMPANYING PROTOCOLS (1951/1966)*; PROPISI O PRIMJENI PRAVILA MEĐUNARODNOG RATNOG PRAVA U ORUŽANIM SNAGAMA SFRJ, *Naredba i Uputstvo*, SSNO, Beograd, 1988; STATUTE OF THE INTERNATIONAL TRIBUNAL FOR GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW IN THE FORMER YUGOSLAVIA (ICTY) OF 1993 – ANNEX OF SC Res. 827 of May 25, 1993; RIMSKI STATUT MEĐUNARODNOG KRIVIČNOG SUDA, 17. JULI 1998, official translation – čl. 2 Ratifikacija, Službeni glasnik Bosne i Hercegovine, Sarajevo, March 6, 2002; INTERNATIONAL CRIMINAL COURT, *ELEMENTS OF CRIMES*, UN. DOC. PCNICC/2000/1-ADD.2 (2000); Dieter Fleck - Michael Bothe, *THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS*, Oxford, 2001; Patrick Daillier - Alain Pellet, *DROIT INTERNATIONAL PUBLIC*, Paris, 2002; I. Carey - W. Dunlap - I. Pritchard, *INTERNATIONAL HUMANITARIAN LAW: THE ORIGINS*, New York 2003; I. Carey - W. Dunlap - I. Pritchard, *INTERNATIONAL HUMANITARIAN LAW: THE PROSPECTS*, New York, 2006; I. Carey - W. Dunlap - I. Pritchard, *INTERNATIONAL HUMANITARIAN LAW: THE CHALLENGES*, New York, 2004; R. Provost, *INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW*, Cambridge, 2002; I. Charny, *GENOCIDE – THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES*, Hiroshima, 2004, p. 6; *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (EPIL)*, The Hague 1984.-2006.; G. Perazić, *MEĐUNARODNO RATNO PRAVO*, Beograd, 1966; *OSNOVI PRAVA, Udžbenik za vojne škole JNA*, SSNO, Beograd, 1979; Juraj Andrassi, *MEĐUNARODNO PRAVO, Školska knjiga*, Zagreb, 1978; Vladimir Đuro Degan, *MEĐUNARODNO PRAVO, Pravni fakultet*, Rijeka, 2000; Vojin Dimitrijević, *LJUDSKA PRAVA*, Beograd, 1997; Frederic De Mulinen, *HANDBOOK ON WAR LAW FOR THE MEMBERS OF ARMED FORCES*, Geneva, 1987; *THE INTERNATIONAL COMMITTEE OF THE RED CROSS, International REVIEW of the Red Cross*, Vol. 87, Issue 857, Geneva, March 2005; Jack Donnelly, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE*, 2nd edition, *Cornell University Press*, Ithaca, New York, 2003; ANNEX TO THE CONVENTION, *LAWS AND CUSTOMS OF WAR ON LAND*, The Hague, October 18, 1907, Art. 32.

a) For protected persons

- Shooting
- Slaughter
- Shelling
- Use of landmines
- Bombardment
- Use of infantry ammunition
- Use of sniper fire
- Burning (a living person; incineration)
- Imprisoning
- Strangling
- Throwing a living person into a river
- Throwing a living person into a pit
- Killing in a "human shield"
- Wounding in a "human shield"
- Killing while at forced labor
- Wounding while at forced labor
- Hitting the head
- Hitting the chests
- Hitting the back
- Hitting the soles
- Hitting the ears
- Deportation
- Forced expulsion
- Displacement
- Enslavement

- Hostage-taking
- Forced disappearance
- Abduction
- Rape
- Sexual slavery
- Forced prostitution
- Forced pregnancy
- Sexual violence
- Forced sterilization
- Threatening to murder family members
- Threatening to torture family members
- Threatening to wound family members
- Threatening to torture others
- Bondage, in particular painful bondage
- Hanging
- Electro-shocks
- Burning body parts (using cigarettes etc.)
- Mutilation
- Crushing and removing healthy teeth
- Pouring salt over fresh wounds
- Forced stay in extremely hard conditions
- Body scarring (tattooing)
- Terrorization
- Harassment
- Denial of medical assistance
- Starvation by deprivation of basic life needs (water, food, hygiene, sleep and other)

- Contamination
- Increasing mortality of population
- Decreasing natural increase of population
- Other¹³⁵

b) For protected civilian buildings

- Shelling
- Burning
- Bombardment
- Laying landmines
- Other¹³⁶

135 Ibid

136 Ibid

6. Basic Features of Scientific Projects and Essential Postulates of Scientific Research

An approach to the research of genocide victims in which, among other things, the categories of victims, their status, the forms of crimes or the methods of commission of crimes have not been correctly defined, leads to a conclusion on the lack of knowledge of and/or respect for the norms of theory, logics and methodology in defining concepts, their meaning and significance, their basis and role in creating a system of classification within a theoretic determinant of the subject of research, which along with the scientific, theoretic and other findings defines the type of research and the research objectives, which is simultaneously at the fundament of the construction of instruments for data collection on the topic in question. The definition of categorical concepts and basic provisions of the subject of research enables us to determine and identify realities in society, and their direct and indirect manifestations – individual and collective, as valid syndrome indicators, which are at the basis of the content of complex data, or information on the phenomenon – subject of research, and which only then can be used as valid arguments in the process of proving or confirming hypotheses in the project of research. In this way, we open up questions of important setup in terms of the basis and premises in the determination and conclusion on the subject or phenomenon of research. Unfortunately, the conceptions and approaches toward research which, at least in basic aspects, lean towards science and overlook the role, meaning and significance of existing scientific and verified or at least evidenced, but not verified findings and concepts cannot be compensated, in any way, by any exact measure or mathematical quantification which would convince us of the relative truth of the findings which tend to, in a way, give it the legitimacy of scientific findings.

The presented positions may be particularly argued in terms of certain examples of research in Bosnia-Herzegovina which have dealt with the grave breaches of international humanitarian law, or rather, the crimes against humanity and international law committed between 1992 and 1995.

The research of genocide victims must be taken on in an integral, comprehensive way, as the approach to this kind of study has not been defined by a specific direction in theory and methodology.¹³⁷ According to this, we cannot evade the application of **hypothetic-deductive, statistical, modeling and comparative methods** in any predominantly scientific, empirical social research.

All the phases and stages of scientific research intensively use all special analytic-comprehensive methods.

The process of collection and gathering of data obliges us to use **observation, questioning, and documentary analysis** as methods. Research praxis shows that the choice of methods is influenced by three factors: the subject and objectives of research, the type of research, and its discipline. It is not seldom that research can be conducted or subjects of research reviewed indeed using only one method. For example: the content and the major provisions of a document can only be researched applying documentary analysis. However, this does not preclude the application – or the possibility to use – research methods which would let us find out the positions, assessments, and judgments of certain subjects on the document. In situations in which the subjects of research determine and suggest the use of various methods of data collection, they can be related to various statuses in the process (equal or unequal – one dominant, and others additional or auxiliary). Related to this, Prof. Dževad Termiz expounds the rule: **“the primary and dominant method and technique is the one that most fits the findings required by the subject of research, and which most profoundly penetrates them”**.¹³⁸

¹³⁷ I. Charny, GENOCIDE – THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES, Hiroshima, 2004, p. 6.

¹³⁸ Dž. Termiz, METODOLOGIJA DRUŠTVENIH NAUKA, Sarajevo, 2003, p. 242.

In every kind or type of research, whether it is theoretical or empirical or combines both whereas one of the two is dominant, it is necessary to collect various data on the research subject, and in accordance with the objectives of research and scientific hypotheses which will be tested, proven or confirmed based on the alignment of data and their processing and analysis. Therefore, it is extremely important that we determine the procedures and mechanisms of data control in the process of their collection, during their entering into the database, and their analysis. This way, we do not enter the trap of determining mathematical and statistical forms, but rather concentrate primarily on the determination of the theoretical, logical and empirical content of the data, its accuracy and truthfulness, which only then becomes a valid basis of application for statistical techniques and methods and offers the possibility to determine their meaning by means of interpretation.

A simultaneous application of various methods of data collection¹³⁹ (methods of inquiry, methods of observation and methods of analysis of document contents) must be understood, first and foremost, in the function of data complementarity, or rather their completeness, control by cross-checking to ensure validity, which is a sound basis for adequate reliability, accuracy and truthfulness of data in the process of their processing, analysis, hypothesis testing and conclusion-making on the subject, phenomenon, and field of research.

The basic intention in victim research must be based on the completeness, reliability and truthfulness of the data, based on which we

¹³⁹ Research of social phenomena involves data which is not finite and formed, and cannot generally be said to be subjected to collection. Data are sensory and intellectual products, made by sensing and other intellectual activity by the researcher and scholar on the basis of presentation of certain societal facts, whereby first the contents and significance of a certain declaration must be formed, for only later to allow the formation of data. Therefore, one is more correct in referring to **data gathering**, rather than **data collection**, in the context of social research. Let us not forget the fact that simplistic demonstrations cannot be used as an argument to confirm or negate the scientific hypothesis in the scientific research project, but that only complex data can serve this function, whose basis is made of syndrome indicators. The following works provide a more detailed overview on the topic: Dž. Termiz, *METODOLOGIJA DRUŠTVENIH NAUKA*, Sarajevo, 2003, and S. Milosavljević - I. Radosavljević, *OSNOVI METODOLOGIJE POLITIČKIH NAUKA*, *Službeni glasnik*, 3rd and amended edition, Beograd, 2005.

can only reach findings which can be given the status of scientific data, that is, of the scientific truths. The scientific truth in genocide victim studies is considered as the human finding on the subject of scientific thought and scientific research, which objectively understands and perceives the subjects of a given social reality for what they truly are.

Reliable data for processing and analysis is only data collected from **relevant** documentation of differing provenience, which provides important findings on the phenomenon and its basic features. This is particularly true of data related to the status of victims of crimes committed in the period from 1991 to 1995, in which case one must not forget the fact that the subject of research are, mostly, persons and objects protected by international law.

Sources of data¹⁴⁰ are an important factor for the validity and reliability of data. Having this in mind, one can immediately notice the difference between **empirical data**, which include people as individuals and their collectivities, as well as their actions, statements and creations, and **scientific sources** as a specific form of human creativity. In empirical research, both sources play an important role, whereas scientific sources play a dominant role in theoretical research.

In the research in question, documents play an important role and they may be classified following a complex criterion determined by the author, source, reliability, and time of origin. Starting from the basic concept included in the previously mentioned criterion, documents as sources of data can be classified as primary and secondary.

Primary documents as data sources include those which relate data which is complete and/or as complete as possible and relevant, whose authors are institutions, organs of government and other relevant and competent individual and collective subjects, both national and international. This includes: military unit lists (manpower of the units), payroll lists of the units, the military registration form (VOB-8), wartime and operational logbooks of military units, the regular and extraordinary combat reports, orders by unit commands and army institutions, bulletins of daily events, various situation reports, working reports, dispatch

¹⁴⁰ On data sources, see: Dž. Termiz, bibliography., pp. 204-207.

messages, notifications, bulletins of security related events, periodical reports, orders, analyses of work – analytical reports, official notes, personnel exchange lists, information authored by unit commands and army and police institutions, questionnaires for in-service military personnel serving in the armed forces, decision rendered by military units, commands, and institutions; registers of injury and death, logbooks of duty officers in units, observation logbooks, documents by burial societies confirming the death, documents by health institutions on injury or death, relevant scientific findings, and others.

Secondary documents as sources are those whose content, essence, and form offer relatively complete and relatively reliable data but which, by using the principle of complementarity, together with primary sources, become a significant and reliable base in the collection and/or control of data obtained from the field researchers. This includes printed and electronic media, certain documents by various associations, lists of various social subjects, data by the ICRC and ICTY, government institutions, NGOs and other organizations, which deal with various aspects of crimes against population, etc. Therefore, we rightly treat secondary documents as indirect sources.

In empirical research, which includes the problem of assessing the overall count of victims, one must carry out the procedure of conceptualization of scientific research whose role and main task is to ensure the creation of an applicable project for scientific research. Relevant results of scientific research and their implementation can only be achieved with a valid and complete scientific project.

A scientific project, as it is well known in research practice and methodologists and researchers of various social problems, represents at the same time a scientific and an operational document. The scientific problem contains and encompasses:

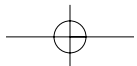
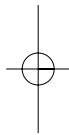
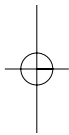
- A formulation of the problem;
- The subject of the research;
- The objectives of the research;
- The hypotheses and indicators;

- The method of research, as well as
- The scientific and social justification of the research.
- The operative part of the project comprises:
 - Research plans: time plans, human resources plans, material/technical plans and financial plans
 - Data processing plans, and
 - Instruments, with instructions for their use.

Analysis of research practice and numerous results of research demonstrate serious flaws in the theoretical and methodological approach by researchers, and thus we would here like to point out certain crucial issues in theory and methodology such as: the conceptualization of the research and the creation of the research project; the question of the scientific and methodological approach and paradigm; the application of scientific methods in the process of research, its stages and phases; sources of data, their roles, significance and meaning in the process of collection of data, as well as separate definition of terms and concepts, and their roles relevance, and meaning in the overall process of scientific research beginning with the observation and registration of the problem, its nomination and designation, through the creation of a research project, to the construction and presentation of the report on the research, as well as its results.

PART TWO

**A THEORETIC-METHODOLOGICAL CRITIQUE
OF EXISTING RESEARCH
OF THE VICTIMS OF THE GENOCIDE
IN BOSNIA AND HERZEGOVINA**



*1. An Overview of the Existing Results of Research of Victims
in the Republic of Bosnia and Herzegovina*

Various institutions, committees, national and international associations and organizations have been actively collecting data on the crimes against humanity and international law in the Republic of Bosnia and Herzegovina at the end of the 20th century, processing and analyzing them in terms of segments, completely or partially, including:

- *State Commission (of the Republic of Bosnia and Herzegovina) for the Collection of Facts on War Crimes, Sarajevo;*
- *Institute for the Research of Crimes Against Humanity and International Law of the University of Sarajevo, Sarajevo;*
- *State Commission (of the Republic of Bosnia and Herzegovina) for the Exchange of Prisoners of War, Persons Deprived of Liberty and Post-Mortem Remains, and the Registration of the Killed, Wounded and Missing Persons in the Republic of Bosnia and Herzegovina, Sarajevo;*
- *State Commission (of the Republic of Bosnia and Herzegovina) for the Search for Missing Persons, Sarajevo;*
- *Federal Commission for Missing Persons, Sarajevo;*
- *Healthcare Institute, Sarajevo;*
- *Institute for Forensic Medicine, University of Sarajevo, Sarajevo;*
- *Institute for Forensic Medicine, Tuzla;*
- *Commission (of the Government of Republika Srpska) for the Search for Missing and Imprisoned Persons, Banja Luka;*

- *Central Commission* (of the Government of Republika Srpska) *for the Exchange of Prisoners and Civilians*, Banja Luka;
- *Office* (of the Government of Republika Srpska) *for the Search of Missing and Imprisoned Persons*, Banja Luka;
- *Bureau* (of the Government of Republika Srpska) *for Relations with the International Criminal Tribunal for War Crimes*, Banja Luka;
- *Documentation Center* (of Republika Srpska) *for the Research of War Crimes*, Banja Luka;
- *Department* (of the “Hrvatska Republika Herceg-Bosna”) *for the Exchange of Prisoners and Other Persons*, Mostar;
- *Ministry of Defense of the Republic of Bosnia-Herzegovina/Federation of Bosnia-Herzegovina*, Sarajevo;
- *Ministry of Defense of Republika Srpska*, Sarajevo;
- *Ministry of Internal Affairs of the Republic of Bosnia-Herzegovina/Federation of Bosnia-Herzegovina*, Sarajevo;
- *Ministry of Internal Affairs of Republika Srpska*, Banja Luka;
- *Association of Camp Detainees of Bosnia and Herzegovina*, Sarajevo;
- *Association of Camp Detainees of Republika Srpska*, Banja Luka;
- *Institute for Statistics of the Republic of Bosnia-Herzegovina*, Sarajevo;
- *Institute for Statistics of Republika Srpska*, Banja Luka;
- *Agency for Investigation and Documentation of Bosnia-Herzegovina*, Sarajevo;
- *Republic Secretariat of the Republika Srpska Government for the Relations with the Hague Tribunal*, Banja Luka;
- *SIPA – State Investigation and Protection Agency*, Sarajevo;

- *FOSS – Federal Intelligence and Security Service of the Federation of Bosnia and Herzegovina, Sarajevo;*
- *OSA – Intelligence and Security Agency of Bosnia-Herzegovina, Sarajevo;*
- *Commission (of the Government of Republika Srpska) for the Research of Events in and around Srebrenica on July 10 to 19, 1995, Banja Luka;*
- *Workgroup (of the Government of Republika Srpska) for the Implementation of Conclusions from the Final Report of the Commission for the Research of Events in and around Srebrenica on July 10 to 19, 1995, Banja Luka;*
- *OBS – Intelligence and Security Service (of the Government of Republika Srpska), Banja Luka;*
- *Human Rights Chamber of Bosnia-Herzegovina, Sarajevo;*
- *Prosecutor’s Office of Bosnia-Herzegovina, Sarajevo;*
- *Court of Bosnia-Herzegovina, Sarajevo;*
- *Cantonal and other prosecutor’s offices and courts in Bosnia and Herzegovina*
- *Association “Istraživačko dokumentacioni centar” (Research and Documentation Center) – Sarajevo;*
- *Association “MAG” – Sarajevo;*
- *Association “Žene Srebrenice” (Women of Srebrenica) – Tuzla;*
- *Association “Majke enklava Srebrenica i Žepa” (Mothers of the Enclaves of Srebrenica and Žepa) – Sarajevo;*
- *Association of Former Camp Detainees of the Wars 1991-1995 – Belgrade;*
- *Various municipal associations of families of missing persons throughout Bosnia-Herzegovina*

- *Commission (of the Government of Serbia and Montenegro) for Missing Persons, Belgrade;*
- *Commission for Humanitarian Issues and Missing Persons (of the Government of the Federal Republic of Yugoslavia), Belgrade;*
- *Committee (of the Federal Republic of Yugoslavia) for the Collection of Data on Committed Crimes against Humanity and International Law, Belgrade;*
- *Office (of the Government of the Republic of Croatia) for Prisoners and Missing Persons, Zagreb;*
- *Department (of the Government of the Republic of Croatia) for Prisoners and Missing Persons of the Ministry for Families, War Veterans and Inter-Generational Solidarity, Zagreb;*
- *“Veritas” Documentation Center, Belgrade;*
- *Association of the Families of Missing Persons (Asociacioni të Familjarëve të Personavë të Zhdukur), Priština;*
- *Association of the Families of Missing and Abducted Persons in Kosovo and Metohija, Niš;*
- *ICTY – International Criminal Tribunal for Grave Breaches of International Humanitarian Law in the Territory of Former Yugoslavia since 1991 (Department for demography), the Hague;*
- *ICRC – International Committee of the Red Cross;*
- *ICMP – International Commission on Missing Persons;*
- *PHR – Physicians for Human Rights;*
- *Finnish expert team for exhumations;*
- *Amnesty International;*
- *Human Rights Watch;*
- *The United Nations Commission on Human Rights, Special Rapporteur Tadeusz Mazowiecki (1992);*

- *The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia (1992);*
- *The United Nations Working Group on Involuntary and Enforced Disappearances (1995);*
- *Netherlands Institute for War Documentation (Nederlands Instituut voor Oorlogsdocumentatie), Amsterdam;*
- Other more or less known non-governmental organizations, individuals, and associations, for their own purposes.

The total number of victims of all categories in Bosnia and Herzegovina at the end of the 20th century has not been definitely determined yet. The research of this kind has been conducted for years. Research so far has mostly directed attention to the determination of the number of the killed and missing, i.e. only to one form of crime (murder/killing).

Based on an insight into the results of research so far completed by individual researchers, experts and institutes and institutions, which have been published, the following brief overview can be presented.

During the aggression, genocide, and other forms of crimes against humanity and international law – the Healthcare Institute in Sarajevo published every week a bulletin on the “**Victims of War in Bosnia-Herzegovina**”, covering the area of municipalities under the control of the legal government of the internationally recognized state – the Republic of Bosnia and Herzegovina (61 municipalities). In January 1996, the Institute published preliminary data on “**the victims of the aggression against Bosnia and Herzegovina**” estimated at **156,824** killed and missing persons, and on March 25, 1996, the total number of all killed, missing and “otherwise dead persons” – **278,800**.¹ Research by Professors Arif Smajkić and Ilijas Bošnjović puts the number of dead at **258,000**, 138,800 of which were Bosniacs.² According to Professor

¹ *BILTEN*, No. 194, January 1, 1996. and No. 206, March 25, 1996, Institut za zdravstvenu zaštitu Sarajevo, Republički štab za zdravstvo i socijalnu bezbjednost Sarajevo, 1996.

² I. Bošnjović - A. Smajkić, *STANOVNIŠTVO I DEMOGRAFSKI GUBICI*, in: *ZDRAVSTVENO-SOCIJALNE POSLJEDICE RATA U BOSNI I HERCEGOVINI* (5th edition), Sarajevo, 1997, p. 13.

Murat Prašo, “**of the gross reduction of population (2.07 million), some 328 thousand have been killed, fatally injured or gone missing**”, some 218 thousand of which were Bosniacs.³ Vladimr Žerjavić has published that **220 thousand** persons were killed in Bosnia-Herzegovina, among them 160 thousand Bosniacs, 30 thousand Croats and 25 thousand Serbs.⁴ In 1995, the *Commission of Experts Investigating Violations of International Humanitarian Law in the Former Yugoslavia* (also known as the Bassiouni Commission) determined the number of “killed and missing” at around **200,000**,⁵ whereas the International Peace

³ M. Prašo, DEMOGRAFSKE POSLJEDICE RATA 1992-1995, *MOST*, No. 93, Mostar, March/April 1996, pp. 64-71.

⁴ V. Žerjavić, TRAGIČNA BILANCA ..., *GLOBUS*, No. 370, Zagreb, January 9, 1998, pp. 24-27.

⁵ GENOCIDE IN BOSNIA AND HERZEGOVINA, A HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, U. S. Congress, One Hundred Fourth Congress, Commission on Security and Cooperation in Europe, Washington DC, April 4, 1995, Doc. No. CSCE 104-1-4, p. 8; M. Mennecke - E. Markusen, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE CRIME OF GENOCIDE, in: GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003, p. 303.

Prof. dr. Cherif Bassiouni (Professor of law at DePaul University, Chicago; Chairman, International Institute for Human Rights) was named in 1993 to Chair *THE UNITED NATIONS COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, formed on October 6, 1992. He has authored numerous books on US criminal law, international and comparative criminal law and human rights. The commission has functioned until late April 1994, and has concluded its research in mid-1995 with a 3,500 page volume, and a 100 page conclusion. (GENOCIDE IN BOSNIA-HERZEGOVINA, A HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, Washington, DC, April 4, 1995; E. Tabeau - J. Bijak, WAR-RELATED DEATHS IN THE 1992-1995. ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of population*, Springer, 2005, pp. 195-196 and 213; M. Mennecke - E. Marcusen, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE CRIME OF GENOCIDE, in: GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003, p. 303; ∴ MEĐUNARODNI SUD ZA RATNE ZLOČINE NA PODRUČJU BIVŠE JUGOSLAVIJE, *Hrvatski helsinški odbor za ljudska prava and Hrvatski pravni centar*, Zagreb, 1995; Dr M. Cherif Bassiouni

Research Institute from Stockholm put the number of victims in 1993 at **169,100**.⁶

Professor Herbert Hirsch wrote in 1995 that “**around 200,000 people**” have been killed in Bosnia.⁷ In 1997, professor Francis Boyle stated his estimate of 139,000 dead.⁸ George Kenney (1995) estimates the number of “war-related deaths (i.e. excluding natural deaths)” amounts to between **25 and 60 thousand**.⁹ Raju Thomas, in 1993, puts the number of deaths in Bosnia at between **40 and 70 thousand**,¹⁰ whereas Benjamin A. Valentino puts the mark between **25 and 155 thousand** deaths.¹¹

Back in 2001, Professor Dr. Jean-Paul Sardon published an academic article on demographic changes in the Balkans from the late eighties of the 20th century onwards, in which he estimated the number of victims in the war in Bosnia-Herzegovina, while claiming that the “wars which have accompanied the dissolution of the former Yugoslavia” have caused

and others, HISTORIJAT EKSPERTNE KOMISIJE UJEDINJENIH NACIJA, in: GENOCID U BOSNI I HERCEGOVINI 1991-1995.), *Conference proceedings from the International Congress for Documentation of Genocide in Bosnia and Herzegovina 1991-1995*, held in Bonn, August 31 – September 4, 1995, Institute for Research of Crimes Against Humanity and International Law in Sarajevo, Sarajevo, 1997, pp. 669-679.

The Commission has created and formed a database which includes 65,000 documents and 300 tapes, and presented results of research which stated the following: number of killed in Bosnia – around 200,000, 800 concentration camps and other places of detention (with around 500 thousand inmates), 50 thousand torture victims, over 20 thousand estimated rape cases, 151 mass graves with around 3,000 bodies, etc. (Ibid).

⁶ Stockholm International Peace Research Institute, 1993, Casualty estimate of the war in Bosnia and Herzegovina, *Nedjeljna Dalmacija*, August 4, 1993.

⁷ H. Hirsch, GENOCIDE AND POLITICS OF MEMORY, *The University of North Carolina Press*, Chapel Hill, 1995, p. 5.

⁸ F. Boyle, Re: STATISTICS. An (on-line) commentary, in: *Buffalo Archives of the Tribunal Watch*, May 23, 24 and 25, 1997.

⁹ G. Kenney, THE BOSNIAN CALCULATION, *New York Times Magazine*, April 23, 1995.

¹⁰ R. Tomas, DEHUMANIZING A NATION THE BALKAN CONFLICT AND INTERNATIONAL REACTION, quoted in: E. Tabeau and J. Bijak, WAR-RELATED DEATHS IN THE 1992-1995. ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of population*, Springer, 2005.

¹¹ B. A. Valentino, FINAL SOLUTIONS: MASS KILLING AND GENOCIDE IN THE 20TH CENTURY, *Cornel University Press*, New York, 2004, p. 77.

“**hundreds of thousands of deaths**”, of which “**200 to 300 thousand were in Bosnia-Herzegovina**”, which, according to him, represented **5-7%** of the total population.¹² Five years later, on March 24, 2006, testifying on behalf of Serbia and Montenegro at the International Court of Justice in The Hague, with the primary aim of reducing the number of victims of genocide in Bosnia, Sardon negated his own research results. Namely, during cross-examination by British solicitor from London and Bosnian legal team member Joanna Korner, he said that he had not carried out “**either a direct or indirect estimate of the number of victims of the war which engulfed Bosnia-Herzegovina between 1992 and 1995**” and accepted that, related to his 2001 estimate of 200-300 thousand deaths in Bosnia and Herzegovina, this easily could have been a mistake, a “**carelessness**” on his behalf (“...**It was perhaps a little careless on my part...**”).¹³

Noel Malcolm claims that “perhaps, maybe the best commentary to Milosevic’s and Karadzic’s tactics and achievements in Bosnia-Herzegovina are **more than 150 thousand deaths**, more than 2 million people expelled from their homes, villages and towns in ruins, and several hundred mosques and churches blasted.”¹⁴

According to a Report by the *International Commission on the Balkans*¹⁵ (1996), “**145 thousand people were killed or had died during**

¹² J.-P. Sardon, DEMOGRAPHIC CHANGE IN THE BALKANS SINCE THE END OF THE 1980’S, *Population: An English Selection*, Vol. 13, No. 2 (2001); www.icj-cij.org/docket/files/91/10685.pdf?PHPSESSID=bfc893d9f7cf101f58fc2b3612b65f3, TESTIMONY BY JEAN-PAUL SARDON at the International Court of Justice in the Hague, March 24, 2006.

¹³ Ibid. In that way, Professor Sardon has publicly negated his own estimates on the number of victims in Bosnia-Herzegovina, acting in the interest of Serbia and Montenegro.

¹⁴ N. Malcolm, POVIJEST BOSNE, Kratki pregled – translated from: BOSNIA - A SHORT HISTORY, Erazmus Gilda – Novi Liber – DANI, Zagreb – Sarajevo, 1995.

¹⁵ In 1914, the Carnegie Foundation for International Peace had published the Report of the *International Commission for the Research of Causes and Actions in the Balkan Wars of 1912 and 1913*, In 1995, the Carnegie Foundation for International Peace and the Aspen Institute from Berlin have, alongside several other foundations from Europe and the USA formed a similar commission, *International Commission for the Balkans* seated in Berlin. The commission’s mandate was **to prepare a report on the situation**

the conflict in Bosnia, 174 thousand were wounded, 2.5 million expelled and 1.1 million went into refuge into other states...”¹⁶ Dr. Ivo Goldstein (2003) claims that “the most realistic estimate of the victims of the entire war in the Republic of Bosnia and Herzegovina is that of 215 thousand deaths, including 160 thousand Bosniacs - Muslims (8.4% of the 1991 total), 30 thousand Croats (4% of the 1991 total) and 28 thousand Serbs (2.1% of the 1991 total).”¹⁷

“The war in Yugoslavia”, according to Bernard Bruneteau, “has caused 250 thousand deaths, two thirds of which were civilians, and 2.8 million refugees and displaced persons”.¹⁸ According to a November 2005 United Nations Resolution, 260,000 persons were killed in Bosnia-Herzegovina.¹⁹ Bora Radović considers the “number of 250,000 killed and missing” more realistic than other estimates.²⁰

in the Balkans and formulate long-term measures which could contribute to the establishment of permanent peace in that area. The institutions, which have financed this project have acted so “as they were convinced that the existing hardships, and the dominating mentality in the Balkans, are a permanent threat to the peace, an astounding example of intolerance, and a shame for Europe”. (NEDOVRSĀENI MIR - *Izveštaj Međunarodne komisije za Balkan*, Hrvatski Helsinški odbor za ljudska prava, Zagreb, Pravni centar, Zagreb; FOF BiH, Sarajevo, 1997, p. IX-XII)

The **Report of the International Commission on the Balkans** has been published by the Croatian Helsinki Committee under the title “NEDOVRSĀENI MIR - *Izveštaj međunarodne komisije za Balkan*“, Zagreb, 1997.

¹⁶ .: *NEDOVRSĀENI MIR: Izveštaj Međunarodne komisije za Balkan*, Hrvatski helsinški odbor za ljudska prava, Pravni centar, Zagreb; FOF BiH, Sarajevo, 1997, p. 7, as per the original: UNFINISHED PEACE, REPORT OF THE INTERNATIONAL COMMISSION ON THE BALKANS, Washington DC, 1996. I.

¹⁷ I. Goldstein, HRVATSKA POVIJEST, *Novi Liber*, Zagreb, 2003, p. 409.

¹⁸ B. Bruneteau, LE SIÈCLE DES GENOCIDES, *Violences, massacres et processus genocidaires de l’Armenien au Rwanda*, Armand Colin, Paris, 2004.

¹⁹ *Oslobođenje*, Sarajevo, November 23, 2005, p. 5.

²⁰ B. Radović, JUGOSLOVENSKI RATOVI 1991.-1999. I NEKE OD NJIHOVIH DRUŠTVENIH POSLEDICA, in: *TORTURA U RATU, POSLEDICE I REHABILITACIJA*, Beograd, 2004, p. 51.

While asserting the issue of the “HUMAN PRICE OF WARS IN THE FORMER YUGOSLAVIA”, especially the “killed” in the “War in Bosnia (April 1992 - November 1995)“, Bora Radović, apart from other things, points to the existence of articles in the Serbian press “**which consider the number of victims of war in Bosnia-Herzegovina**

In mid-2003, basing their results of research on sources from the Institute for the Research of Crimes against Humanity and International Law at the University of Sarajevo, Ewa Tabeau and Jakub Bijak, **estimated the minimum number of “the total of war-related deaths in Bosnia” at 102,622 persons**, of which 55,261 (54%) were civilians, and 47,360 (46%) were soldiers, stressing that this was, **as yet, incomplete data**.²¹

On December 16, 2005, the Association “Research and Documentation Center” in Sarajevo presented data that from 1992 to 1995, **93,837 persons were “killed and missing”** in Bosnia-Herzegovina, of which 35,046 were civilians and 54,507 were soldiers.²² On June 21, 2007, the same source presented its “results of the ‘Human Losses in Bosnia and Herzegovina 1991-1995’ project”, which claims that **97,207 persons were killed and missing**, including 39,684 civilians and 57,523 soldiers.²³

Based on international law literature, UN press releases, as well as Amnesty International and Human Rights Watch data, Rony Blum, Gregory H. Stanton, Shira Sagi, and Elihu D. Richter claimed (2007) that in Bosnia, from 1991 to 1995 a genocide was committed, in which **some 200,000 people were killed**.²⁴ The *United Human Rights Council* claims that Serbs committed genocide against Muslims in the Republic

to be much lower“. With this in mind, he mentions an article titled “*Godine tragičnog življenja*“ *Danas*, April 5-6, 2003, p. 2), which, among other things, reads “**various estimates which consider that the war in Bosnia-Herzegovina has taken the lives of between 150 and 200 thousand people**“. Such estimates, according to B. Radović, “cannot be taken seriously“, “as there are no sources to the article whatsoever“. Simultaneously, Radović warns of the question on “**the methodology and sources of data for the ‘estimates’ which differ up to as much as 50 thousand people**“ (Ibid, pp. 49-51).

²¹ E. Tabeau and J. Bijak, WAR-RELATED DEATHS IN THE 1992-1995. ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of population*, Springer, 2005.

²² *Oslobođenje*, December 17, 2005, p. 3; *Dnevni avaz*, December 17, 2005, p. 12; *DANI*, No. 445, December 23, 2005, pp. 13-15. 4,284 persons are listed as “status unknown”.

²³ *Oslobođenje*, June 21, 2007, p. 2; June 23, 2007, p. 11; *Dnevni avaz*, June 22, 2007, p. 10; *DANI*, June 29, 2007, pp. 18-21.

²⁴ Rony Blum, Gregori H. Stanton, Shira Sagi, and Elihu D. Richter, ‘ETHNIC CLEANSING’ BLEACHES THE ATROCITIES OF GENOCIDE, *European Journal of Public Health*, Oxford, 2007, pp. 1-6.

of Bosnia-Herzegovina between 1992 and 1995, systematically murdering **over 200,000 Muslim civilians**.²⁵

It is obvious that, according to the mentioned results of research, estimates on the number of victims in Bosnia, mostly killed victims, cross a span from the extremely low 25 thousand all the way up to 328 thousand. This is by no means a phenomenon unique to the genocide against the Bosniacs in the Republic of Bosnia-Herzegovina at the end of the 20th century, but is a common trait of all genocides so far, beginning with the genocide in Namibia (1904), the Holocaust (1933-1945), all the way to the Darfur genocide (2003-...).

The problem of determination of the number of genocide victims represents a difficulty for researchers and academically legitimate work, on the one hand, while widely opening the doors for manipulators, falsifiers, and those who **deny** both the crime itself as well as its genocidal intent, on the other hand. For example, estimates of the number of Holocaust victims range from **five**²⁶ to **six million**²⁷, of the Rwandan genocide from **500,000 and one million**²⁸, and of the Jasenovac concentration

²⁵ www.unitedhumanrights.org/Genocide/bosnia_genocide.htm, **BOSNIA GENOCIDE – 1992-1995 – 200.000 DEATHS**. This source, **apart from 200,000 dead, lists “more than 20,000 missing, feared dead, and 2 million refugees. According to the US Undersecretary of State Richard Holbrooke, this was ‘the biggest failure of the west since the 1930-ies’**“ (Ibid).

²⁶ Donald L. Newyk, *THE COLUMBIA GUIDE TO THE HOLOCAUST*, New York, 2000, p. 45. Holocaust deniers present **“three key theses”**:

- first, **“that the gas chambers and crematories were not used for mass murder, but to kill lice in clothing, and burn those who had died of illness and work-induced exhaustion”**;

-second, **“that the number of 6 million victims is an exaggeration, and that 600 000, and not six million, were killed at the hands of the Nazis”**;

- third, **“that there was no intent by the Nazis to exterminate the Jews of Europe, and that the Holocaust was a tragic by-effect of the horrors of war”** (Michael Shermer and Alex Grobman, *DENYING HISTORY: WHO SAYS THE HOLOCAUST NEVER HAPPENED AND WHY DO THEY SAY IT?*, Los Angeles, 2000, p. 3).

²⁷ *THE HOLOCAUST*, *Encyclopedia Britannica*, London/New York, 2007.

²⁸ OAU (*ORGANIZATION OF AFRICAN UNITY*) SETS INQUIRY INTO RWANDA GENOCIDE, *Africa Recovery*, Vol. 121, August 1998, No. 1.

camp, from **20 thousand**²⁹ to **1,100,929**.³⁰

Based on the above, two important questions are logically raised:

- First, why is it so dauntingly difficult to determine a relatively true overall count of victims of genocide and other forms of crimes against humanity and international law?
- And second, where from, how and due to what do such major divergences appear in works of various authors – scientists and researchers – dealing with the same problem in the same science or scientific discipline?

At the moment, we will not enter a detailed debate of the mentioned open questions, but rather point out what seem to be the fundamental reasons for which these and other problems appear. First of all, they are global strategic problems related to science and scientific methodology, methods in science and research itself, and then, the problem lies in the ideology and political nature.

²⁹ M. Bulajić, JASENOVAC – RADNI LOGOR ILI SISTEM USTAŠKIH LOGORA GENOCIDA, in: JASENOVAC – SISTEM HRVATSKIH USTAŠKIH LOGORA GENOCIDA (1941-1945), Conference proceedings: Second International Conference on JASENOVAC – SISTEM HRVATSKIH USTAŠKIH LOGORA GENOCIDA (1941-1945), Banja Luka – Donja Gradina, May 8-10, 2000, *Dokumentacioni centra Republike Srpske za istraživanje ratnih zločina, Banja Luka, 2002*, p. 45. According to Milan Bulajić, the former Croatian President, Dr. Franjo Tuđman, had claimed during the Hague Conference on Yugoslavia on November 6, 1991 that **“the overall victim count for the Jasenovac camp is 20,000”** (Ibid). Two years earlier, Dr. Franjo Tuđman had stated his claim in his book called **“BESPUĆA POVIJESNE ZBILJNOSTI”**, which, among other things, claims: **“The Jasenovac camp had actually had several tens (3 to 4) of thousands of prisoners, mostly Gypsies, then Jews, Serbs, and even Croats”** (F. Tuđman, BESPUĆA POVIJESNE ZBILJNOSTI, Zagreb, 1989, p. 316).

³⁰ R. Bulatović, KONCENTRACIONI LOGOR JASENOVAC S POSEBNIM OSVRTOM NA DONJU GRADINU, *Svetlost*, Sarajevo, 1990, p. 413.

2. An Analytical Review of a Part of Existing Research Results Related to the Victims in the Republic of Bosnia and Herzegovina

The previous part of the text has given a concise overview of the existing results of research by individual scientists, institutions, and some civic associations, which have dealt with the assessment of victims in Bosnia and Herzegovina. In this context, we will not carry out a detailed analysis of all research so far, but shall rather concentrate on results of research (or estimates) of the ICTY Demographic Unit, made from 1998 to 2003 by Dr. Ewa Tabeau and Dr. Jakub Bijak, as well as the data by the Association “Research and Documentation Center” in Sarajevo. Of all mentioned research results given in the overview, only these two subjects have taken the identity of the victims into account, but neither has ever publicly presented a list of the names of the victims.

a) Critical Remarks on the ICTY Estimates

Dr. Ewa Tabeau and Dr. Jakub Bijak are authors of a text titled “WAR-RELATED DEATHS IN THE 1992-1995 ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS”, where they give an overview and critique of the previous estimates and present “the most recent ICTY estimates”, published in the *European Journal of Population* in the spring of 2005.¹

¹ Ewa Tabeau-J. Bijak, WAR-RELATED DEATHS IN THE 1992-1995 ARMED CONFLICT IN BOSNIA AND HERZEGOVINA: A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of Population*, Springer, 2005, pp. 187-215. The authors finished their research in mid-2003.

The results of this research comprise: an abstract; 1. A general framework for assessment of war-related deaths of the Bosnian conflict;

Dr Ewa Tabeau has a B.Sc. and M. Sc. in econometrics and statistics (1981), and a doctorate in mathematical demographics (1991) from the School of Economics in Warsaw, Poland. She taught statistics and demographics at the mentioned faculty for several years. Also, she was a researcher at the Netherlands Interdisciplinary Demographical Institute (NIDI), in The Hague, working to develop models and predict mortality based on the causes of death and life expectancy analysis, which are her main fields of research.

Since September of 2000, Dr. Tabeau has worked as a demographer and the Demographics Project Manager in the Prosecutor's Office at the ICTY, where she studied demographic consequences of the conflicts in the former Yugoslavia, and ensured statistical depictions of crimes required for the trials and OTP investigations. The main subject of her work involves statistics and war-related death estimates (killed, missing, exhumed, identified, etc), injured persons, internally transferred, and refugees. During her work for the Prosecutor's Office, she authored more than 20 expert reports including, among others, reports for the cases: Slobodan Milošević (Bosnia), Biljana Plavšić (Bosnia), Momčilo Krajišnik (Bosnia), Generals Stanislav Galić and D. Milošević (Siege of Sarajevo), Blagojević and Popović and others (Srebrenica), Prlić and others (Herzeg-Bosnia), and testified as an expert – witness at the Tribunal, on various occasions.

Dr. Tabeau is an author of 5 monographs published worldwide, 25 articles in academic international and national journals, 19 conference papers, presented at international conferences, and more than 60 research reports and working documents. She was a supervisor to researchers who presented their master's and doctoral theses, and she has worked as a reviewer for academic journals and publishers such as *European Journal of Population*, *Journal of Peace Research*, *Mathematical Population Studies*, *Springer*, *Thela Thesis*, etc.

Dr. Jakub Bijak has a degree in quantitative methods and information systems from the Warsaw School of Economics, where he has received his Master degree *cum laude* in the field of mathematic population studies. His doctoral dissertation results were presented at the European Population Conference, in August 2003. In 1999, he was a guest researcher at the Interdisciplinary Demographics Institute in The Hague. From 1999 to 2000, Jakub Bijak has worked at the Institute of Statistics and Demography of the Warsaw School of Economics, where he taught statistics and advanced statistical methods for the senior students. During 2001, he was a research assistant at the Demographic Unit of the Prosecutor's Office in the ICTY where, during October 2002, he has been employed as a young professional. During his work, he has cooperated on seven different research reports.

While still studying, he has authored many research papers. As a student, he attended various conferences of young researchers, presenting thus numerous interesting theses. He was a leader for the Unusually Talented Research Group at the Warsaw School of Economics. Also, he participated in various Polish and international research projects related to the demographic and economic aspects of society, and authored several papers.

2. An overview of previous estimates which includes: estimates made in Bosnia and Herzegovina and Croatia and estimates made outside the former Yugoslavia; 3. The latest estimates made at ICTY which includes: Sources and methods, minimal and total numbers; 4. Discussion and Conclusions; List of Abbreviations; Notes. Literature used, and References.²

The resume clearly confirms that the authors used data available to them, which they have **taken over** from certain subjects from Bosnia and Herzegovina, based on which they have presented their critique of previous estimates “of war-related deaths” in Bosnia and Herzegovina and have given their own estimates which, they claim, “could be considered more founded than others, although they are still incomplete and must be considered work in progress.”³

The part which considers **A general framework for assessment of war-related deaths of the Bosnian conflict** sees the authors presenting political qualifications of differing content,⁴ some of which are confirmed – and some not – by relevant scientific, theoretical and other sources.

The contemporary scientific and theoretical sources, as well as experiential findings, confirm the authors’ statements on Serb nationalism and the Greater Serbia project, and on the role of Slobodan Milošević in the implementation of the said plan “carved out of the territories mainly in Bosnia and Herzegovina and Croatia, with Slovenia providing the Serbs with cheap resources”. The realization of such a project has, according to the authors, “produced the largest number of victims” and “extraordinary migrations (both internal and external), of mainly Muslim population”. They claim that the “Bosnian Muslims suffered the greatest losses during this war”, with the war ended in a division of the country into two political entities.⁵

On several places, this section of the text also presents a series of statements and claims which do not reflect the state of fact in social reality,

² Ibid, pp. 187-215.

³ Ibid, p. 187.

⁴ Ibid, pp. 188-190.

⁵ Ibid.

and which are not scientifically and professionally based, representing a distorted picture of the true events in Bosnia-Herzegovina and Yugoslavia 1991-1995, which can be qualified as some kind of fantasies or most brutal forgeries of Bosnia-Herzegovina's most recent past. This position is confirmed by statements such as: "the situation in Bosnia and Herzegovina was far more complex than in Slovenia and Croatia", among other things, as they claim, "due to the absence of a single ethnic Muslim Republic in the former Yugoslavia"; "Bosnian Muslims, Serbs and Croats existed as politically distinguished groups who happened to live in the same country". Furthermore, the authors stated that the "political goals of these ethnic groups were too distinct to allow for a peaceful settlement", implying that war was inevitable. The struggle of the Bosnian Serbs, "and later of the Bosnian Croats", "(often through ethnic cleansing and terror campaigns)", included the "take over and control of territories that otherwise would be subject to the rule of the Bosnian Muslims from Sarajevo". According to them, "Muslims fought for these territories as they believed they did not have much choice". The presentation of the claim on "a Muslim-Muslim conflict" in Bosnia represents the absolute lack of knowledge on elementary empirical facts on the events. The claim on "ethnic cleansing of Bosnian Muslims by Serbs", repeated on various occasions, is of similar character, as it evidently denies⁶ and avoids to use the term

⁶ Ibid. *Genocide denial* is driven by various motives, including primarily ideological, political, and strategic motives, with almost exclusively tragic consequences. All perpetrators deny genocide, which obviously leads to "**fundamentally negative consequences**". It is the Greater Serbian aggressors, and its collaborationists who have this tendency, as they have presented – among other things – claims on Muslims bombing and killing themselves, in a way in which they overachieve Hitler's Goebbels. René Lemarchand's judgment on genocide denial is that it "**moves alongside a gap between the slaughterers and victims, and excludes efficient dialogue among them, presenting a major obstacle to the perspective of reconciliation.**" (R. Lemarchand, COMPARING THE KILLING FIELDS: RWANDA, CAMBODIA AND BOSNIA, in: GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003, p. 144).

Political interests, in the view of Samantha Power, Martin Mennecke, and Eric Marcusen, can create an impulse which leads to the denial of genocide. Such a situation, in their view, was prevalent in political circles in the USA related to the Bosnian and Rwandan genocides, where public presentation of the position that the mass murders represent a genocide was avoided, has enabled the USA in evading active intervention.

genocide and avoids naming it by referring to it as “ethnic cleansing”.⁷

(S. Power, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE*, New York, 2002, p. 358; M. Mennecke - E. Marcusen, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE CRIME OF GENOCIDE*, in: *GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES*, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003, p. 296).

Strategic denial of genocide, according to R. Lemarchand, is dramatically illustrated in American politics during the genocides in Bosnia and Rwanda, which has represented a clear intention to excuse the United States of America from intervening, in accordance with the Convention on Prevention and Punishment of Crime of Genocide. With this in mind, he states that there were two contradictory processes going on: the intent by some officials who insisted, back in 1992, on the use of the term of the Bosnian genocide, and the other, which has seen the term genocide systematically removed from official murder reports (R. Lemarchand, p. 144).

The United States of America has repeatedly refused to identify Serb attacks and mass crimes in Bosnia as genocide. For certain officials, such as Marshall Harris, Stephen Walker, John Western, George Kenny and others, who resigned after the USA failed to act to prevent genocide in Bosnia (because of their disagreement over State Department policies), this non-action represented a significant unacceptable element of US policy. The attitude of such US policy towards the genocide in Bosnia has been described by M. Harris in the following way: “While State Department lawyers and career officials were convinced that genocide was going on, the administration was passing a political decision, not only not to refer to the United Nations Genocide Convention, but also not to use the word ‘genocide’ in describing Serb atrocities – without a political qualification. In line with this, administration leaders stated in various formulations that Serb crimes ‘border genocide’, are ‘akin to genocide’ or constitute ‘acts of genocide’.

Calling this genocide would imply that there are victims, not “warring parties” in a “civil war” instigated by “ancient ethnic hatred” whose results are “atrocities on all sides”. This would also imply that we have a moral imperative to prevent genocide, if necessary even by force, including the right of the Bosnian people to self-defense. The administration was always careful not to allow too much pressure for taking action to build up, and recognition of genocide would create exactly that kind of pressure.” (Francis A. Boyle, *THE BOSNIAN PEOPLE CHARGE GENOCIDE: PROCEEDINGS AT THE INTERNATIONAL COURT OF JUSTICE CONCERNING BOSNIA V. SERBIA ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE*, Amherst, Massachusetts, 1996)

Even official United Nations reports, as well as those from Western European countries, avoided the use of the term genocide (M. Mennecke – E. Marcusen, p. 295). It must however be said that the United Nations General Assembly referred to the obnoxious policy of “**ethnic cleansing**” perpetrated by Serb and Montenegrin forces and their collaborationists during the aggression against the Republic of Bosnia and Herzegovina, “**with the aim of forceful expansion of their territory**”, a form of genocide

Contemporary works in scientific methodology agree on the issue of the role and significance **of the source of data** in scientific research.

(Resolution of the General Assembly of the United Nations, A/RES/47/121, December 18, 1992, 91st Plenary Session, The Situation in Bosnia and Herzegovina, in: S. Čekić – M. Kreso – B. Macić, GENOCID U SREBRENICI, “SIGURNOJ ZONI” UJEDINJENIH NACIJA, JULA 1995 Institut za istraživanje zločina protiv čovječnosti i međunarodnog prava, Sarajevo 2000, pp. 459-464.

Many researchers have referred to Serbian ideologies, policies and practices as genocidal, and “massive Serb cruelty” and Serb mass crimes against Bosnian Muslims, as genocide (Roy Gutman, *A WITNESS TO GENOCIDE*, New York, 1993; Helen Fein, *TESTING THEORIES BRUTALLY*, in: George J. Andreopoulos, *GENOCIDE: CONCEPTUAL AND HISTORICAL DIMENSION*, Philadelphia, 1994; Norman Cigar, *GENOCIDE IN BOSNIA: THE POLICY OF “ETHNIC CLEANSING”*, *College Station*, Texas, 1995; David Rieff, *SLAUGHTERHOUSE: BOSNIA AND THE FAILURE OF THE WEST*, New York, 1995; S. Čekić, *THE AGGRESSION ON BOSNIA AND GENOCIDE AGAINST BOSNIACS 1991-1993, Institute for the Research of Crimes Against Humanity and International Law*, Sarajevo, 1995; Thomas Cushman - Stjepan Mestrovic, *THIS TIME WE KNEW: WESTERN RESPONSES TO GENOCIDE IN BOSNIA*, New York, 1996; Peter Maas, *LOVE THY NEIGHBOR: A WAR STORY*, New York, 1996; M. Sells, *THE BRIDGE BETRAYED: RELIGION AND GENOCIDE IN BOSNIA*, Berkeley, 1996; Robert Melson, *PARADIGMS OF GENOCIDE: THE HOLOCAUST, THE ARMENIAN GENOCIDE, AND CONTEMPORARY MASS DESTRUCTIONS*, *Annals of the American of Political and Social Sciences*, Vol. 548, November 1996; F. Boyle, the paper from Amherst, Massachusetts, 1996; S. L. Burg, *GENOCIDE IN BOSNIA-HERZEGOVINA?*, in: Samuel Totten, William S. Parsons and Israel W. Charny, *CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS*, New York, 1997; M. Mennecke - E. Marcusen, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE CRIME OF GENOCIDE* in: *GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES*, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003; R. Lemarchand, *COMPARING THE KILLING FIELDS: RWANDA, CAMBODIA AND BOSNIA* in: *GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES*, *The Danish Center for Holocaust and Genocide Studies*, Copenhagen, 2003; Martin Mennecke – Eric Markusen, *GENOCIDAL VIOLENCE IN BOSNIA AND HERZEGOVINA*, in: Samuel Totten, *CENTURY OF GENOCIDE*, 2nd edition (in print); H. Hirsch, *GENOCIDE AND POLITICS OF MEMORY*, *The University of North Carolina Press*, Chapel Hill & London, 1995, and other authors).

⁷ Ibid. E. Tabeau-J. Bijak, pp. 188-190. The concept of “*ethnic cleansing*” is the most obvious euphemism for genocide. “Ethnic cleansing” is, according to Tadeusz Mazowieck, special rapporteur of the *United Nations Commission for Human Rights (UNCHR)*, “**the most direct cause of the largest number of human rights violations in Bosnia-Herzegovina since the beginning of the crisis in March and April 1992.**” (NATIONS UNIES, SITUATION DES DROITS DE L’HOMME SUR LE TERRITOIRE DE L’EX

The general consent points to the fact that sources are basic factors of the validity and reliability of data. Having in mind that the authors of

YUGOSLAVIA - *Rapport préparé par M. Tadeusz Mazowiecki*, Rapporteur Spécial de la Commission des Droits de l'homme sur la situation des droits de l'homme en ex Yugoslavia, A/47/666-S/24809, November 17, 1992, Para. 8-11. For the policy of ethnic cleansing in Bosnia and Herzegovina in spring and summer 1992, see ... *Rapport...* by T. Mazowiecki, E/CN4/1992/S-1/9, August 28, 1992 para6-32. T. Mazowiecki claims that the term "ethnic cleansing" refers to **"the elimination carried out by one ethnic group which has control over certain territory, over members of the other groups."** To this aim, according to him, **"various methods are used, including: threats, harassment, and terror; house, shop and business shootings; use of explosive; destruction of religious buildings and institutions of culture; forced expulsions or transfers of population; collective executions; commission of atrocities with the aim of terrorizing the population, such as torture, rape, mutilation, and the shelling of civilian centers"** (Ibid, Para. 9). Unfortunately, Mazowiecki also does not use the term genocide, although all the mentioned forms of crimes, which he defines using "ethnic cleansing", presents elements of the most complex and gravest form of crime – genocide.

The policy of "ethnic cleansing", which, **"due to the intensification of the aggression by Serb and Montenegrin forces, and with the aim of violently occupying wider territory..."**, applied in the Republic of Bosnia-Herzegovina, represents according to a UN General Assembly Resolution of December 18, 1992, **a form of genocide** (*RESOLUTION* of the United Nations General Assembly, 47/121, December 18, 1992, A/RES/47/121, 91st Plenary Session, *Situation in Bosnia and Herzegovina*, in: S. Čekić, M. Kreso and B. Macić, GENOCID U SREBRENICI, „SIGURNOJ ZONI“ UJEDINJENIH NACIJA, JULA 1995, *Institute for Research of Crimes Against Humanity and International Law*, Sarajevo, 2000, pp. 459-464).

"Ethnic cleansing", according to the United Nations Expert Commission to Investigate Violations of International Humanitarian Law in the former Yugoslavia (the Bassiouni Commission), is **"the attempt to make an area ethnically homogenous by using measures of coercion or terror, to remove all persons belonging to certain groups from the area"**. The United Nations commission has, based on available documentation which **"describes the policies and actions"** in the former Yugoslavia at the end of the 20th Century, defined "ethnic cleansing" as a **"willful policy by one ethnic or religious group which intends by violent and terror-spreading means to remove the civil population belonging to another ethnic or religious group from certain geographic area"**. In line with such policy and practice in the former Yugoslavia, "ethnic cleansing" has, according to the mentioned Commission, **"been carried out in the form of murder, torture, arbitrary arrest and imprisonment, execution with no prior trial, rape and sexual harassment, ghettoization of civilians, forced removal, forced transfers and expulsions, deliberate military attacks or threats of attacks against civilians and a wanton destruction of property"**. Such procedures have been, accordingly, characterized by the United Nations commission as crimes against

the text did not carry out their own scientific-empirical research, not even a predominantly theoretical work of research, but have – as they

humanity, war crimes, or genocide (MEĐUNARODNI SUD ZA RATNE ZLOČINE NA PODRUČJU BIVŠE JUGOSLAVIJE, *Croatian Helsinki Committee for Human Rights and the Croatian Law Center*, Zagreb, 1995, pp. 282-288).

Rony Blum, Gregory H. Stanton, Shira Sagi and Elihu D. Richter rightly claim that “ethnic cleansing” **“bleaches the atrocities of genocide”**, from which they derive and define the title of their paper from 2007 (R. Blum, G. Stanton, Sh. Sagi and E. Richter, ‘ETHNIC CLEANSING’ BLEACHES THE ATROCITIES OF GENOCIDE, *European Journal of Public Health*, Oxford 2007). The numbers of victims of genocide in the last fifteen years, at the turn of the century “(Bosnia 1991-1995, 200 thousand; Kosovo, 1998-1999, 10 to 20 thousand; Rwanda, 1994, 800 thousand; Darfur, 2003-2006, more than 400 thousand)” - demonstrate that the use of the term **“ethnic cleansing” “stands in no relation to the number of victims, or to the intent of the crime, but does represent the lack of will to prevent genocide, leading to significantly higher victim counts and the avoidance of the international legal obligations to recognize genocide”** (Ibid, pp. 1-6).

According to Blum, Stanton, Sagi and Richter, “ethnic cleansing” is a euphemism **“first used by the perpetrators, and later by bystanders, to describe individual and mass killings, arbitrary extra-judicial executions, mass rapes, starvation, destruction of residences and religious institutions and expulsions”**. (Ibid)

Slobodan Milošević, who died while being tried for crimes against humanity at the ICTY in The Hague, was **“the first politician to use the term in April 1987 to characterize Kosovo Albanian commanders’ violence towards Serbs”**. Stating that the **“United Nations referred to the ‘new term’ of ‘ethnic cleansing’ for the first time in 1993, and later in seven subsequent Security Council resolutions”**, the authors mention: **“(…)ironic that the UN itself adopted a euphemism invented by Milošević, an accused perpetrator of genocide, despite its never having been formally defined or recognized as a term with specific legal status and mandated obligations”** (Ibid). In that way, **“the criminals’ disturbed ideas become those of our own”** (Ibid), as the authors claim.

The use of the term genocide has, according to the authors, **“from 1994 onward, until the massacre in Srebrenica, until NATO bombardment and the Dayton peace agreement halted genocide”**, **“largely outnumbered the use of term ‘ethnic cleansing’, but it happened only after at least three years passed and the majority of the 200 thousand dead in Bosnia had already been killed”**.

The prominent genocide legal scholar William Schabas asserted that ‘ethnic cleansing’ **“can never be genocide, because the intent of ‘ethnic cleansing’ is to drive out a population, whereas the specific intent of genocide is to destroy it.”** (Ibid) Commenting this, Blum, Stanton, Sagi, and Richter rightly claim that W. Schabas **“ignores the fact that genocidal massacres often have both intentions; Genocidal massacres by them are to intentionally destroy a substantial part of an ethnic group and the specific**

claim themselves – **used** available and accessible sources which they took over by selecting them following their own criteria, these sources may have been able to provide them with data on the identity of victims, the time, place and method of commission of crimes. However, the sources used in no way present data on the causes of death, and they could not have been a reliable basis for the determination of the **causes of death**.

The authors have used information on **the method of commission** provided by available sources as the source of their conclusions on the cause of death. One cannot equalize the cause of death with the method of commission as these are equivalent, but not identical concepts. Let us illustrate the mentioned position with the following example: when town A was being shelled at time B, an individual, X.Y., was hit by shrapnel in the neck area, after which blood supply to the brain has been interrupted, which resulted in an instant death. In this example, the method of commission of the crime is a shell; or rather the crime was committed by shelling, whereas the cause of death is the interruption of blood supply into the brain.

In order to further clarify the presented attitudes, let us illustrate them with certain examples from the research results presented. The lists (taken over) of killed soldiers from the Ministry of Defense of the Federation of Bosnia and Herzegovina and the Ministry of Defense of Republika Srpska, as well as data by the Statistical Institute of the Federation of Bosnia and Herzegovina, do not give provide information about the cause of death. The authors do indeed point to the medical doctors as the relevant officials who can determine the causes of death,

intent suffices to prove genocide - and also has the intent to terrorize a population into flight or forced deportation” (Ibid).

The acclaimed Holocaust and genocide researcher, Prof. Dr. Israel Charny, claims that the concept of “ethnic cleansing” is one of (the nine) ways to prove the *intent* to commit genocide. Prof. Charny thereby compares cases, based on an analogy between the Nazi term “*Judenrein*“, used by the Nazis for territories “cleansed” (German, *rein - cleansed*) from the Jews, and the contemporary use of the term “ethnic cleansing”, primarily related to the crime of genocide in Bosnia and Herzegovina (I. Charny, GENOCIDE - THE CAPTIVATING LEMKIN WORD THE WORLD HAS LEARNED TO USE AS AN OVERARCHING GENERIC CONCEPT WITH DEFINED MULTIPLE SUBCATEGORIES, Hiroshima, 2004, pp. 1-79).

which needs to be supplemented by: as well as other persons authorized to determine death – meaning that medical institutions are the only relevant source for determination and establishing of the cause of death. However, they do not use medical institutions and hospitals as a source of data – if and whether these institutions keep such data in the first place. Furthermore, when having in mind the campaign to conquer Bosnia-Herzegovina, and in particular the never-ending systematic campaign of shelling civilians and civilian areas and objects using artillery and infantry weapons, which in many cases resulted in systematic killings, or in other cases where death was introduced as a direct or indirect result of aggression or genocide,⁸ when not even the medical institutions were

⁸ For example, by pursuing the prohibited siege form of warfare in **Sarajevo**, the Yugoslav People's Army/Army of Yugoslavia, and its collaborationists (Army of Republika Srpska and others), have carried out a coordinated, long-term, widespread and systematic campaign of shelling civilian areas, buildings and populations from artillery weapons, mortars and infantry armaments, **“bringing it into a state of severity reminiscent of the middle ages, and in perpetual fear of death”**. With shelling and sniper fire, thousands of civilians of both genders were killed, including persons of all ages – children and old people. Thus, the civilian population was terrorized, causing it bodily and mental harm, because of which a large part of the civilian population lived in fear, causing many to die.

By destroying utility and other infrastructure, by interrupting electricity supplies, by blocking public transportation and other communal services, the civilian population of Sarajevo was continuously tormented. The lack of the most basic necessities was evident, leading the population of Sarajevo into a fight for biological survival – thirst, hunger, lack of sleep, feeling of insecurity and lack of perspectives, lack of basic medication, medical treatment, etc.

The civilian population was deliberately targeted when dealing with existential affairs or while located in civilian sites. The attacks were of such nature that they involved the deliberate shooting of civilians with firearms for direct action. Civilians were shot at funerals, in ambulances, hospitals, trams and busses, while driving cars or riding bicycles, at home, while gardening, while queuing for water, bread and firewood, and in other tasks. Even children in schools or playgrounds were targeted (ICTY, the Prosecutor vs. Stanislav Galić, Judgment and Opinion, The Hague, December 5, 2003).

Civilian objects were often **“targeted or under siege”**, which, according to Tadeusz Mazowiecki, represents *a violation of international humanitarian law*:

“103. Hospitals in towns such as Goražde, Srebrenica and Sarajevo, which have suffered for months under siege, are reported to be under constant shelling and artillery and rocket fire. A team of European Community monitors who visited Gorazde on 20 January 1993 has reported that there are about 70,000 people living there, of whom about 35,000 are displaced persons. The town has

able to register and state the cause of death in each individual case.

The cause of death is not included in any of the other sources used by the authors, which is a fact well known to Dr. E. Tabeau. The Access Database of the “Bakije” burial society, compiled by the ICTY Prosecutor’s Office, does not include information on the cause of death (or the place of commission of crime).⁹ Empirical research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo on the victims of the siege of Sarajevo, from mid-1994¹⁰, which has been used by the authors, lists identification data, the date and place of the murder, injury or disappearance alongside the **method of commission**¹¹ *en lieu* of the cause of death. The “Casualty Declaration” of the Association “MAG” (Muslims against Genocide

had no electricity or water since May 1992 and many people live in cellars or in the remains of burnt houses. Telephone lines are cut and all roads are closed. The only communications possible are through amateur radio operators. The use of the “Red Cross” symbol is now widely regarded by medical and aid workers as a disadvantage as it seems to attract attacks instead of helping to protect these humanitarian and medical activities

104. A medical doctor from Sarajevo has emphasized that 15 per cent of the wounded he treats are children. Furthermore, his testimony describes the absurd situation whereby those in the hospital, who have already been injured by shooting and shelling are shot at and shelled again. He refers to this as ‘the wounding of the wounded’.” (UNITED NATIONS COMMISSION ON HUMAN RIGHTS, SITUATION OF HUMAN RIGHTS THE TERRITORY OF FORMER YUGOSLAVIA, *Report on the situation of human rights in the territory of former Yugoslavia by Mr. Tadeusz Mazowiecki*, E/CN 4/1993/50, February 10, 1993)

⁹ ICTY, *The Prosecutor vs. Stanislav Galić, E. Tabeau, M. Zoltkowski and J. Bijak, Human Losses during the ‘Siege’ of Sarajevo, from September 10, 1992, through August 10, 1994*, Case investigation report for the case against STANISLAV GALIĆ, IT-98-29-I), The Hague, May 10, 2002.

¹⁰ *List of Households on the Free Territories of the City of Sarajevo in 1994 (Popis porodičnih domaćinstava na slobodnim područjima grada Sarajeva u 1994. godini)*, Institute for the Research of Crimes Against Humanity and International Law of the Sarajevo University, Sarajevo, 1994.

¹¹ ICTY, *The Prosecutor vs. Stanislav Galić, E. Tabeau, M. Zoltkowski and J. Bijak, Human Losses during the ‘Siege’ of Sarajevo, from September 10, 1992, through August 10, 1994*, Case investigation report for the case against STANISLAV GALIĆ, IT-98-29-I), The Hague, May 10, 2002.

Association) lists “direct cause of death” as one of the questions on the appropriate forms.¹² This box, however, mostly remained empty.

When speaking of the causes of death, the authors begin with the statement that “the awareness of the existence of various classifications of causes of death is of the key importance to the perception of the size and causes of mortality in Bosnia-Herzegovina from 1992 to 1995” and, with this in mind, create a dichotomy which distinguishes “**regular causes of death**” from “**extraordinary deaths**”. Speaking about it, they explain both categories.¹³ Having in mind the massive scope, content, continuity and intensity of crimes in Bosnia-Herzegovina,¹⁴ including

¹² Ibid. E. Tabeau, M. Zoltkowski and J. Bijak claim that MAG had collected data on the causes of death too. However, this is not correct, as we can see from looking into its data collection form – under “Immediate cause of death”

¹³ Ibid, p. 191, “Regular causes of death” are in the authors’ opinion, “usual medical categories of mortality due to illness, ageing, or accident”. “Extraordinary deaths”, include those deaths which are of “exclusively related nature (...) of exclusively conflict – related causes”), particularly extraordinary deaths of civilians **due to war operations or harsh living and working conditions during the war**”. (Ibid, p. 191, italics as in original)

¹⁴ In Sarajevo under siege, for example, apart from continuous systematic shelling of the civilian population, civilian areas, and objects, “**every day civilians are facing a dire shortage of food, water, gas, and electricity, which is aggravated by the constant sense of threat pervading the city. The whole fabric of ordinary life has been destroyed by the siege**” (NATIONS UNIES, SITUATION DES DROITS DE L’HOMME DANS LE TERRITOIRE DE L’EX YOUGOSLAVIE, *Troisième Rapport Periodique* ..., E/CN. 4/1994/6, August 26, 1993, Par. 2). The civilian population in Sarajevo, particularly the wounded, sick and immobile persons, as well as pregnant women and children were victims both to “**direct attacks as well as the shortages caused by hostilities**” (Ibid, Para. 24).

In harsh conditions of the siege of Sarajevo, and other towns in the Republic of Bosnia and Herzegovina, as well as during attacks (by heavy artillery and sniper fire) against civilians in towns including Maglaj, Zavidovići, Travnik, Tešanj, Žepče, Visoko, Vareš, Zenica, Gradačac, Tuzla, Srebrenica, Žepa, Goražde, Kladanj, Olovo, Bihać, and Mostar (“**starvation of the civilian population, and deliberate killing and injuring of individual civilians; temporary or permanent interruption of electricity, water and gas supply; preventing the supply of food and of the provision of medical materials necessary for the survival of civilians; constant shelling of hospitals, and hostage situations involving civilians**”), the psychological and physical condition of the population has significantly deteriorated, thus increasing suffering and intensifying the pain (NATIONS UNIES, SITUATION DES DROITS DE L’HOMME DANS LE TERRITOIRE DE L’EX YOUGOSLAVIE, *Sixième rapport periodique*..., E/CN.4/1994/110,

the crime of causing and spreading fear among (spreading terror) civilian populations,¹⁵ the authors lose count of the important fact that, in such extraordinary conditions, only in a very few cases can we actually speak of “regular causes of death”, given that “extraordinary deaths” dominate the scheme.

February 21, 1994, Para. 5-79; Ibid, *Neuvième rapport periodique...*, A/49/641-S/1994/1252, November 4, 1994, Para. 146, 154, 166, 172, 186, 192, 199, and 205). The alarming disturbance in the psychological and physical condition of the population of Sarajevo has significantly worsened its overall health conditions, Thus, for example, the pre-war figure of 10,000 new-born babies has dropped to 2,000, and the percentage of innate infant anomalies has tripled. (NATIONS UNIES, SITUATION DES DROITS DE L'HOMME DANS LE TERRITOIRE DE L'EX YOUGOSLAVIE, *Rapport periodique...*, E/CN.4/1994/6, August 26, 1993, Par. 29).

¹⁵ FIRST ADDITIONAL PROTOCOL, Art. 51(2); SECOND ADDITIONAL PROTOCOL, Art. 13 (2).

Determining the responsibility of Stanislav Galić, the Commander of the Sarajevo-Romanija Corps of the Army of Republika Srpska, that is, of the Army of Yugoslavia, for shelling and sniper fire against civilians in Sarajevo under siege, the ICTY had developed elements of crimes in “**acts of violence and threats thereof, whose predominant aim was to spread fear among the civilian population**”, or rather, “**of the crime of terrorizing the civilian population as a violation of the laws and customs of war**”, on which no Judgment had ever been passed before, nor had another court provided a similar opinion. **The crime of terrorizing civilians** is limited to the attempt of terrorization of civilians during armed conflict (ICTY, PROSECUTOR VS. STANISLAV GALIĆ, JUDGMENT AND OPINION, The Hague, December 5, 2003; ICTY, *Statement by the ICTY President Fausto Pocar*, Den Haag, October 31, 2007).

The Serb shelling and sniper campaign against civilians in Sarajevo had, among its aims “**to terrorize the civilian population of the city, ... the aim of the attack was to terrorize the civilians..., cause terror..., lead psychological warfare against the civilians..., that they were ‘truly terrorized and in war’ ..., terrorizing the civilian population and causing it to suffer...**” (ICTY, PROSECUTOR VS STANISLAV GALIĆ, JUDGMENT AND OPINION, The Hague, December 5, 2003, Para. 65-66, 74-75, 121, 595 and other). By terrorizing civilians, shelling, and sniper campaign, whereby the main targets of the terrorization, among others, were women and children, the “psychological pressure was pursued against the civilians in the city” (Ibid).

In the Galić case, the ICTY Appeals Chamber has, inter alia, confirmed its jurisdiction over the “**crime of terrorization**” and pointed to the character of the prohibition of causing fear among civilian population (ibid), which can be found in Art. 51(2) of the **First Additional Protocol** as well as Article 13(2) of the **Second Additional Protocol** (“**The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.**”)

The authors pay special attention to the causes and conditions of death. Starting from this assumption and the classification presented earlier, which distinguishes normal and extraordinary causes of death, they have collected data, underlining the collection of data on the extraordinary causes of deaths. They do point out that this is a “very restrictive”¹⁶ approach. Unfortunately, such an approach is not restrictive merely in the perspective of collecting data on the causes of death, but is primarily restrictive in terms of the sources used and their questionable reliability, which is of key importance to the determination of the overall number of victims. The mentioned drawback has been pointed out by the authors themselves in the following statement: “this approach to research is more restrictive than in the usual statistical and academic practice and results in quite conservative assessments”.¹⁷ Such an approach to research, in the authors’ own admission, does not have the quality of “usual statistical and academic work”.¹⁸

E. Tabeau and J. Bijak present the following classification of “death categories”, that is, the forms of crimes:

- “a) Regular deaths caused by disease, old age, or war-unrelated accidents;**
- b) Deaths (of mainly civilians) due to severe living conditions during war;**
- c) Deaths of civilians due to war;**
- d) Deaths of soldiers/other military personnel due to war;**¹⁹
- e) Missing persons (both civilians and soldiers)”.**²⁰

¹⁶ E. Tabeau – J. Bijak, p. 190

¹⁷ Ibid, p. 191.

¹⁸ Ibid.

¹⁹ Ibid, p. 191. That category, according to the authors, comprises “members of the army, police and other forces of the Ministry of Defense and military support personnel. Members of paramilitary formations have usually not been registered as part of the official reports on combatants, but rather as civilians”. (Ibid, p. 212).

²⁰ Ibid.

Bearing in mind the presented classification, the authors distinguish five “death categories”. The formulation of the given categories has led them to use a combined approach where, by combining the causes of death and the status of victims, they form the mentioned “categories”. Although the text’s authors refer to international humanitarian law,²¹ they have not harmonized their own classification of “categories of death” with the relevant provisions of international humanitarian law, which deals with *forms of crimes* and not, as the authors claim, of “*death categories*”. Furthermore, it is the surprising fact that the authors do not distinguish the categories of victims from the forms of crimes, which is of a particular relevance, because, without elementary knowledge about it, one cannot discuss the definition of a concept based on which categories are established and later incorporated in the foundation of the research instruments.

As already mentioned, the dogmatism of international humanitarian law does not know “**soldiers**” as a category. Rather than using **soldier**, only the use of the term **combatant** is covered by international humanitarian law, which we have explained when dealing with scientific and theoretic postulates and scientific methodology approach in assessing the victims of genocide (pp. 15-78). The authors are however familiar with the concept of “combatant”, which they mention in the text of the analysis only occasionally and by the way. The most frequent terms used by them are **soldier, military personnel, military status of victims, military deaths and military victims**. *Ipsa facto*, they recognize victims as **civilians and soldiers** (rather than **civilians and combatants**).²²

²¹ Ibid, p. 190.

²² Ibid, pp. 191-209. It is surprising fact that the authors misinterpreted certain data from certain sources, for reasons known merely to them. The instruments of empirical research from the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, from mid-1994 (“*Popis porodičnih domaćinstava na slobodnim područjima grada Sarajeva u 1994. godini*”), define the status of victims correctly using a double marker: that of CIVILIANS, and that of COMBATANTS. However, E. Tabeau, M. Zoltkowski and J. Bijak, in their Report on “**Human Losses During the ‘Siege’ of Sarajevo from September 10, 1992 to August 10, 1994**” prepared for the ICTY in the Galić case (IT-98-29-I) of May 10, 2002 (ICTY, PROSECUTOR VS STANISLAV GALIĆ, E. Tabeau, M. Zoltkowski, J. Bijak, *Human Losses During*

Thus they **failed to create a valid theoretical and logical definition of concepts**, whereby they did not start either from the analysis of realities in society, or the theoretical analysis of the existing scientific corpus, but rather they used terms which have homonymous character leading to **evident confusion and the impossibility of the creation of a valid classification**, where its classification elements could not be discovered and identified in social reality. Namely, in the simplest of terms, speaking of the status of victims, the authors have involved two essentially distinct phenomena, **civilians and combatants** when defining the concept of **soldier**, which points to the status. To avoid any confusion, they have also, separately, used the term **civilian**, which is correct. However, while defining the term soldier, they included, as previously mentioned, both realities – both civilian and a soldier and they presented it under the concept of soldier, making thus an essential and conceptual error that contributes the distorted research results that deal the segment of the victims' status. In this way, determining the status of the victims, the authors have included hundreds and thousands of civilians under the concept of soldier, **yet who were not killed in military operations.**

the 'Siege' of Sarajevo from September 10, 1992 to August 10, 1994, Stanislav Galić Case Research Report (IT-98-29-I) The Hague, May 10, 2002), largely use the abovementioned research of the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, and differentiate two concepts CIVILIAN and SOLDIER. In that way, contrary to their "principal source" as they referred to the Institute's research, they mistakingly introduced the term SOLDIER, which does not correspond with the state of facts and made a cardinal mistake.

E. Tabeau, M. Zoltkowski and J. Bijak have in the same way used the term DECEASED. Namely, the term which is supposed to stand for one category of victims according to the Institute empirical research, was suddenly expanded to include "DECEASED OF NATURAL DEATH CAUSES" (ICTY, PROSECUTOR VS STANISLAV GALIĆ, E. Tabeau, M. Zoltkowski, J. Bijak, *Human Losses During the 'Siege' of Sarajevo from September 10, 1992 to August 10, 1994*, Stanislav Galić Case Research Report, IT-98-29-I, The Hague, May 10, 2002). However, the authors forget or overlook the important fact that, in the occupied territories of Bosnia and Herzegovina and the cities under siege, which were exposed to a coordinated, long-term, widespread and systematic campaign of shelling civilians, which led to the murder and injury of many civilians and where, among other things, there were no conditions, not even for existential survival (water, food, gas, medicine and other), one can only speak of an indeed insignificantly small number of persons who died of natural death causes.

From the perspective of international humanitarian law, once again, the described situation clearly identifies them as civilians.

Although the authors claim that the number of victims, using the criterion of the victim status, is higher in civilians (55,261 or 54%) than in soldiers (47,360 or 46%)²³, unfortunately, **the overall number of killed “soldiers” includes a significant portion of civilians.** This is the result of a systemic mistake whose basis is in the adoption of lists created by certain social subjects in Bosnia-Herzegovina.

By pointing to the mentioned classification of “death categories”, the authors stress that the estimate of war-related deaths “must concentrate on civilian victims, whose death (or disappearance) can be directly related to war operations (categories b, c, and the civilian component of e)”. However, their classification of “death categories” dwindles from five to three, and then two “categories” (c and d), thus excluding “categories” of “normal deaths caused by illness, ageing or accidents not related to war (a)”, “deaths of (mostly) civilians due to harsh living conditions during the war (b)” and “missing persons (civilians and soldiers) (e)”.²⁴ Such an approach represents an **essential, radical reduction** in the attempt to reach objective data on the overall number of victims, where they seem to have “forgotten” or completely ignored the fact that one of the more important mass forms of crimes against humanity is the *forced disappearance of persons*.

The significant reduction of victims, or forms of crimes against humanity and international law, and their reduction from five to two by the authors, comes, on the one hand, from the lack of accordance of the author’s postulates with the provisions of international humanitarian law and, on the other, from the sources which they have uncritically taken over from various subjects and used to present their estimates on the overall number of victims.

It is beyond doubt that these results are partial and incomplete, and that they cannot be justified, not even by using academic wording

²³ Ibid, pp. 207 and 209.

²⁴ Ibid, pp. 191-192.

such as **minimum number of victims**, or claiming these are estimates better than others, work in progress, with still incomplete data.

By focusing their attention on two status categories of victims (“**deaths of civilians due to war**” and “**deaths of militaries due to war**”), the authors have demonstrated their intent to simply gather, without critical review, data given by others, or rather only to include **victims killed in a direct way**, completely excluding victims of **crimes killed in an indirect way**.

Although the authors claim that the methods of commission of crimes, the direct and indirect one, are war-related, they have, as we have pointed out, only researched direct casualties. Their estimate on the total number of victims (102,622) comprises “**the entirety of war-related deaths**”, meaning all victims killed in a direct or indirect way. Acknowledging the fact that the authors considered that the overall number of victims can only be established if they are provided with full data on direct and indirect executions, and having in mind that the other component is completely missing, this clearly and beyond doubt confirms our position that the estimated number of “war-related deaths” in Bosnia-Herzegovina, 1992-1995, is indeed incomplete.

Our sincere objection to the authors relates to their estimate of the minimum number of victims, or rather, “the number of war-related deaths”, which includes victims of crimes “**in a direct or indirect way**”. It is beyond doubt that the mentioned overall number includes only partially registered victims murdered in a direct way, certainly “war-related”, but not those killed in an indirect way. Here are our arguments:

- First, the classification created by the authors has been unduly and incompletely implemented in their own research;
- Second, their classification has not been based in provisions of the international humanitarian law relative to protection of victims of armed conflict, although, aware of this fact, they did state that the provisions of that law must be respected;
- Third, the data sources and the secondary analysis of data from the sources could only provide data – almost exclusively – on

direct “war-related deaths” or caused by the aggression against the Republic of Bosnia and Herzegovina;

- Fourth, in order to ascertain the real count of victims of grave breaches of international humanitarian law, directly or indirectly related to armed conflict, a proper, empiric research based on a valid scientific research project is necessary.

*

* *

E. Tabeau and J. Bijak have **adopted** and used data from the following sources:

1. “military records of fallen soldiers” from the Army of the Republic of Bosnia and Herzegovina, taken from the Ministry of Defense of the Federation of Bosnia and Herzegovina – 28,027 (“*all war-related*”)
2. “military records of fallen soldiers” from the Army of Republika Srpska, taken from the Ministry of Defense of Republika Srpska – 14,237 (“*all war-related*”)
3. “military records of fallen soldiers” from the Croat Defense Council, taken from the Ministry of Defense of the Federation of Bosnia and Herzegovina – 6,689 (“*all war-related*”)
4. Missing persons in Bosnia-Herzegovina 1992-1995, list compiled by the International Committee of the Red Cross and the American NGO “Physicians for Human Rights” – 20,621 (“*all war-related*”)
5. Mortality database from the Federal Institute for Statistics in Sarajevo – 74,402, of which 25,103 “*war-related*”

6. Research results from the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo – 12,860 (of which 7,879 “*war-related*”)
7. Database of the “MAG” Association (Sarajevo) – 34,378 (“*all war-related*”)
8. Burial lists from the “Bakije” Burial Association (Sarajevo) – 12,866 (of which 5,449 “*war-related*”)
9. Reports on identified persons exhumed in the area of Bosanska Krajina – 2,705 (“*all war-related*”)
10. Book of the Missing persons in the Prijedor Municipality – 3,146 (“*all war-related*”).²⁵

Based on the mentioned sources, the authors have created “**a list of individuals whose death happened in Bosnia-Herzegovina from April 1992 to December 1995, and they were all war-related, in a direct or indirect way.**”²⁶ This list “**served as a basis for calculating statistics, such as the overall number of war-related deaths in Bosnia, or the number of civilian or military victims**”, or rather, it has allowed them to calculate the **minimum number of confirmed death cases**, presenting an estimate of “**the number of war-related deaths in the war in Bosnia and Herzegovina**” as equaling **102,622 persons**, of which 55,261 (54%) are “**civilians who died as a result of war**”, and 47,360 (46%) are “**military victims**”.²⁷

The mentioned overall minimum number of victims was calculated when, on the basis of **ten adopted lists**, the authors had created a single list of victims. Using **methodic comparison**, they have **eliminated** all individual cases that, to them, appeared to be duplicates.²⁸ However, with this in mind, we must stress the following:

²⁵ Ibid, pp. 198-215. The authors claim that their estimate is “more accurate than any other presented thus far”, whereas they also advise that it is not complete, because all the war-related deaths have not yet been included in it (pp. 209-210).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

- First, these are the **secondary sources** of data, which have questionable accuracy on the data of the murdered individuals (victims – civilians and “soldiers”), particularly in terms of their status. Furthermore, most such sources do not allow a precise determination of the cause of death, category of victim, and status of victim;
- Second, the authors of the text (analytical review) should bear in mind that analytics is a field of science where methods of scientific knowledge and research are applied in finding the scientific truths, and that this can in no way be equaled to a simple comparison of names from adopted lists, whose accuracy had never been verified, and the creation of a single list that would point out a probably approximately correct number of “war-related” victims;
- Third, the authors did not prepare, organize or implement their own empiric research that would help them reach data on the overall number of victims in Bosnia-Herzegovina 1992-1995;
- Fourth, what is the basis for the authors to believe into the relatively high accuracy of the sources, which they continue to formulate as: “The reliability of the sources is fairly satisfactory, although it is not comparable with that of regular statistical sources.”²⁹ The used sources, particularly the adopted lists of “killed soldiers”, are neither completely reliable nor reliable, and they do not allow for permissible conclusions on, e.g., the status of victims;
- Fifth, generally, in the largest number of cases, the main cause of death is war – in the broadest sense of the word. However, it is impossible to determine the cause of death based on the sources, used by the authors. The question is therefore rightly asked: what claim can be made as to the **integrity** of the (adopted) lists and the claim that all these deaths are war-related? Furthermore: why the authors, in their “assessment of war-related deaths”, did not include data on all victims of all forms of crimes related to the

²⁹ Ibid, p. 198.

international armed conflict in Bosnia-Herzegovina, in particular, victims that were result of a deliberate imposition of harsh living conditions calculated to bring about physical destruction, which is one of the elements of genocide? Even more so, as they claim to have made a list of persons whose all “deaths, in a direct or indirect way, were war-related”. In the logical continuation, one may rightly pose the following questions: how was it possible to determine, on the basis of the mentioned (adopted) sources and the minimum number of 102,622 persons, that among them there were 55,261 (54%) civilians and 47,360 (46%) soldiers?³⁰

- Sixth, the authors have not devoted any attention whatsoever to the **wounded** (civilians and combatants), which was one of the most usual forms of crimes committed involving serious (bodily) injuries, which also represents the second element of genocide – right after killing members of the group. The same happens to individuals, victims of severe mental (psychical) harm;
- Seventh, on the basis of the database of the Federation of Bosnia and Herzegovina Institute for Statistics (Sarajevo), related to the territory of the Federation of Bosnia-Herzegovina, it has not been possible to determine that, of the 74,402 registered death cases, only 25,103 were “war-related”.³¹ This assessment is completely opposed to the author’s conclusions on the lists of the Army of the Republic of Bosnia and Herzegovina, of the Army of Republika Srpska, of the Croat Defense Council and of the International Committee of the Red Cross and others, where it is claimed that “all deaths are war-related”;³²
- Eighth, **the sources present predominantly incomplete data:** of the overall number of used sources (10), three have been taken over from military formations within Bosnia-Herzegovina, two present data on victims in Sarajevo under siege (Institute for the Research of Crimes against Humanity and International Law,

³⁰ Ibid, pp. 197 and 206-207.

³¹ Ibid, pp. 199-200.

³² Ibid.

and the “Bakije” burial society), one source is an association of citizens (MAG), one is an international organization (ICRC), and the remaining two are incomplete data on identified bodies from exhumations in an area in Bosanska Krajina and a book on the deaths in the area of one municipality (Priedor). The incompleteness of the data may be interpreted in two ways: not all exhaustible sources were used, and the other is incomplete data and reliability of data offered in the sources used.

- Ninth, the authors have excluded a total of 1,923 persons from the overall estimate and analysis of war-related deaths in Bosnia-Herzegovina as these persons, according to them, “did not provide the evidence which was consistent enough, because their names were found on electoral lists and on lists of persons whose death was a result of war activity”.³³ The authors oversee here the fact that, in certain parts of Bosnia and Herzegovina, and particularly those areas where Bosniacs had lived and where the intensity of genocidal acts was highest, there are cases where many people have the same first and last names, even parents’ names. Having this in mind, there are indications that individual persons have been excluded with no valid reason whatsoever, which contributes the reduction of the overall number of victims.

The authors of the text mention **the principles of methods** used in the evaluation of the number of war-related deaths, yet without full complementarities of the mentioned principles which are at the basis of criterion based on which we could estimate, with a high probability of accuracy, the total number of “war-related deaths”.³⁴ In analytic activity, one must – unavoidably – apply certain basic methods in analytics and synthesis, a fact not visible from the authors’ “analytical remarks”.

All of the above allows us to conclude that the authors of the text have used a method of comparison of existing lists and data from various social and state subjects, which have used various methodologies and methods in the gathering of data.

³³ Ibid, p. 203.

³⁴ Ibid, pp. 201-203.

From the analytical remarks of the authors' text, we are informed of the sources of data, on the method used (in particular, on the principles of the method), as well as on the basic concepts that they use in the text. However, contemporary methodology of scientific research, and the related analytics – as a specific kind of research activity, requires the knowledge of issues, such as: the sources of data and their features, definitions, classifications and their role in the process of research; the sampling and choice of samples; the knowledge of methods of scientific perception and research accepted as the instruments and procedure of scientific finding, and their conscious, responsible and creative use; the issue of data collection, processing and analysis, including control and evaluation processes during the process of designing the project; the collection of data and the final analysis, the issue of conclusions, positions and judgments presented as hypotheses and the presentation of arguments, choice, and evaluation of them; their use in proving theses and hypotheses; the composition and structure of the analytical review (report), scientific presentation, language and style of presentation; the use of illustrations; the presentation and deduction of conclusions and conclusive remarks, and others – these are just some of the issues of scientific methodology and of analytics, as a separate form of research activity, that go alongside the conceptualization of proper research, the creation of research projects of various types, and their preparation, organization and implementation.³⁵ For all of the above, we are surprised that experts as qualified and as recognized as E. Tabeau and J. Bijak ignored some of the issues we mentioned, and which we believe to be known to them. Having this in mind, and not disregarding the fact reflected in the presented correctness of the authors, the results of research could have appeared significantly different from the ones they reached, logically thus implying the question of their objectivity, neutrality, or the presence of certain forms of prejudice at the basis of their preference.

Apart from the concrete intent by the authors to provide answers to question as socially and scientifically important as the one on the overall

³⁵ In more detail and extensively, see: Dž. Termiz, *METODOLOGIJA DRUŠTVENIH NAUKA*, Sarajevo, 2003.

number of victims in Bosnia-Herzegovina, we cannot avoid four major, essential drawbacks, which are more than obvious:

- The first is the **disregard for norms and principles of science and scientific methodology in research of social realities** as, among other things, they did not conceptualize their research and create a research project based on which they could prepare, organize and implement their own scientific, empiric research, but rather created a physical synthesis from already available, secondary data sources;
- The second is in the context of the former, and relates to the **question of definitions of concepts – the categories of victims and their classification, the status of victims, the forms of crimes and the methods of their commission;**
- The third is **the significant reduction of the forms of crimes** which certainly does not contribute to the indepth, integrity and subtlety of accurate findings;
- The fourth is the fact that major drawbacks in applied definitions of factors and research subjects **do not allow for an objective, factual identification of realities in social practice**, which leads to the subjectivity of findings, and which is opposed to the postulates, standpoints, norms, principles, and procedures of science, methodology, and science and research methods. The most obvious illustration of this position is given in the following example: the overall number of “soldiers” or combatants, beyond any argument, includes a large number of civilians as well, thus creating the foundation for erroneous conclusions.

b) *Critical Remarks on the Estimates of the Association
“Research and Documentation Center”*

In more recent times, unfortunately, the phenomenon that certain organizations, associations and individuals, with no skills or experience in methodology or research whatsoever, present all sorts of various data on victims and their numbers, or rather, on the crimes against persons and objects protected by international humanitarian law in Bosnia-Herzegovina in 1991-1995, as well as on combatants, which opens us space for various manipulations and this represents forging of the recent history of Bosnia-Herzegovina. This involves even foreign countries – directly or via national “personnel”, which carry out, using various associations, “research” into the most sensitive and most complex social processes and problems in other countries, using various associations, without any consent or approval by the national authorities, intending to impose their views of the problem situation, including the number of genocide victims, to the Bosnian and international public. Thus, the question appears as legitimate whether the Bosnian researchers, for example, could study the relation of national governments towards immigrants, inter-ethnic or religious relations, or even genocide and other forms of crimes against humanity and international law, in Norway, Sweden, Switzerland, the United Kingdom or Turkey, and whether all this may happen without any problem, having in mind the issue being researched, its complexity, its subtlety, and possible consequences of the results of said research in ideology, society, policy and/or science. The reason for pointing this out is the fact that research results are not only used by science in the function of scientific development, but rather by extra-scientific sources, whereby they can significantly influence the social and political relations, situation and conditions in a certain country.

The problem does not lie in the fact that the true subject of research is genocide and other forms of crimes against humanity and international law, but rather that the “results” of such research can be used, actually or potentially, to prove theses such as that of a “civil war” or the reduction of the Bosnian genocide to “ethnic cleansing”. Starting from this point,

such research can be treated as research whose basis is the achievement of certain interests, where it serves as instrumental research. Therefore, one must – based on the criterion of the role and aims of research – distinguish research whose aim is the collection of scientific findings or scientific truths from research whose latent aim is the achievement of a certain (political) non-scientific interest, which possess qualities of manipulation. Such “*benevolent*” research ignores, among other things, the fundamental difference between *justice* after *genocide* and “*reconciliation*” in the aftermath of a “*conflict*”.

A certain number of “naïve intellectuals in the western, pro-Serb lobby”¹ in the West, and Bosnia’s immediate environment, have spoken of a “war”, a “civil war”, “parties in conflict”, “religious war”, “internal conflict of three sides”, “tribal and historical hatred between Yugoslav peoples” and “permanent ethnical and religious hatred”. Having in mind relevant documents of diverse provenience, we cannot but confirm that such “research” is in the most direct function of the argument(s) by which, above all, the intent is to avoid using the terms **aggression** and **genocide** to describe the events in Bosnia-Herzegovina and substitute them with **civil war** and “**ethnic cleansing**”. We rightly doubt and openly can state that this is directed, manipulative research, among which the research on the number of the “killed and missing” in Bosnia-Herzegovina 1991-1995, carried out by the Association “Research and Documentation Center” (Udruženje Istraživačko-dokumentacioni centar; hereinafter: IDC) from Sarajevo.

The IDC Association, lead by Mirsad Tokača, who has a degree in journalism, has been registered in 2004² by illegally appropriating

¹ B. Bruneteau, LE SIÈCLE DES GENOCIDES, Violences, massacres et processus genocidaires de l’Arménie an Rwanda, *Armand Colin*, Paris, 2004.

² The IDC association was registered into the Register of associations held by the Ministry of Justice of Bosnia and Herzegovina on April 19, 2004 under the nema of “Association “RESEARCH AND DOCUMENTATION CENTER”, its main aims and activities include the tracking, achievement, protection, development and affirming of **human rights** in Bosnia-Herzegovina (Bosna i Hercegovina, Ministarstvo Pravde, No. RU-151/04, Sarajevo, April 19, 2004, *DECREE on Registration in the Register of Associations*). However, the Decree does not provide explicit information on the activities of the mentioned association, whose aim is to research **grave breaches** of international

the whole archive and other property of the State Commission for the Collection of Facts on War Crimes.

The IDC took over the “project” titled “POPULATION LOSSES IN BOSNIA-HERZEGOVINA 1992-1995” from the State Commission, where it was “in an advanced stage, but was terminated for lack of finances”³. This “taking over” also included by then collected “**around**

humanitarian law, or rather, crimes against humanity and international law. What is known and apparent is that M. Tokača, former Secretary of the State Commission for the Collection of Data on War Crimes (hereinafter referred to as State Commission) is trying to formalize, for his own needs, the basis to carry out research on crimes against humanity and international law, for which he has neither the training nor the scientific experience, nor the legality of the State Commission, so as to achieve not only the content and essence but also the formal continuity of the Commission. As the association cannot deal with researching crimes against humanity and international law, as is apparent from the Founding Act, that attempt was made impossible by the Ministry of Justice of Bosnia and Herzegovina (“*Oslobođenje*”, February 11, 2006, *POGLED*, p. 5). Regardless of the multiple illegal basis, from its founding until today, the association has carried out activities contrary to the applicable normative and legal acts of Bosnia-Herzegovina, opening up doors for various forms of manipulations and wrong interpretation on the collection, processing and analysis of original empiric data on the grave breaches of international humanitarian law, including the crime of genocide. Given the sensitivity of the mentioned themes, particularly in a society such as Bosnia and Herzegovina, the authority, first and foremost, of scientific and judicial institutions must prevail and take over a key role in the process of research, to be able to present created and formed results of research to all the different segments of human society.

³ <http://www.idc.org.ba/projekti/gubicistanovnistva.html>, “GUBICI STANOVNIŠTVA 91-95”, January 17, 2006, pp 1-3. The State Commission was formed by the Presidency of the Republic of Bosnia and Herzegovina on April 28, 1992, and its first president was Stjepan Kljuić, then member of the Presidency of Bosnia and Herzegovina. Two departments were formed within it; one led by Prof. Dr. Zoran Pajić, and the other by Prof. Dr. Smail Čekić. The Commission had involved a number of affirmed and renowned lawyers and scientific workers, such as Ekrem Galijatović, Mladen Šutej, Zijo Hadžimuratović, Azra Smajović, then Dr. Zvonko Tomić, Dražen Petrović M.A., and so on. The Secretary of the Commission – i.e. the person in charge of technical and administrative affairs of the Commission – was Mirsad Tokača (“*Oslobođenje*”, February 11, 2006, *POGLED*, p. 5).

With the signing of the Dayton Peace Accord and due to, among other things, the lack of necessary finances for its work, the Commission had functioned in difficult conditions for a certain period of time, after which it ceased working. However, the Presidency of Bosnia and Herzegovina did not pass a decision on its closure, nor did it

75 thousand names of the killed and missing persons”, and the continuation was justified as being “cost-efficient, particularly in terms of costs related to the research methodology, development of the information system, staff training and other material and technical costs”.⁴ The continuation and completion of this “project”, started by the Commission – for which Mirsad Tokača demanded 605,394 Bosnian Convertible Marks as the “amount necessary to meet the Commission’s costs in the application of project” – was deemed to be of “extreme importance for the entirety of Bosnia and Herzegovina, as its full implementation would prevent all future random, false, malevolent, and thus dangerous manipulations with the number of wartime victims”.⁵

The IDC Association claims that it is implementing its research on the basis of a **project**.⁶ One can neither say nor accept the fact that this is a real project in question as an idea of discovering true findings on a certain question of a social reality. Starting from the definition of research and its classification, contemporary research methodology in social

take over the significant documentation which belongs to it. The members and experts of the Commission continued with their activities on other tasks and businesses, whereas Mirsad Tokača appropriated the documentation which belongs to the State, and brought it in the IDC, an association where he is the President.

The mentioned association continued collecting facts on crimes, which is in violation of its basic activity, for which the association had actually been formed - thus confirming the illegitimacy of its activities.

Mirsad Tokača, even once the Commission had stopped working, by registering the IDC Association, kept using the Commission's letterhead and seal, signing documents as the Commission Secretary. Therefore, abusing authority previously vested in him, he continued collecting data on “the killed and missing” from municipal associations of missing persons’ on behalf of the Commission (*Oslobođenje*, February 11, 2006, *POGLED*, p. 5).

⁴ Ibid.

⁵ Ibid. Having in mind that the State Commission had stopped working and that the IDC, as an Association, collected data on the “killed and missing” the question arises, among other things, as to how the IDC President still used the name of the Commission in the process of fundraising for that project, or rather, sought funds for the work of the Commission.

⁶ Ibid.

sciences distinguishes clearly between scientific, professional research and dilettante, amateur quasi-research, as well as research directed at gathering certain findings on a certain phenomenon in social reality, and those whose aim is the achievement of a certain interest, and then instrumental (action-based) and manipulative research. When speaking of the IDC's **research project**, we can most easily fit it into dilettante research, with participation from researchers with insufficient knowledge in methodology and research, which evidently demonstrates their lack of acquaintance with norms of theory and methodology in the conceptualization and design of the project, as well as the collection, processing, analysis and interpretation, and use of data. However, dilettante research may instigate serious researchers to set up theoretically valid forms of research starting exactly at the methodological and methodical faults and misses in the mentioned dilettante research.

By reviewing the IDC text titled **“POPULATION LOSSES IN BOSNIA-HERZEGOVINA 1992-1995”**, whose components include *“Victim Record Cards”* and *“Form filling instructions”*,⁷ one can easily grasp that the claim on dilettantism and dilettante research is fully grounded. Furthermore, one can say that this is simultaneously an interest-oriented and/or manipulative research, with the aim to use its results – publicly presented in the media – to influence the way the public in Bosnia and Herzegovina and the international community think and act.

We do not intend to discuss the content or procedural and conceptual norms at length here, or their role in development of a viable scientific research project, as contemporary works on scientific methodology⁸ provide insight into its role and function in the creation of research projects. For now, may it suffice to say that this is neither a serious project or research task, nor an idea sketch, let alone a true scientific, research project.

Although the IDC results have been presented in electronic and print media, and not independently presented or published in form of

⁷ www.idc.org.ba/fmail/karton_zrtve.html. Udruženje ISTRAŽIVAČKO-DOKUMENTACIONI CENTAR, Sarajevo, *Uputstvo za popunjavanje obrasca i Karton žrtve*

⁸ Further details: Dž. Termiz, *METODOLOGIJA DRUŠTVENIH NAUKA*, Sarajevo 2003.

a scientific oeuvre, in academic journals or the like, the sensitivity of the issue at issue and the implications which it provides demand serious scientific critique which can aid both the IDC and the “project” authors in a more serious approach to research which, due to the accented sensitivity and subtlety of the social and scientific problem, and its societal and scientific meaning; it must have the determinations and qualities of scientific argumentation.

The IDC has presented its research results in December 2005 and in June 2007. The “Victims Statistics 1991-1995” of the said association from 2005 lists 93,837 victims from Bosnia and Herzegovina, including 35,046 civilians and 54,507 soldiers (as well as 4,284 individuals of unknown status), of which 63,687 Bosniacs, 24,216 Serbs, 5,057 Croats and 877 others.⁹

From its initiation to the termination of its work, the State Commission on the collection of facts on war crimes collected data “on some 75,000 killed and missing persons”. Since its formation (April 19, 2004) thru mid-December 2005, or during the period of one year and eight months, the IDC collected data on 18,837 killed and missing persons. If the State Commission had collected 75,000 names, and the IDC collected 18,837, this doubtlessly indicates that the IDC had continued unlawfully the work of the State Commission, appropriated the 75,000 names of victims and presented the data on 93,837 names of killed and missing persons, presenting both as integral results of their own collection of empiric data.¹⁰ The IDC President, Mirsad Tokača, claimed that this

⁹ “*Oslobođenje*”, December 17, 2005, p. 3; “*Oslobođenje*”, *POGLED*, December 21, 2005, p. 4; “*Dnevni avaz*”, December 17, 2005, p. 12; “*DANI*”, December 23, 2005, pp. 13-15.

¹⁰ *Ibid.* The mentioned quantitative data demonstrate that the number of 93,000 includes “about 75000 killed and missing” from the State Commission. The presented qualitative and quantitative indicators confirm the claim on the abuse of the position of the Association President in relation to the unlawful appropriation of said data, and their presentation as fruits of their own work. This not only leaves IDC legal framework of activity, and deceives the national and international public, but also manipulates the funders through personal promotion, promotion of results through interviews in (electronic and print) media.

was the “**final phase of research**”, notwithstanding that “there may be changes” and, should there be any, “they will not be radical in nature”.¹¹

Smail Čekić reacted on the presentation of said data with a text titled MIRSAD TOKAČA’S “VICTIMS STATISTICS” IS NOT SCIENTIFICALLY RELEVANT, published on January 14th, 2006, by the *Oslobođenje* daily.¹²

Mirsad Tokača spoke of “elaborate” studies carried out on site, using “interviews and survey techniques”.¹³ First and foremost, he is not familiar with the contents, forms, and types of scientific research using methods of scientific research in certain phases of the research process, which provide scientific truths of a strictly defined phenomenon – or problem – being researched. The previous part of the text, speaking on contemporary methodology of scientific research, has presented insight into basic types of research, and this leaves us with an open guess as to what kind of research its author is referring to. Based on the aforementioned, it is clear that the research carried out cannot be claimed to be scientific research, not even professional research, which provide scientific or at least qualified findings, with the highest degree of reliability and scientific relevance. The research project cannot be downgraded to the research methods and techniques used in it. In the IDC case, these are represented by interviews and surveys. By mentioning the concepts and their imprecise notions in terminology (i.e. research, method, technique, interview, survey etc.), the concept system of methodology of research work does not leave us convinced of their acquaintance with the significance, let alone their utilization through the research process, beginning with the creation of the research project, going through its implementation, and ending with the creation of a report on the research and the presentation of appropriately achieved results with attachments.

¹¹ “*Oslobođenje*”, *POGLED*, December 21, 2005, p. 4. After the first critical remarks on such research by esteemed scientists, M. Tokača abandoned the position that research is in a “final phase”.

¹² S. Čekić, “STATISTIKA ŽRTAVA” MIRSADA TOKAČE NIJE NAUČNO RELEVANTNA, *Utvrđivanje ljudskih i materijalnih žrtava*, “*Oslobođenje*”, *POGLED*, January 14, 2006, pp. 8-9.

¹³ “*Oslobođenje*”, January 21, 2006, p. 6.

The data presented by the IDC President, from the viewpoint of the debate on the **source of data** and the **data collection methods**, demonstrate his lack of elementary knowledge on data sources, their role in the process of scientific inquiry, and critical perceptions of data, having in mind the diverse sources of data and their nonselective, non-systematic utilization. He speaks of the collection of “a series of other relevant information sources”,¹⁴ which demonstrates that he does not distinguish between the authenticity and reliability of sources and the authenticity of reliability of data itself. Not all the sources he lists are reliable enough, and they are particularly not complete and integral, but as partial they only allow for incomplete findings, which is a task that demands verification and confirmation. One must particularly bear in mind that this data stems from non-primary sources and that the conditions, criteria and validity evaluation of verification procedures must be defined, having their character in mind. The case in essence involves secondary, even tertiary sources of data, rather than data obtained by the IDC through application of their own research. Therefore, the basic form of data is that of **taken-over lists**, even burial site markings, and the engagement of Serb police officers in the process of collecting data related to the murdered Bosniacs.¹⁵

IDC’s lists mostly come from “**official institutions**”.¹⁶ This includes lists of killed soldiers (i.e. military data records on killed combatants) from the armed formations (the Army of the Republic of Bosnia and Herzegovina, the Army of Republika Srpska, and the Croat Defense Council) which any interested citizen may electronically obtain in the course of a single day and simply add them up to get some 58,000 names. These lists include hundreds, even thousands of persons who are civilians and have nothing to do with combatants, or soldiers in this case according to the IDC.

¹⁴ “*Oslobođenje*”, January 21, 2006, p. 6. This, according to him, includes “collected and microfilmed press and death announcements, hundreds of books and other publications, collected lists from various NGOs and victims’ associations, as well as collected military and civilian databases compiled by governmental and non-governmental organizations, etc.” (Ibid).

¹⁵ “*Oslobođenje*”, POGLED, December 21, 2005, p. 4; “*DANP*”, December 23, 2005, p. 14; “Žena-žrtva rata” Association, Sarajevo, June 3, 2004, Izjava by *Tifa Anđelija*.

¹⁶ “*DANP*”, December 23, 2005, p. 14.

The data on the number of “killed soldiers” from various armed formations in Bosnia-Herzegovina was adopted by the IDC from other social subjects and it simply compared and non-critically analyzed them to produce an essential material error, which falsifies social realities. Although M. Tokača knew – or, in his words, “had data” – on thousands of civilians who were registered as “soldiers”, he did not act in compliance with researchers’ ethics. Instead, his reaction demonstrates a lack of academic respect and academic manners: **“It is not up to me to categorize them. If the state says that these are military victims, then they are military victims.”**¹⁷ Even in a situation where he has information of the same victim from multiple sources and when two sources speak of the victim’s civilian status and only one – which Tokača claims to be “official” – lists the victim as a “soldier”, then this is a closed case: the victim is a “soldier”. With this in mind, he stated: **“I did not want to enter this debate, I did not even try to, it was up to me to find out the people who were killed, to clear this whole thing up.”**¹⁸ It is obvious that M. Tokača does not bother as to who is a civilian, and who a “military victim”, i.e. combatant, as ultimately all of them are victims – a point which we can agree on. However, we cannot agree on the explanation provided by Mr. Tokača as to the irrelevance of the status, which he demonstrates, classifying them according to his own criteria of *civilians* and *soldiers*. Any serious, conscious, lest to say educated researcher, should not allow himself to mechanically adopt data on the status of victims and represent it as absolutely truthful. In social research which occurs within the framework of social sciences, we can only speak of **relative truths**, stemming from the attributes of the subject of research, the time and space and, in relation with this, we can only speak of scientific explanations of theological and statistical nature which are, generally, demonstrated by formulations such as “probably are”, “results demonstrate”, etc., and not – as in natural sciences in which the subject of research is much more stable and where there are certain regularities and nomothetic laws, which are the basis of explanations of a higher degree of probability and reliability than in the case of social sciences.

¹⁷ Ibid.

¹⁸ Ibid.

In order to be able to compare the data collected from various sources, among other things, one must use both the same research subject and the same method, or methods, of research. What is certainly true is that the authors of certain results of identical or similar research have not always used the same method of scientific inquiry, meaning that even this fact makes it hard to compare methods in the broadest sense of the word that led them to this data. The only thing which possibly could be compared, and comparison and **the comparative method** in social research means the same as experiment in natural science, which in this case is the comparison of names, of data on victim identities, in this case of the killed and missing, provided their identity data is complete. Otherwise, the comparison of incomplete data cannot be authentic in determining the data on the victims' names.

M. Tokača's attempt to use the media to educate serious scientists, representing that the method at issue is one which apparently yields results and that this "is an issue which many don't understand – and comes down to the importance of whether a method yields results or, in the contrary case, the discussion of the 'scientific validity' of the methods becomes a way to divert the public's attention from the essence of the argument"¹⁹ – is an insolent attempt, having in mind that it comes from a quasi-researcher who demonstrates that he does not differentiate scientific subjects from scientific methods or constituent factors, and the interactive relation between the subjects and methods of science, all of which has necessarily reflected in a negative way onto the results of his research. We shall not talk now of issues in scientific methodology, such as a way, a way to get knowledge, a method of scientific knowledge, scientific methods, and research methods. Every researcher, within the research carried in whatever field they may be active, must know the object of science and method of science as a scientific discipline, starting by using the features of science, methods of research and the needs of inquiry relevant to his science. This is particularly true because this is a serious matter studied within history, as a science, and its scientific disciplines which research the past and present, and their results influence

¹⁹ "Oslobođenje", January 21, 2006, p. 6.

– once presented to the public – its conscience, opinion, behavior, judgment and activities within a social reality, its factors, features, links and relations in the past, present and future. If we bear in mind that history, in the broadest of meanings, is the teacher of life, and that researchers and scholars in history must apply all defined inquire and research methods seriously, in a strict procedure of scientific research, not focusing only on individual research techniques, then the IDC conclusion – which implies the need to explain to scientists what scientific method can represent and what are its key markers – lacks any sound basis. A conscious, responsible, and creative application of scientific methods in the process of research demands qualified research subjects, which includes their basic education in methodology and research experience as the assumptions of valid research methods and their responsible and critical application.

Starting from scientifically valid and experiential findings – and from the critical analysis of the mentioned IDC data by the author of this text published in the “*Oslobođenje*” daily – let us present here the essence of this review almost in its entirety.

“The research completed so far (by commissions, institutes, centers, various associations and others) demonstrates that the largest number of the killed/liquidated in the Republic of Bosnia and Herzegovina (whose total number has not yet been determined) were murdered at the beginning of the open aggression against the internationally recognized Republic of Bosnia and Herzegovina, mostly, **during the spring and summer of 1992**, when the Republic still did not possess any real – lest say adequate – armed forces and at the time when its territory was densely possessed by the mighty army of the Federal Republic of Yugoslavia (officially proclaimed on April 27, 1992). This was not a war in the contemporary sense of the word (a war usually understands a conflict between two or more sovereign states, primarily involving the members of their armed forces) implying a large number of military victims, but rather a war against the non-Serb population. Actually, this implies the most severe, most disgusting form of crime in the history of mankind – the crime of genocide – which, once again, had been committed in Europe, at the end of the 20th century, against the Bosniacs in this case.

As opposed to the perpetrators of genocide, who had support by a state, or states, because genocide is primarily a crime of the state, the targeted victims, the Bosniacs, were **helpless, unarmed, unprotected and unorganized**, and thus not able to carry out any form of organized armed combat, or use a force which, in fact, they did not even possess at the time. In essence, we are speaking of the implementation of a previously prepared plan which implied various operations necessary to annihilate the Bosniacs. Having this in mind, when speaking of the genocide against Bosniacs, as the targeted ethnic group for destruction i.e. of victims chosen only for belonging to a certain group, in the mentioned period and in the occupied territories, particularly in the Podrinje, Posavina and Potkozarje areas, as well as in the Sana and Una river valleys, we cannot speak of **military** victims. Thousands of Bosniac civilians have fallen victims to genocidal violence and acts on these territories (although genocidal actions and other forms of crime were also committed in other occupied territories), meaning that these were **civilian** and not **military victims**, as wrongly claimed by Mirsad Tokača, President of the Research and Documentation Center (IDC). Mirsad Tokača's published claims on a 'sensational' discovery, which solves 'the Gordy knot' at the base of the problem, which had led the 'victims to be somewhat scared', lack a sound basis and cannot be accepted. Particularly unfounded and unacceptable is the scandalous claim of an equal percentage of civilian and military victims from among the Bosniacs. In essence, this is a reduction of **civilian** and an exaggeration of the number of **military victims**, which indirectly corroborates the claim that there had been a civil war in Bosnia-Herzegovina, rather than an aggression against the country. This also impermissibly minimizes the scope of the genocide committed against the Bosniacs.

Knowing that this can in no way correspond to the facts, Mirsad Tokača "requalified" numerous **civilian military conscripts** who, were killed in genocidal acts for merely humane reasons, as to allow for the support of their families and who were **retroactively accorded the status of members of the Army of the Republic of Bosnia and Herzegovina** (just as had been done in all former Yugoslavias: DFJ/FNRJ/SFRJ), into military victims, thus drastically reducing the number of victims of genocide against the Bosniacs, which is an obvious **forgery of true facts**,

something even Tokača is well aware of. It is an insult to the numerous families of genocide victims as they, according to Tokača – **“that ordinary folk between survival and a lie on the wartime status”**, chose the lie. This is no lie. It is a fact that thousands of Bosniac military conscripts were murdered as civilians who have never taken up arms or belonged to any organized military formations. The retroactively accorded status cannot change this historic fact, nor does it have anything to do with their execution coming from a genocidal basis, which had been carried out before their status was determined.

Given that the key ‘statistical data’ on the equal percent of civilian and military victims from among the Bosniacs is obviously wrong and principally, materially unacceptable, even more so are Mirsad Tokača’s IDC overall “victims statistics”. The way in which the victims are described, limited only to the killed and dead, represents a very restricted horizon. Thus, the notion of a victim was unacceptably reduced only to the number of killed and murdered. Apart from that, Tokača completely ignores the overall (demographic) losses to the population in Bosnia-Herzegovina (which, according to him, do not exist), thus reducing the content of true, substantial losses in population, which is unacceptable. So far, all relevant World War II researchers took the overall population losses into account. This methodological postulate of research was obviously completely ignored by Tokača in the case of Bosnia-Herzegovina.

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The key mistake by Mirsad Tokača’s IDC is that its ‘statistical data’ are not **the result of its own research**, but rather of an uncritical acceptance of data from other sources for which he himself claims not to be reliable, in fact inaccurate, and then he separates them into one of the two of his own categories which, to say the least, lacks any note of seriousness. These two categories of Tokača’s are not demographic categories in the full sense of the word, but are rather closely defined

by the concept of ‘status’ (‘civilian status’ and ‘soldier status’), which does not define the victims in a clear, unconditional way. Mirsad Tokača’s category titled “status unknown” is, in fact, in opposition to the valid norms of international humanitarian law.

Statistically targeted and selected data from Mirsad Tokača’s IDC (we say ‘statistic data’, not research results), without any broader elaboration, cannot be accepted for various reasons – because they lack scientific relevance. Such research, amongst other things, must be precisely founded in terms of methodology and concepts and be well precised with clearly defined and exactly determined concepts in terms of terminology and categories. The manipulation with two concepts (**civilian** and **solder**) is misleading and insufficient in such research. It is historically unacceptable that a military conscript, a member of the armed forces, killed in his own home, be treated in the same way as one killed on the frontline. If we think in such a way, then it would seem as if all these military conscripts (or, in Tokača’s words, soldiers) were killed in fighting, which is a forgery of the truth. This does not only forge the truth on them and their true status at the moment of execution, but also the truth on the character of the war. Furthermore, the discussion on the so-called double names is also relevant: is it right to remove every double name and surname from the database? The experience of the Srebrenica Commission and Workgroup of the Republika Srpska Government, which have dealt with the same issue, is significant in those terms, as it has demonstrated that in our country there is a large number of persons with the same name and surname, even the same middle initial – i.e. the same patronymic initial. Also, the question of the method of verification and critical review of the collected data is also present; this is an obligation to every researcher when controlling and evaluating data.

Not even the IDC’s “statistic data” on the larger number of soldiers in relation to civilian victims (54,507:35,406, or 58.09:37.35%) can be accepted either, and its aim is probably to change the evaluation of the character of the war in the Republic of Bosnia and Herzegovina. With this in mind, Tokača stated that the “**number of civilians was always larger**” and that, “**particularly when speaking of Bosniac victims, more**

than 50% are civilians”. However, his schematically demonstrated ‘victims statistics’ (‘DANI’, No. 445, December 23, 2005; p. 15) denies his claim: the number of the killed soldiers from among Serbs and Croats is larger than the number of killed civilians (particularly in the case of the Serbs, 22,399 to 1,978), whereas the number of killed Bosniac civilians and soldiers is almost equal (30,514 to 30,173, or 32.50 to 32.15%).

It is not correct, as Mirsad Tokača claims, “...**that it all happened in 1992; that genocide actually happened back then**”. The genocide against the Bosniacs, in line with the Greater Serbian and Greater Croatian genocidal ideologies, policies and practices, had been carried out in continuity, with a higher or lesser degree of intensity, until the end of 1995, regardless of the number of murdered persons. The intent to exterminate the Bosniacs from all of the occupied territories was carried out during the whole war and since its very beginning. The perpetrators of the genocide believed that, *via facti*, they would be able to legalize genocide as a political practice. With this in mind, one must also acknowledge various other facts. In the summer of 1992, when global media released news on the existence of concentration camps (Omarska, Keraterm, Manjača, Luka Brčko, Bileća, Foča Penitentiary, Sušica, and many others), and when frightened Europe was set awash by an unseen wave of expelled refugees, the Greater Serbian aggressor, rather than concentrating on openly genocidal warfare, had switched the accent to other forms of crimes against humanity and international law. Under pressure from the global public, a number of camps were disbanded, while moving a part of the fertile population into other existing or newly formed camps, and its prisoners of war were – in good measure – exchanged with Bosniac civilians, using blackmail against the legitimate authorities of Bosnia and Herzegovina²⁰. Apart from that, all liberated people were forced to leave the territory of Bosnia and Herzegovina, which had further aided the completion of the Bosniac genocide. Given that the genocidal intent to exterminate the Bosniacs was clearly obvious back then, the London

²⁰ In stark contrast to the rules of international law, the Greater Serbian aggressor had continuously tried to exchange prisoners of war (Serbs) for civilians (Bosnian-Herzegovinian Muslims, i.e. Bosniacs). The Government of the Republic of Bosnia-Herzegovina has, by rule, denied such illegal exchanges, except in cases when the principle of the inherent protection of the right to life has prevailed.

conference proposed **the formation of safe areas for the population of Bosnia-Herzegovina threatened by genocide, protecting them in situ.** In the autumn of 1992, the Greater Serbian aggressor had concentrated onto the extermination of Bosniacs in the Podrinje area. With this aim, the Drina Corps was founded in 1992 which, with a contribution from the Yugoslav Army during the winter and spring offensives, liquidated three free enclaves (Cerska, Konjević Polje, and Kamenica) and was about to occupy Srebrenica on April 16. By a counter-attack in the Guber area, this attack was stopped and the United Nations Security Council passed its *Resolution 819*, which proclaimed Srebrenica as a United Nations safe area, thus terminating the offensive in which the population of the Podrinje enclaves had been cut in half once again – either murdered or forced into refuge. Instead of a retreat by the aggressor, the United Nations apparatus (the Secretariat and UNPROFOR), concealed the Resolution and enforced the demilitarization of the town of Srebrenica. The six safe areas of the United Nations did not provide for the security of the population within them, and they were, in the spirit of a letter by John Major on May 2, 1993, transformed into concentration camps, in which the population was forced to starve and spread away. The Croatian Army and its collaborationists had in continuity committed crimes against Bosniacs (until March 18, 1994), as well as partly against Serbs. In 1995, at the peak of the preparations for the termination of the aggression, in a senseless “murder operation”, mostly in the course of four days in July, the aggressor had carried out the intended and predefined patterned slaughter of 8,000 Bosniac civilians protected by international law in the UN Safe Area of Srebrenica, including more than 500 children. The armed formations of Fikret Abdić, which had been of service to the aggressor, committed numerous crimes against its own people. Even certain Bosniacs, in the process of defense from biologic and spiritual extermination, committed some war crimes.

Therefore, Mirsad Tokača’s IDC ‘victims’ statistics’ are neither truthful nor scientifically relevant. The method of his research is not adequate to the subject of research, the concepts are presented incompletely and without precision, terminologically the “statistical data” are not serious and are random which, among other things, leads the presented ‘results’ to being understood as pure improvisation and sensation.

Mirsad Tokača approaches the issue of victims in Bosnia and Herzegovina quite casually and one-sidedly. The issue of the overall reliability and the superficial interpretation not only dims the reality and scope of the genocide against the Bosniacs, but also obscures the depth of the overall demographic disaster, as – in terms of reproductive demography – Bosniacs, Croats and Serbs had all suffered. If all human victims and overall demographic losses were to dwindle to the data given to us by Tokača, which he turns into spectacle and self-promotion, Bosnia and Herzegovina could be at peace or could expect a peaceful revitalization of its reproductive capacities. Unfortunately, the demographic losses and human victims are in such scope and size that there are almost no possibilities for the population of this area to ever regain their full capacity.²¹

The public presentation of IDC data on the number and classification of killed and missing persons have led to reactions by, apart from Smail Čekić, respected professors at the University of Sarajevo (Ilijas Bošnjović²² and Nijaz Duraković²³), demonstrating the scientific irrelevance of the presented data, and the following researchers: Muhamed Mešić from the Vienna and Sarajevo Universities, John Craig from the Sussex University, and Alvin B. Marchaird from the Liverpool University, demonstrating the dangers of scientific amateurism and simplified processing of such key important data²⁴.

Unfortunately, some weeklies in Sarajevo have – without any justification – presented a row of insults against the dignity and work of Smail Čekić, Director of the Institute for Research of Crimes against

²¹ “*Oslobođenje*”, POGLED, January 14, 2006, pp. 8-9.

²² Ilijas Bošnjović, ŽRTVE RATA NE MOGU SE REDUCIRATI SAMO NA BROJ POGINULIH, “*Oslobođenje*”, POGLED, January 21, 2006, p. 7.

²³ Nijaz Duraković, „I ŠKORPIONI SU “FOTOGRAFIRALI”, *Sumnjiva statistika Mirsada Tokače*, “*Oslobođenje*”, POGLED, January 28, 2006, p. 2.

²⁴ Muhamed Mešić – John Craig - Alvin B. Marchaird, „ŽRTVE” GENOCIDA ILI DEMOGRAFSKOG AMATERIZMA, “*Oslobođenje*”, POGLED, July 8, 2006, p. 5. Authors of this text are Muhamed Mešić and Alvin Marchaird. John and Craig are the names also used by Mr. Marchaird.

Humanity and International Law and Professor at the Faculty of Political Science of the University of Sarajevo, and Professor Nijaz Duraković²⁵, without entering into analysis of the IDC's "results", its aims and interests, or the critical remarks by Smail Čekić, grounded in the axioms and postulates of science and the perspectives and approaches of scientific research.

The IDC has presented "its" research results on the eve of the beginning of the judicial proceedings in the Application by the Republic of Bosnia and Herzegovina against Serbia and Montenegro before the International Court of Justice in The Hague. Its data was used as an argument to dismiss the overall number of victims in Bosnia and Herzegovina by the Legal Team of Serbia and Montenegro, led by Prof. Dr. Radoslav Stojanović. The Legal Team of Serbia and Montenegro seemed to be particularly keen on the data supplied by the above mentioned association on the relation between civilian and "military" victims which had been used, among other things, to deny the thesis of genocide against the Bosniacs²⁶. During his testimony on behalf of the Serbia and Montenegro Legal Team at the ICJ, Jean-Paul Sardon himself had referred to the IDC estimates on March 24 2006. His critical analysis of the estimate of the number of victims in Bosnia and Herzegovina, with a special accent on the estimate by the Demographics Unit of the ICTY Office of the Prosecutor (Ewa Tabeau and Jakub Bijak) made him state that these two estimates are similar and that this similarity implies that "the

²⁵"DANF", January 20, 2006, p. 16; February 3, 2006, p. 16; "SLOBODNA BOSNA", January 19, 2006, p. 5; February 2, 2006, pp. 4-5.

²⁶ Nagorka Idrizović, GRAĐANSKI RAT NA MALA VRATA, *Prilozi za biografiju IDC, "Oslobođenje"*, February 11, 2006, *POGLED*, p. 5. The interviews and public claims by Mirsad Tokača on the 93,837 "killed and missing" in Bosnia and Herzegovina have been presented by the Legal Team of Serbia and Montenegro and presented to the International Court of Justice around the end of January 2006, with the aim of improving Serbia and Montenegro position at the Court. The Agent of Serbia and Montenegro, Professor Stojanović had considered data from Mirsad Tokača as relevant and final, particularly in relation to the ratio between "military" and civilian victims (Azhar Kalamujić, BROJ UBIJENIH NE MIJENJA DOKAZE O GENOCIDU, "Oslobođenje", February 10, 2006, p. 2, Sarajevo, 2006.; www.icj_cij.org/docket/index.php?p1=3ap2=3acode=bhyacase=91ak=f4).

number of victims between 1992 and 1995 is, after all, only half of the number of the often quoted number of 200,000 victims.”²⁷

The perception that the incomplete results by Ewa Tabeau and Jakub Bijak, on the one hand, and Mirsad Tokača’s soon after, on the other, are highly similar, implies to a high degree of probability that the “results” of research and the “research” itself by M. Tokača can only be understood, as we have said, as an interest-oriented, targeted, manipulative research. If we add the time of publication of results to this and the way they were used as arguments in court, our claim becomes ever more probable.

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On June 21, 2007, with significant involvement by certain media outlets, the IDC Association again presented the results of the “project” on “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”, according to which **97,207** citizens of Bosnia and Herzegovina were “killed or went missing” during the given period, including 39,684 civilians (40.82%) and 57,523 soldiers (59.18%).²⁸ This way, the number of the killed and missing got increased – from December 16, 2005, to June 21, 2007 – by 3,370 names of persons.

In comparison with the data by the State Commission on the Collection of Facts on War Crimes (75,000 names), which the IDC had

²⁷ www.icj-cij.org/docket/files/91/10685.pdf?PHPSESSID=bfc893d9f7cf101f58fc2b3612b65f3, TESTIMONY BY JEAN-PAUL SARDON before the International Court of Justice in The Hague, March 24, 2006. Professor Sardon had, among other things, stated that the research by E. Tabeau and J. Bijak, in terms of quality, stands out and represents the “most serious work” and that their estimate of 100,000 is “completely realistic”. (Ibid).

²⁸ “*Oslobođenje*” June 21, 2007, p. 2; June 23, 2007, p. 11; “*Dnevni avaz*”, June 22, 2007, p. 10; “*DANI*”, June 29, 2007, pp. 18-21.

adopted and falsely demonstrated as its own findings, or rather, if the 75,000 names of killed and missing persons are deducted from the total of 97,207, there is a total of **22,207** names of killed and missing persons collected by the IDC from April 19, 2004, to June 21, 2007. Therefore, the **22,207** names of killed and missing persons represent the data – the results of work which the IDC had reached in three years and two months of work by **adopting** data from other sources.²⁹

Starting from the social and scientific importance of the problem related to assessment of victims of, mostly, grave breaches of international humanitarian law, and to its scientific research, this is the opportunity for us to demonstrate various significant facts:

- First, it is true that until today, in Bosnia and Herzegovina, apart from research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, no proper and broad scientific and empirical research on the victims of grave breaches of international humanitarian law, or rather, on the issue of protected persons and objects under special protection by international law, had been carried out. All the research was reduced to indirect, induced research, at the basis of which we find various **lists** adopted from certain subjects, of which many possess questionable reliability and authenticity. None of them was carried out by professional research institutions which have their own academic personnel, conditions and resources for work, whereby their objective scientific approach based on the postulates of science and scientific methodology will be respected.

No other research, apart from the research by the Institute, not even the “research” by the IDC, respected the norms of methodology and methods in conceiving, projecting, gathering, processing and using data whereby we can notice various and varied theoretical, empirical, methodological and logical errors, meaning that they can only be used as an impulse for serious scientific inquiry, but cannot represent valid

²⁹ Thus the IDC, between April 19, 2004, and December 16, 2005, i.e. in twenty months, had collected 18,837 names, and from December 16 to June 21, 2007, i.e. in a year and six months, only 3,370 names of victims.

scientific research themselves. Having this in mind, they can rightfully be considered dilettante (amateur) research;

- Second, the research practice provides space for a situation in which the research project is reduced and dwindled to the research instruments, which is the highest degree of improvisation of the scientific fundament of the research. Let us remind: every serious scientific research demands the implementation of a procedure of conceptualization of scientific research, which is especially necessary in the cases of scientific and empirical research, in which case they need to provide valid bases for the creation of applicable research projects. With research seen as a scientific, operative document, it simultaneously articulates the synthesis of the existing scientific, theoretical, methodical and other findings on the phenomenon, problem, subject, situation, condition, etc. Through such a research project, and especially its scientific part, the problem of research is demonstrated – and from there derived the subject of research, determined the aims of research – scientific and social, derived the system of hypotheses and indicators, determined or proclaimed the methods of research, and – if research is not based on integral observation – its scientific and social justification presented. In the second part of the project, which we mark as operative, plans of research, plans of data processing, instruments and instructions on the researchers' work are given, or rather, instructions on the application of certain instruments in the process of data collection.³⁰

The mentioned “research” by the IDC is not conceived as scientific research, and does not provide any basis whatsoever for serious scientific analysis of its results, because it contains no clear methodological paradigm, as the starting point, as an approach for serious scientific research, and has not been implemented on the basis of a research project document which uses scientific language and scientific terminology which demands the highest degree of clarity, precision and clarity of concepts used therein. Any analysis on which a critique of research carried

³⁰ Theoretic and methodological positions on the process of social research are presented in detail in the following textbook: Dž. Termiz, METODOLOGIJA DRUŠTVENIH NAUKA, Sarajevo, 2003.

out would be based should have started from the same method used in this research, which here has no feature to mark it as scientific.

- Third, the social and research practice largely glorifies the power of statistical techniques and procedures, which plays its part in establishing a certain mysticism. Every quality has its quantity and it is well known that there is no quantity to nothingness. Every human being individually, and as part of the community and society, demonstrates certain qualities, features and characteristics which can be demonstrated, and are demonstrated in quantitative terms. What does, in the specific context of research, the term **soldier** imply, and what **civilian**? What are the **direct** and what the **indirect causes of death**? In the end, what, at all – as implied by the title of the “project” (“HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”) – do “**human losses**” mean when seen only through one category of victims?³¹ What does it mean, and is research at all possible, without defining the basic terms and depicting them in certain terms in the theoretic determination of the subject of research, based on which certain classifications have been created and systems thereof established, which are at the basis of creation for research instruments in the process of gathering data? The role and significance of definitions is well known in the process of scientific discovery. In science and research work, the whole process happens through the definition and redefinition of terms, whereupon the definition of terms is the initial form, but also the ultimate factor of the manifestation of scientific findings, and is in the function of creating a system of classification, with classification being the initial form of measurement;

- Fourth, every research project first establishes the research problem and from there, the **research subject**, which is bi-dimensional. The first dimension demonstrates a theoretic determination of the subject of research, and the operational dimension includes factors of the contents of the research subject, the time of research, the space of research, and the disciplinary determination of the subject of research. In this case, of the IDC, the theoretic determination of the research subject does not exist

³¹ Association “IDC” Sarajevo, Project Results Presentation “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”, Sarajevo, June 21, 2007.

at all, and the operational determination of the subject of research is incomplete, unclear, and not defined in precise enough terms.

The subject of research is determined by the use of **methods of scientific inquiry and scientific research**. In every research project, the part titled “method of research” necessarily lists all methods of scientific inquiry and research which must be used in individual stages and phases of research. The “research” by the IDC (“HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”), the methods of research were not stated, and their division into quantitative and qualitative methods from the perspective of contemporary scientific methodology is archaic, which is also case with the division of forms of research into theoretic and empiric. Every kind of research collects various data: factual data, empiric data, value-based data, qualitative data, quantitative data, previous data, trial data, operative-functional data, whereas the subject of research, hypotheses, variables and indicators direct us to the need of gathering certain data by the appropriate scientific methods, or data collection methods. Furthermore, in every research based on valid scientific research projects, various data is gathered, used, and implemented. If it is original, the research mostly relies on original data – **primary data**, sources of the first grade, whereas other data such as the data from the Statistics Institute which have the status of general data, is adapted to the purpose and intention of the concrete research, and other sources’ data (institutions, associations, and other), have the status of **secondary data** and can eventually be used in the process of control of data from the own research, if it is determined that they can be used as process points in data control, analysis and processing. Research based merely on the interactive comparison of represented data from secondary sources, which presents only statistical data with no theoretic grounds and explanations, leads us to the following conclusions: first, these represent diletantism, implying the lack of knowledge, understanding, superficiality, lack of seriousness and responsibility; second, from the ethical or moral point of view, it is impermissible that the victims of genocide and grave violations of international humanitarian law, be treated as numbers, which is confirmed by the fact that the report on the “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”, apart from figures, does not contain a single victim’s name.

In the framework of this text, we will not enter the discussion on the relation and contents of qualitative and quantitative data, qualitative and quantitative methods, or qualitative and quantitative methodology, nor qualitative and quantitative concepts. The discussion will not be opened for reasons of it demanding our immersion into problems of methodology and methods, which are at the core of contemporary scientific methodology, but we will just point to the difficulties of separating the quantitative from the qualitative markers in the process of social research and the depiction of their results. The overall social reality has been created by a natural and social reality, and its environment. The natural reality is at the basis of a social reality, and society, with its actions, influences the changes in natural reality. The social reality is created by social phenomena and other social processes which produce, create or involve various subjects of society with their actions, activities, behavior, etc. Subjects of society may be represented as individuals, social groups, organizations, communities, etc. As individuals and members of various social groups, they possess certain markers, features and characteristics of which we collect various data – qualitative, quantitative, empirical, factual, value-based, etc. The qualitative data is the form of data which speaks of the contents and structure of the phenomenon, of the factors, their features, functions, relations and links, as well as of the content, essence and form of the phenomenon. Quantitative data is data which speaks of spreading, duration, intensity and frequency of a notion in time and space. Qualitative data are basic; quantitative data are concrete and conditioned. If we say five, it is an example of quantitative data, usually accompanied by a marker (five persons, five hours, five apples, five pears, etc.), simultaneously implying quality. Therefore, the relation of quality and quantity is not merely interaction; it is also interdependence. One cannot quantify nothingness, i.e. quantity always belongs to something – e.g. the concept of age (“X years old”), which not implies all the features of ‘being old’, but also quantitative markers on the years lived so far.

In contemporary research, and in particular, empirical research carried out on the basis of scientific research projects, the connectivity of the qualitative and quantitative is demonstrated by the mere process of creation of data collection instruments – which involves certain scales

of measurement, whereas data processing involves measurement, quantification, and the application of statistical, general scientific methods.

M. Tokača claims to use qualitative and quantitative methods in the process of research, whereby he treats them in the context of scientific research work, and speaks of the methods, of “the organization of research, infrastructure, equipment, and technology”. We have already dealt with qualitative and quantitative data, methods, and methodologies. The project of research consists of a scientific thought with accompanying instruments, and of the plans of management and processing of data, as well as research plans in terms of time, personnel, technical and financial resources. Although we have previously already spoken about this, we repeat this question for the reason that M. Tokača also lists methods related to the “organization of research, infrastructure, equipment, and technology”. The initiation of a debate on the issue of scientific methods and its treatment as a “method of public delusion” is an attempt to personally present and affirm oneself, where it is Mr. Tokača’s intent to represent himself as a big connoisseur of scientific methodology, in order to – as such a connoisseur – introduce a new dichotomy of classification of official and nonofficial methods; a distribution which, at least for now, does not exist in relevant scientific literature, at least for as long as the author does not introduce it in there. The non-official methods, according to him, are the ones that “lead to information”, meaning “his relations to people, his contacts”, whereby he had received data “nobody else could have gotten”. Interestingly, Mr. Tokača’s “rich” research work initiates and opens up a philosophical question on the relation of politics, ideology, and science; whereas we believe that he does not possess any, not even the basic academic knowledge either on science, or on political theory and practice;

- Fifth, in every scientific piece of research, **data sources** are an important factor in terms of the validity and reliability of the findings on the research subject. Therefore, we must take good account of the diversity of the sources, and the authenticity of the data, which they provide. Based on an insight into the text of the related “research” by the IDC, the part on the sources obviously does not, apparently, use all available and possible data sources, but it does also not rank them by significance, availability, reliability and usability;

- Sixth, all scientific research should serve the discovery of **scientific truths**, whereas we understand – as scientific truths – scientific findings on subjects of thought and research, which are objectively understood and perceived for what they truly are. Therefore, the scientific truth is the closest or the most adequate form of findings, which corresponds to the real state of the social reality. This, for the research we have mentioned on various occasions, cannot be rightfully said.

In the process of conceptualization of scientific research up to the creation of a research project, one of the basic and main tasks is the determination of the **title – theme of research**. The title of the project represents a preliminary definition of the subject of research and should be stated briefly, in a definite manner, clearly and precisely, as the essence of whatever will be the subject of research. Not entering a more detailed elaboration of the role, significance and function of the topic – theme of research, we must only repeat that the title obliges us to follow certain contents for the subject of research, and that it cannot be (significantly) reduced or go beyond the title – or topic of research.

The title of the “project” “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95” means, from the perspective of a conscious, responsible researcher, that the subject of research will be the **overall human losses**, or rather all the victims of genocide and their status, and the forms of crimes and methods of commission, determined by the normative definitions in international humanitarian law and relevant international acts. Otherwise, the specific case involving implementation of a research project idea requires the establishment of an operational or working definition as the basis for classification and categorization of victims to be the subject of research. The project here in question demonstrates no contextual and logical link between the title, topic, and its contents; quite the contrary, numerous forms of crimes have been reduced to the “research” of only one form of crimes – **killed** individuals. These, according to the IDC, are “**killed and missing**”, “**killed – missing**”, “**killed/missing**”, whereby it ignores the concept of *force disappearances* as a form of crimes against humanity. Obviously, the author of the IDC “project” does not understand the role, meaning and significance of

categorical concepts which stand in for generic, class-oriented data – conceptual variables which lead to other concepts, and link them to the subject of research, the hypotheses, variables, indicators and instruments of data collection. The mentioned problems come from the lack, or non-implementation, of the conceptual process and the valid, implementable scientific and research projects within which these questions are solved in a decisive manner.

In the research project, or more precisely, in the draft of the scientific thought, the formulation of the problem leads to a **subject of research**, which contains two components. The first part, or component, demonstrates the factors of theoretic definition of the subject, specifically in two layers:

- a) A first layer, which presents findings, and determines the status and character of the findings, further conditioning the type and kind of research, possible and estimated aims, or levels of achievement in scientific discovery;
- b) A second layer, which presents definitions of basic, key categorical terms based on which qualifications can be established and used as a basis for the construction of data collection instruments. Even a superficial analysis, without much detail, helps us understand that in the case in question the component of theoretical determination of the subject of research was fully eliminated, which leads to a high level of confusion and complication, and thus implies the turbidity related to the research subject and contributes, at later stages of research, to numerous mistakes which are necessarily multiplied, and thus at the basis for the creation of wrong judgments and conclusions on the subject of research.

The second component of the research subject is operational. It actually makes the true research subject concrete, and lists markers in terms of time and space as to what defines the research subject, as well as the discipline orientation - or rather, scientific identity, i.e. a scientific discipline within which the mentioned research is to be carried out. The methodology of social research over the last three decades has provided typical models for social research with elements of theory, methodology and research paradigm to enhance the researcher's capability to determine

the factors of the research subject contents, i.e. the conditions, subjects, motives, interests and aims, the activities and actions, methods and means and effects - the results and consequences. In the case of the IDC, there has been no paradigmatic initial point for the overall content of the research subject content, but rather a multiple reduction thereof, in which case the mentioned factors of the content of operational determination have been reduced to subjects - individuals as victims of crimes, and this in merely one form of crime.

The author of the “project” “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”, in the part titled “**Research subject**”, defines human losses as “**fatalities from among the citizens of the Republic of Bosnia and Herzegovina (regardless of their ethnic or religious identity, political preference, or social origins and regardless of their ideological convictions and membership in armed forces), as well as missing persons..., whose death/disappearance was caused by direct military operations... or whose death occurred as a consequence of (various forms of) torture and inhuman treatment during or related to imprisonment**”.³² Based on the presented perception of the subject research, we have to point out the following:

- First, how are “fatalities” (i.e. dead citizens) supposed to give us data on their political preference or ideological conviction?
- Second, the way in which the understanding of the contents of the subject of research was presented, implies that the sole subject of study were “soldiers” which, as a status category, are not included within international humanitarian law, which knows *combatants*, not to mention the fact that *civilians* and other protected persons are not even mentioned;
- Third, the concept of “**fatalities**” is too broad, implying that it cannot possibly be concretized and made operational in research practice, and as such, is not even known to international law. As the author of the “project” did not even defined or determined the meaning of “fatalities”, it is not possible make a classification

³² Ibid.

of an undefined term “fatality”, which obviously leads to various perceptions and implementations of the mentioned concept which, in the final stage, is not even mentioned. Rightfully, we can pose questions on the point of researching something not even validly defined.

The mentioned social research does not allow us to research the causes of “deaths”. The research of causes of death is a task for medical sciences and disciplines, and not of social sciences.

What does the formulation of **“deaths occurred as a consequence of (various forms of) torture and inhuman treatment during or related to imprisonment”** imply?³³ Such a formulation opens up a series of questions: where, when, how, to what extent, directly or indirectly, has death occurred as a consequence of imprisonment? The list of confusing questions is not exhausted, quite the contrary, it opens up yet other questions, such as on the interpretation of a death which happens months, even years, after a victim leaves a concentration camp or other place of detention, implying that this formulation should also pose the question on whether all such cases should be involved into research, including also the ones who have an active component beyond 1995. Obviously, the undefined basic terms of the subject of research, and the confuse and equivocal presentation of contents of the factors of the operative determination of the subject of research cannot be at the basis of logical consistence of the idea, conceptions and concepts of research, but rather lead the author to resort – in a completely novel way – to secondary sources, i.e. various, adopted lists (subject/able to all sorts of manipulations) available to him, representing them as original results of his personal four-year empirical research.

The last part of the exposé on the research subject in the “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95” project presents an undoubted conclusion that the sole subject of research was directed to combatants, marked by the author of the “project” as “soldiers”, hence ignoring the broadest status category of victims, i.e. civilians. The basics of the research of crimes against humanity and international law imply the knowledge of basic categories of victims, their status, the forms of

³³ Ibid.

crimes and methods of commission of crimes, which is the basis for any serious scientific research in the subject matter. Having this in mind, the presented fundamental ignorance of the author in the field of research of crimes against humanity and international law has contributed to some strategic errors with potential various longterm consequences, which has again lead to catastrophic research results and thus contributed to the faking of history and the deception of the national and international public.

In every research project, the basis of the scientific thought includes the **aims of the research** which stems from the subject of research and presented as scientific and social. Not wanting to discuss scientific aims at large on this occasion, or their various classifications, we will keep to one usual division of scientific aims which present the possible level of achievement of scientific inquiry, ranging from scientific description, scientific classification and typology, scientific discovery, scientific explanation all the way to scientific prognosis. The complexity, the subject of research and the aims of research also determine the type of scientific research, as well as the probability and possibility of the collection of new findings on a certain phenomenon, problem, or subject of study. The more complex the subject matter, the more disperse and subtle it is, and the less scientifically verified findings there are about it, the more it is possible to determine the scientific aims using a scientific description, classification and typology.

Unfortunately, there is no single generally accepted codification and classification of social aims from the perspective of the utility and purposefulness of the results of research in social practice. Contemporary methodological literature, however, gives us a classification of social aims we can accept, and which leads us to the use and application of research results by subjects – research commissioners and result users. We can therefore speak of the results whose use is up to the choice or option of individual users, which give an access to the solution of the problem, which suggest a solution to the problem or which can be used as a direct solution to a certain social problem.

The “research” project “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95” does not distinguish between the scientific and social **aims of research**, whereas the accent is obviously positioned on social aims (“**preserves the memory of citizens – fatalities of the**

1991-1995 period”, “determines the identity of every victim...”, “contributes to the establishment of trust in Bosnia and Herzegovina...”), which is a typical feature of action-based research. The eventual scientific aims, implied by a declaration on the **“determination of a truth as approximate as possible on the scope and methods of death casues among the citizens of Bosnia and Herzegovina”** and **“the reduction of space open to manipulations and brute estimates on the total number of victims (killed and missing)”**,³⁴ we could say that the author of the “project” may have wished for scientific description, classification, and typology. However, the so-called Research Report, or “research results”, does not give us a concrete, clear, precise, valid report on the scope and qualification of the total number of victims, and particularly can one not review and discover the **status of victims** at the time of the commission of crimes, and the forms and methods of commission, which would demand the perception and a clear and precise definition of social realities and their classification. In the end, the research aims can be claimed not to contain a logical/content-based link between the subject of research and the aims of research, which are in a dysfunctional relationship. With this in mind, we can restate the assumption that the author of the “project” does not at all know the various categories of victims, which is visible from his subject and aims of research. We can also establish his ignorance and lack of distinction for the subject and aims of research, which contributes to a general confusion leading to catastrophic results.

Analyzing the methodological approach to research, from which the subject of research has been defined unclearly, and from which the research aims were not presented, alongside a mixture of scientific and social aims, one cannot establish a system of **research methods** to be otherwise used in the process of research. The author of the project, indeed, does mention certain methods³⁵, but he does not differentiate between research methods, research techniques, instruments and processes in the collection procedure, and data processing and analysis. He does not point out what research methods are used to collect data at what segment

³⁴ Ibid.

³⁵ Ibid.

of research, as well as what the role of individual research methods is, when seeking true findings. Furthermore, in every methodological approach, in the draft of a scientific idea emanating from the subject of research, and in accordance with the aims of research, one creates and presents a system of hypotheses, beginning with general, special, and individual hypotheses whose indicators determine and condition the application of certain research methods. Data are not formed or finished creations, data are formed and at their core are indicators, that is, the defense of appearance of the phenomena indicating upon it and presenting it. Therefore, first the existence of a certain phenomenon, then its content and significance, are determined, in order to allow it to form into a certain meaning, a certain importance. The type and mode of research is determined by the use and application of certain research methods. In this case, one could almost have prevalently spoken of analysis of document contents, a type of quantitative analysis within so-called secondary analysis, lists formed already and documents coming from certain subjects. It is usual that, within the framework of research methods, data sources usually get listed as well, which points to their authenticity and reliability in the process of analysis, as data validity factors. Annexed to the report, obligatorily, the data collection instruments are also presented. Unfortunately, none of the above had actually been presented by the author of the “project” and of the report.

In the operational determination of the research subject, one must also necessarily determine **the temporal scope of the research**, defined by astronomic or calendar time. The IDC “project” on “POPULATION LOSSES IN BOSNIA AND HERZEGOVINA 92-95” has first been determined as between 1992 and 1995, whereas another document, titled “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95”, includes an expanded time scope related to the period between 1991 and 1995, with certain parts of the text referring to results related, interchangeably, to 1992-1995 or 1991-1995. From the perspective of research methodology, this change of research timeframe is impermissible, as any such change or deviation, as well as its reasons, should have been fundamentally explained. In research practice, particularly in the preparatory stages, the appearance of such problems is solved by the re-conceptualization of research. It is obvious that the “project” author does not know

what, apart from the geographic definition of research, the precise temporal timeframe means in research.

The part of the text on the estimates of the overall number of victims sees the IDC presenting, in a table, sources and subjects of estimates, as well as the victim count and the period of time this count is related to, excluding research by E. Tabeau and J. Bijak. It is not clear as to why the IDC has left out the estimate on the overall “number of war-related deaths in Bosnia” by E. Tabeau and J. Bijak, published in 2003, and based on an analysis and comparison of data taken over from other, indirect sources. Our indications and thoughts on the reasons as to why this data was excluded lies in the fact that the mentioned authors have a number of civilian deaths larger than the one presented in IDC data, which also has a smaller number of civilian victims in relation to the count of killed soldiers i.e. combatants.

Every research project includes plans of material and financial funds and means necessary for completion. This part is usually referred to as the project’s budget. The “project” “HUMAN LOSSES IN BOSNIA AND HERZEGOVINA 91-95” has been mostly financed by the Government of the Kingdom of Norway, the United States Department of State, the Swiss Government, the United Nations Development Program (UNDP), and the Swedish Helsinki Committee.³⁶

The ACOFF scheme of research includes actors of research, acts of research, and relations in research. When we speak of actors (subjects), they are treated either as commissioners, scientists, field workers – researchers, and subjects – sources (i.e. research objects). Starting from the mentioned scheme, the division of tasks and roles in the process of research, the relations and links of subjects in the process of research, and the responsibility for the results of research and the processes of their application in the social and scientific practice provide for a responsibility for implemented tasks – results of research, established between those who commission and those who implement the research. Therefore, we may rightfully ask the following questions: how come the mentioned IDC “project” has such a wide scope of funders, and in analogy, who

³⁶ “*Oslobođenje*”, January 19, 2006, p. 7; “*NOVI POGLEDI*”, ACIPS, Sarajevo, Summer 2007, p. 5.

actually has commissioned this research and what exactly is the responsibility – if there is any – in the relation of those carrying out the research and those commissioning it, as well as what is the purpose of research from the perspective of the ones having commissioned it? Who is the real user of the results of research and their consequences and purposes?

In its database titled “THE BOSNIAN BOOK OF THE DEAD” of December 16, 2005, the IDC had a list of 300 thousand names, clearly stating that this is not the “victim count”³⁷. This data remained unchanged until June 21, 2007.³⁸ Having this in mind, we are surprised that the number of names in the database remained identical (300,000) on December 16, 2005 and on June 21, 2007. Furthermore, a question: how was the IDC able, based on this unchanged number in the database, to present different estimates of the overall count of the missing and killed (in 2005 – 93,837 and in 2007 – 97,207)? It would have made perfect sense to expect the number of names in the IDC database to be larger by several thousand by June 21, 2007 in relation to the number of December 16, 2005, as the name of those killed and missing, according to the IDC, increased by 3,370 names.

With an available number of 100 thousand different names of “killed and missing persons”, **the total database** of such a massive number of names should have been much larger than the 300 thousand names available to the IDC. **The Commission** (of the Republika Srpska Government) **for the Establishment of the Events in and around Srebrenica of July 10 to 19, 1995**, while determining the number of victims of genocide in the UN Safe Area of Srebrenica in July of 2005, entered over 150,000 names in the database. An analysis and comparison of data for more than 150,000 names from various sources (including 30 lists of various social subjects and documentation from other sources) determined that there are **13,569** different names of victims of crimes which appear in

³⁷ “DANI”, December 23, 2005, p. 14.

³⁸ “DANI”, June 29, 2007, p. 20. In relation to this, M. Tokača had, in an interview for “DANI”, stated: “The research has seen us register 300,000 names of victims“ ” (Ibid). However, this is not true, as the evaluation by P. Ball, E. Tabeau and Ph. Verwimp puts that number (total number of “all gathered cases”) at a smaller figure, at 246,736 names (P. Ball – E. Tabeau – Ph. Verwimp, THE BOSNIAN BOOK OF THE DEAD: DATABASE ASSESSMENTS, SUMMARY REVIEW, June 14, 2007).

various sources and refer to the 1992-1995 period “for the wider Srebrenica area”.³⁹

The Commission discovered, identified, selected and determined significant sources of data and sources of findings on the presented number of genocide victims, with a database of over 150,000 names.⁴⁰ The following data sources have all been used:

1. *Human Rights Chamber of Bosnia-Herzegovina;*
2. *Applications to the Constitutional Court of Bosnia-Herzegovina;*
3. *List of Submissions to the Human Rights Chamber;*
4. *ICTY – the Hague – Srebrenica Missing Persons in July 1995;*
5. *ICRC – Ante-mortem Data Base;*
6. *List of persons for which the ICRC received notice of death, and whose mortal remains were not turned over to families;*
7. *ICRC, Discovered and Identified Individuals;*
8. *ICRC, Confirmation of Disappearance – enclosed disappearance forms in individual applications;*
9. *Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo;*

³⁹ VLADA REPUBLIKE SRPSKE, KOMISIJA ZA ISTRAŽIVANJE DOGAĐAJA U I OKO SREBRENICE OD 10. DO 19. JULA 1995, 2007, *DODATAK IZVJEŠTAJU OD 11. JUNA 2004. O DOGAĐAJIMA U I OKO SREBRENICE OD 10. DO 19. JULA 1995*, Banja Luka, October 15, 2004.

E. Tabeau, M. Zoltkowski and J. Bijak have, in order to determine “human losses” in Sarajevo under siege, for the needs of the Galić case (IT-98-29-I), formed a database of some 40,000 names (ICTY, Case No. IT-98-29-I, THE PROSECUTOR V. STANISLAV GALIĆ, E. Tabeau, M. Zoltkowski and J. Bijak, *Human Losses During the “Siege of Sarajevo” from September 19, 1992, to August 19, 1994*, The Hague, May 10, 2002).

⁴⁰ VLADA REPUBLIKE SRPSKE, KOMISIJA ZA ISTRAŽIVANJE DOGAĐAJA U I OKO SREBRENICE OD 10. DO 19. JULA 1995, 2007, *DODATAK IZVJEŠTAJU OD 11. JUNA 2004. O DOGAĐAJIMA U I OKO SREBRENICE OD 10. DO 19. JULA 1995*, Banja Luka, October 15, 2004. The mentioned database, with basic data on 150,000 names, is also available at the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, whose own data of empirical research were included into it.

10. *ICMP (International Commission on Missing Persons) list – “SREBRENICA ‘95”*
11. *List from the Association “Women of Srebrenica (Žene Srebrenice)”, Tuzla*
12. *“Victims of the Srebrenica Apocalypse”, Sarajevo, 2002*
 - *Killed and missing 1992-1995*
 - *Killed and missing in July 1995*
13. *List from the MAG Association, Sarajevo*
14. *List by PHR (Physicians for Human Rights)*
15. *List of buried individuals in Potočari, July 11, 2003*
16. *List of buried individuals in Potočari, July 11, 2004*
17. *Srebrenica – Potočari memorial and cemetery, Srebrenica, September 2003*
18. *List of the Batkovići Concentration Center, 1995;*
19. *Cantonal Prosecutor’s Office Tuzla – discovered and identified persons*
20. *List by the Dutch Battalion of the United Nations in Potočari*
21. *Association of the “Mothers of the Enclaves of Srebrenica and Žepa”, Sarajevo;*
22. *Federal Missing Persons Commission, Sarajevo;*
23. *OBS RS – Certificates by Police Stations for the Crossing of State Border, Bratunac, 1995;*
24. *Reports from competent institutions in Serbia and Montenegro;*
25. *Ministry of Interior of the Federation of Bosnia and Herzegovina – List of Police personnel in Srebrenica and Žepa;*
26. *Municipality of Vlasenica – List of individuals entered into Register of the dead by court decision*
27. *List of persons entered into Register of the dead from January 1 to June 30, 2000, in Srebrenica Municipality;*

28. *Army of Bosnia and Herzegovina – List of killed combatants of the Army of Bosnia and Herzegovina born in the municipalities of Srebrenica, Zvornik, Rogatica and Han-Pijesak, 1992-1995;*
29. *AOP Tuzla – List of Killed Combatants from the Srebrenica, Vlasenica, Bratunac and Zvornik municipalities;*
30. *Nijaz Mašić, Bratunac – List of killed and missing persons, Tuzla 1996;*
31. *Naser Orić, Srebrenica – List of killed and missing persons, Ljubljana 1995;*
32. *OSCE – Electoral registry Srebrenica and Bratunac, 1997/1998*
33. *Population Census, 1991 – Srebrenica, Bratunac, Zvornik, Rogatica, Vlasenica and Han-Pijesak;*
34. *Office for the Search for Missing Persons (Government of Republika Srpska), Banja Luka;*
35. *Various documents and reports of the 28th Division and of the 2nd Corps of the Army of Bosnia and Herzegovina on wartime 1992-1995 casualties.*⁴¹

The title of the database (“BOSNIAN BOOK OF THE DEAD”), as well as the database itself, is not the result of the IDC work. The title was taken over from the “MAG” Association, whose project, or “*Casualty Report*”, was titled “BOSNIAN BOOK OF THE DEAD”. Apart from adopting the title of the project, the IDC also adopted the database of the association containing only the names of the victims, in electronic form, whereas full data from the instruments used is available at the Institute for Research of Crimes against Humanity and International Law of the University of Sarajevo.

The statement by the IDC President that in this project, “**the state did not participate with a single gesture, a single penny, nothing...**”⁴² belongs to the worst of lies. Namely, in the harsh conditions of aggression against the Republic of Bosnia and Herzegovina, during the commission

⁴¹ Ibid.

⁴² “DANI”, June 29, 2007, p. 21.

of genocide against the Bosniacs and other forms of crimes against humanity and international law, on April 28, 1992, the state formed the State Commission for the Collection of Facts on War Crimes which had involved a significant number of renowned intellectuals, esteemed university professors, and a certain number of qualified legal experts, as well as ensured conditions for its operation. During the aggression only, the Commission collected a significant number of data on victims (a database of 75,000 names), as well as significant archive materials – documents, audio, video and photo records on crimes, and statements of survivor victims – eye-witnesses to the crimes. All the materials, especially the database on victims of crimes, were appropriated by M. Tokača. In this way he illegally and for the purpose of personal promotion and gain appropriated that what belongs to the state of Bosnia-Herzegovina, which had financed and ensured the conditions, minimum and optimum, allowing the work even in the aftermath of the Dayton accords. The following arguments can be presented to confirm the mentioned assumption:

- First, of the overall number of the killed and missing persons published by the IDC (97,207), only 22,207 are names gathered through the association's proper work and activities;

- Second, for the implementation of the "project" "HUMAN LOSSES IN BOSNIA-HERZEGOVINA 91-95", i.e. the 22,207 names collected, the IDC raised funds from various – mostly international – sources. For the collection of 22,207 names of victims, M. Tokača claims he received well over a million Convertible Marks;

- Third, the process of research which possesses all the features, as we have described, of a dilettante or amateur research, has involved various amateur researchers who, according to M. Tokača, were unpaid volunteers who have "sacrificed their money, time and knowledge".⁴³ Even Serb policemen – a majority of which had participated in the perpetration of numerous crimes – were involved in the data collection process (M. Tokača must have been motivated to hire them because of their "expertise", "experience" and "moral characteristics", which have been obvious to both the commissioning and the implementing party to the project);

⁴³ Ibid.

- Fourth, even for the presentation of results mostly attributable to the State Commission, M. Tokača has received funding from foreign investors, and as the State of Bosnia and Herzegovina did not react at all, he thanked it by saying: “We have carried out a task in which the state did not participate with a single gesture, a single penny, nothing...”;

- Fifth, M. Tokača had contracted three international experts (Patrick Ball, Ewa Tabeau and Philip Verwimp) to aid him in the promotion of his data and focus the attention of the national and international public to the high degree of reliability of the data he presented on the number of “killed and missing” persons;

- Sixth, in his explanation on the motives, interests and aims of research, M. Tokača demonstrated it in a way by claiming that his aims are significantly distinct from aims of ideologies, policies, or individual religions or sciences. The aim he claims was, according to him, to determine a correct and truthful victim count, whereas the others have all tried to maximize and inflate the victim count to the utmost.⁴⁴ As the aggression against the Republic of Bosnia and Herzegovina and the genocide against the Bosniacs have seen the participation of many, national and international subjects, with different roles, tasks, interests and aims, and as today’s so-called democratic world doesn’t like listening and mostly avoids any debate on crimes, hence it is their intent and wish to reduce significantly the results of said aggression. In that sense, every subject, whether an individual or organization or institution ready to get involved on the plan of fulfilling its expectations is, first and foremost, financially rewarded and supported. The best example of this attitude is the significant support to M. Tokača and his IDC for the work at whose basis are the results of research by the State and its Commission;

- Seventh, just before the beginning of the process on the Application of the Republic of Bosnia and Herzegovina against Serbia and Montenegro, the Legal Team of Bosnia and Herzegovina asked M. Tokača to provide them with the results of research by the State Commission, whereupon

⁴⁴ “*Oslobođenje*”, January 22, 2007, p. 7; “*NOVI POGLEDI*”, ACIPS, Sarajevo, Summer 2007, p. 5.; “*DANI*”, June 29, 2007, p. 19.

M. Tokača intended to receive certain material and financial compensations, trying to sell the State what is its own.⁴⁵

In order to determine the truthfulness of the collected data, it is necessary, first and foremost, to determine the possibility of inter-subjective control as well as the procedure and arguments to be used in the process of data verification. This question, in practice, is dealt with in the stage of evaluation and analysis of data. So far it has been known from research practice that there are several basic ways of determining how valid, reliable and authentic collected data actually is. Let us present some of the basic ways to that aim, including:

- Logical and technical control of data;
- Compatibility (degree thereof) with existing theoretical and other findings on the subject of study;
- Cross-checking data received from various sources;
- Relation of data to the research subject;
- Evaluation of data by a group of experts.

The issue of data and their validity in the process of the collection of scientific findings belongs to the basic theoretic, logical, methodological, methodical, and general research issues. In every research, the subject of research, the hypothesis positions, the variables and indicators determine and direct us to collect certain, appropriate data. The seriousness of this issue and its full review demands the establishment of a relationship with the research conception, with the creation of the research project, through its implementation, all the way up to the creation of a report on the research and its results, their presentation and application in scientific and social practice. Therefore, first and foremost, in order to collect data, we must clearly define the research subject, the facts and their direct or indirect forms of manifestation, variables, and their indicators, which serve as the basis for data. Of course, this leads us to the issue of the creation of instruments whose application will lead us to data on the research subject.

⁴⁵ Asaf Bećirović, PODACI VRIJEDNI 10 MILIONA DOLARA, *Lice i naličje zahtjeva Mirsada Tokače, direktora Istraživačko dokumentacionog centra, "Oslobođenje"*, January 19, 2006, p. 7.

In the line of questions on which we must possess even the most elementary findings in theory and methodology, we also have to discuss data sources and their features, the existence of a variety of data, the definition of concepts and their role, the meaning and significance in the process of gathering scientific findings, and the classification of basic important markers and their internal correlations. On the one hand, this link is demonstrated in terms of the identification and description of a concrete social reality; on the other, their relation to the construction of instruments which will be used to collect data.

These are just some of the issues on which there is a relatively rich fund of scientifically verified findings systematized in recent and relevant literature by both international and some national authors.⁴⁶

In order to compare the data offered by IDC and other relevant institutions or organizations, we must begin by determining the subject of comparison, the comparable values, or the difference indicators. Research practice – if the research was already conducted – allows for repeated research by independent investigators or institutions. Such research, given its role, can be considered verification-based research. However, the IDC had not carried out its own empirical research, leaving no space for a research of verification, particularly as there is no presented, described or explained paradigm in methodology, theory, empirical basis or research and, through a methodology known to them and them alone, certain data was collected which can be subject to critical analysis starting from, first and foremost, the sensitivity and complexity of the research problem or subject, of the way this data was collected and its accuracy and truthfulness, comparing them to data from other sources or, even better, results of research by certain social subjects which were produced using scientific research methods.

As this is not a course in methodology, and definitely not a short guide for beginner researchers, but rather should represent a basis and inspiration for serious thinking for those who intend to do research in this field, particularly in the field of genocide and other crimes against humanity and international law. Every victim has a name and surname,

⁴⁶ Dž. Termiz, *METODOLOGIJA DRUŠTVENIH NAUKA*, Sarajevo, 2003; S. Milosavljević - I. Radosavljević, *OSNOVI METODOLOGIJE POLITIČKIH NAUKA, Službeni glasnik*, Treće.izmijenjeno i dopunjeno izdanje, Beograd, 2005.

a biography, a birthplace, parents, families, friends, etc., and downgrading victims to statistical data would be inappropriate. Victims of genocide were murdered in horrendous ways, exposed to various forms of torture and pre-mortem suffering, whereas those who have survived and avoided death by results of aggression and genocide and other horrors of war have died and are dying considerably earlier than it would have been usual for people in that age in pre-war times. One may include here diagnoses of the most horrendous of diseases, way too often is the post-traumatic stress disorder (PTSD) mentioned on the agenda, and let alone social and societal structures and other disorders directly caused by aggression and genocide.

What has been stated previously must be presented as the IDC “conclusively” presents its own data, or the dimensions and quantifications of human victims, not offering their names and surnames which must be presented to the broader public, which is the most relevant way of determining the accuracy, truthfulness, reliability and integrity of the offered data.

The comparison of the IDC Association data can be made only to accurate, correct and truthful data discovered by relevant scientific institutions which can be used as process points, and whose results can be verified in the function of truthfulness, presentation and public nomination of all victims’ names. Let us give several concrete examples.

In **Srebrenica** (and we here suppose that the IDC refers to the UN Safe Area of Srebrenica), in July 1995, the IDC claims that **6,886 persons** were “killed or missing”.⁴⁷ The International Commission of Missing Persons (ICMP) estimates the number of missing at **7,747**. The ICRC lists **7,635** individuals. According to the 2005 ICTY data (Prosecutor’s Office 2005 list) **“the overall number of victims in relation to the fall of Srebrenica in 1995 is at least 7,661”**.⁴⁸ According to

⁴⁷ “DANI”, June 29, 2007, p. 20; Association “IDC” Sarajevo, Project Results Presentation “HUMAN LOSSES IN BOSNIA-HERZEGOVINA 91-95”, Sarajevo, June 21, 2007.

⁴⁸ ICTY, Office of the Prosecutor, H. Brunborg-E. Tabeau and A. Hetland, NESTALI I MRTVI IZ SREBRENICE: IZVJEŠTAJ I SPISAK IZ 2005, *Izveštaj vještaka u predmetu Vujadin Popović*, Hag, November 16, 2005.

the blood base (of the Tuzla laboratory), which has been provided input by families up to October 2007, the number of victims is **7,789**.

The Republika Srpska Government Commission for the Research of Events in and around Srebrenica from July 10 to 19, 1995, has determined the count at **8,742** victims of genocide (which includes 7,108 names whose dates of disappearance or death belong to the period from and including July 10 thru July 19; 698 names are listed with at least one date of disappearance beyond the July 10-19 period, and 936 individuals with at least one date of disappearance within the subject period, i.e. July 10-19, 1995, and the other dates are located outside of July 1995).⁴⁹

The most recent research results by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo demonstrate that the number of genocide victims in the UN Safe Area of Srebrenica equals **8,657**.

Not even the number of “killed and missing” persons in Srebrenica (?) “92-95” provided by the IDC as **8,945** (4,537 killed and 4,408 missing), which includes 8,460 Bosniacs and 480 Serbs, is not accurate. The Republika Srpska Government Commission for the Research of Events in and around Srebrenica July 10-19, 1995, has registered **13,569** names which are related to the period of 1992-1995 “for the wider Srebrenica area”.⁵⁰

The IDC data (**8,877**) on the “killed and missing persons from the Podrinje region 91-95” in Srebrenica (?) is also not correct. According to it, the number of “killed and missing” persons in Bratunac is 1,741, which is also not correct. Namely, results of research so far by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo estimated that number to be 1,898 only for July of 1995. Furthermore, the number of “killed and missing” persons from the Vlasenica area in 1991-1995, according to the IDC, is 729,

⁴⁹ VLADA REPUBLIKE SRPSKE, KOMISIJA ZA ISTRAŽIVANJE DOGAĐAJA U I OKO SREBRENICE OD 10. DO 19. JULA 1995, 2007, DODATAK IZVJEŠTAJU OD 11. JUNA 2004. O DOGAĐAJIMA U I OKO SREBRENICE OD 10. DO 19. JULA 1995., Banja Luka, October 15, 2004.

⁵⁰ Ibid.

whereas research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo positions that number only in the course of July 1995 at 953. only during 1992, the number of killed persons in Vlasenica is about 1,000. Furthermore, the IDC claims that in the Zvornik area, there were 422 “killed and missing” persons, whereas results of research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo position that figure only for the course of July 1995 at 396 individuals.

The IDC claims that the number of “killed and missing persons from the Podrinje area in 1995” in Srebrenica (?) is **6,984** persons, and in 1991-1995, **8,877**, meaning that IDC “research” confirms that during 1991, 1992, 1993 and 1994, only **1,893** individuals were “killed and missing”, which is a completely false claim. According to research carried out so far by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, this figure only in the central Podrinje area (Vlasenica, Bratunac, Srebrenica, Zvornik) is more than 6,000 persons.

Furthermore, the IDC also presents the data on the killed and missing persons from the Podrinje area in varying numbers: one chart shows the figure as 6,984, another as 6,958, and a third and the fourth one as 6,975.

In Srebrenica (?) in July of 1995, according to the IDC, there were 511 children “killed and missing”, which is not correct: the number of under-age victims is much higher. Current results from the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo show that in the UN Safe Area of Srebrenica 674 children (i.e. minors; up to 18 years of age) were killed in Srebrenica in July 1995 although, unfortunately, given the lack of complete data the number is probably much higher.

Not even the data presented by the IDC on the number of killed Bosniacs and Serbs in the area of the Foča municipality is accurate. According to them, the figure in question is 2,805, and according to research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, it equals 2,847.

When speaking of the victims from Sarajevo's ten municipalities (as recorded by the Population Census in 1991), one must, for various reasons, distinguish two areas: an area under siege, and an area under occupation. With this in mind, it is necessary to determine the number of victims in the siege of Sarajevo and the number of victims in the occupied areas of the city. IDC presents a figure of **14,011** "killed and missing" persons in 1991-1995, oddly enough, with the figure for "soldiers" outnumbering the civilians by several thousands.⁵¹ Not only does this figure offered by the IDC not correspond to the factual, social reality, it also drastically differs from the results of research by the ICTY.

E. Tabeau, J. Bijak and N. Lončarić have estimated – for the needs of the ICTY in the Milošević case (IT-02-54) the number of victims in the siege of Sarajevo from April 1992 to 1995 based on, among other sources, empiric research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, by stating that the **“overall number of deaths in Sarajevo-6 (i.e the parts of 6 municipalities under siege – Centar, Ilidža, Novi Grad, Novo Sarajevo, Stari Grad and Vogošća – note by the author) from April 1992 to December 1995 equals 18,889, which includes four categories of deaths: war-related civilian deaths (4,954), war-related soldier deaths (4,548), deaths of civilians by natural causes, which we consider not to be war-related (8,285) and dead civilians, whose death cannot be classified into either the war-related or not war-related category (1,102)”**.⁵² Of the total figure of 18,889 deaths in the mentioned Sarajevo municipalities under siege, the authors have estimated **“a total of 9,502 direct siege victims (civilians and soldiers: 4,954 and 4,584, respectively)”**, pointing out that the figure is **“by no means finite”**.⁵³

It is apparent that there are significant discrepancies between the IDC records and the ICTY investigators' records on the total number

⁵¹ Association "IDC" Sarajevo, Project Results Presentation „HUMAN LOSSES IN BOSNIA-HERZEGOVINA 91-95”, Sarajevo, June 21, 2007.

⁵² ICTY, Demographic Unit, Prosecutor's Office, Milošević Case (IT-02-54), E. Tabeau, J. Bijak and N. Lončarić, *Number of Victims in the Siege of Sarajevo from April 1992, to December 1995*, Study on Death Rate Based on Eight Large Data Sources, The Hague, August 18, 2003.

⁵³ Ibid.

of victims in the area of Sarajevo. IDC in its data of “killed and missing “persons in the territory of ten Sarajevo municipalities in the period 1991-1995 was 14,011, of which 8,407 soldiers and 5,604 civilians. ICTY data on the number of victims in the siege of Sarajevo – parts of six Sarajevo municipalities in the period 1992-1995 suggested that “**the total number of dead**” was 18,889, of which “**9,502 were the direct victims of the siege**” of which 4,954 were civilians and 4,584 were soldiers.

The IDC directory of deaths in the Sarajevo area is not confirmed by data from E. Tabeau, J. Bijak and N. Lončarić. The IDC’s figure of killed “soldiers” (8,407) is larger than that of killed civilians (5,604), both in terms of Bosniac (5,600) and Serb (2,464) victims, as opposed to the data by the mentioned ICTY investigators, who claim that the “**number of war-related civilian deaths**” in the siege of Sarajevo (4,954) is larger than the number of “**war-related soldier deaths**” (4,548).

The number of “**war-related**” civilian deaths is, in fact, much higher than has been determined by the ICTY experts. The number of 8,285 dead civilians who, according to Tabeau, Bijak and Lončarić, have died a natural death not related to the war, is opposed to their position on the “age pattern” of victims, as they demonstrated the difference between **early mortality** and **natural mortality** and the factual aging of the true social reality, conditions and way of life of the population of Sarajevo under siege in 1992-1995.⁵⁴

⁵⁴ ICTY, Case No. IT-98-29-I, THE PROSECUTOR V. STANISLAV GALIĆ, E. Tabeau, M. Zoltkowski and Jakub Bijak, *Human Losses During the „Siege of Sarajevo“ from September 10, 1992, to August 10, 1994*, The Hague, May 10, 2002.

Demonstrating the “**demographic rates**” of the victims during the siege of Sarajevo, from September 10 to August 10, 1994, E. Tabeau, M. Zoltkowski and J. Bijak have determined:

“...the age patterns of the killed and naturally dead is very distinct: in the group of killed individuals, the most cases belong to the lower group (18-69), which should be seen as early mortality, not matching age-related mortality (e.g., in the age pattern of natural mortality the most death cases happen in senior age...;

- the number of wounded in 1992-1994 is extremely high and equals 4,412 injuries to 100,000 individuals, which is three times the number of death cases in 1990-1991“ (Ibid, p. 6).

c) *Critical Review of the IDC Database Evaluation*

Upon request by the IDC and the Embassies of Norway and Switzerland, Patrick Ball, Ewa Tabeau and Philip Verwimp⁵⁵ were contracted to give their opinion on the IDC's expert report titled "THE BOSNIAN BOOK OF THE DEAD: IDC DATABASE EVALUATION". Their June 14, 2007 Report relates to the IDC database, "THE BOSNIAN BOOK

⁵⁵ Patrick Ball – Ewa Tabeau – Philip Verwimp, THE BOSNIAN BOOK OF THE DEAD: DATABASE ASSESSMENTS, SUMMARY REVIEW, June 14, 2007, pp. 1-9.

Dr Patrick Ball is the Head of the Technical Department of the Benetech Initiative. He also manages the Human Rights Programs at Benetech, including the Martus projects and the Human Rights Data Analysis Group (HRDAG). His doctoral degree in sociology comes from Michigan University (1998). Since 1991, Ball had designed systems to manage information, and carried out statistical analysis of major human rights databases for NGOs, tribunals, truth commissions and UN missions in El Salvador, Ethiopia, Guatemala, Haiti, South Africa, Kosovo, Sierra Leone, Sri Lanka, Peru, Timor Leste, Bosnia-Herzegovina, and Chad. He is currently involved in Benetech projects in Sri Lanka, Colombia, Burma, Liberia, Guatemala and other countries throughout the world (Ibid, p. 7).

Basic biographic and curricular data on **Dr Ewa Tabeau** were given on page 94 of the study.

Dr Philip Verwimp had studied economics and sociology at the universities of Antwerp, Leuven and Göttingen, and had worked in the field of Political economics and genocide study at Yale University. He received his doctoral degree (2003) at the Catholic University of Leuven on the "Political economics of development and the Rwandan genocide". He teaches research methods and development economics at the Universities of Leuven, Antwerp, Utrecht, and the Social Studies Institute at The Hague. He worked as an economist of the World Bank and he dealt with the issues of poverty in the world (2004-2005) In 2004, he was awarded the Jacques Rosenberg Foundation Auschwitz Prize for his dissertation, and in 2006 for the best article published in the *Journal of Peace Research*. His works were published in the *Journal of Development Economics*, *Journal of Peace Research*, *Population Studies*, *European Journal of Population*, *Journal of Conflict Resolution*, *European Journal of Political Economy*, and other journals. His research interest includes political economics of the development and conflicts, poverty, inequality, demographics, dictatorships, human rights and genocide. He regularly reviews papers for academic journals, and participates and organizes conferences and workshops.

Dr Verwimp is a co-founder and one of the directors of the Households in Conflict Network (www.hich.org), and also Deputy Director to Microcon, a major European Union research project dealing with conflict issues (Ibid).

OF THE DEAD”, also known as the “POPULATION LOSSES REGISTRATION PROJECT”, which represents a “general database for Bosnia-Herzegovina on the 1992-1995 casualties”.⁵⁶

The completed report includes and contains a “CONCISE OVERVIEW” and a “TECHNICAL REPORT”.

The authors of the “CONCISE OVERVIEW” have researched “three areas of the database”, which include:

- First, data-related problems such as “errors, data purity”; “errors related to ‘wrongly entered Database values’”, the integrity of identified data and the features related to individual deaths;
- Second, “the conservation of original data in the Database”, with special attention devoted to registers created from various sources which give partial, compatible information, and to sources used in the creation of the Database;
- Third, “the scope of the Database”, in terms of the “review of procedures related to the update and elimination of duplicates”.

The remainder of the text, which deals with the assessment of the IDC database, concisely presents important results which consider and present the General findings, the quality of data and the lack of integrity in reporting, the preservation and protection of original data victims, duplicates, sources and recommendations, as well as basic data on the authors.

⁵⁶ Ibid. P. Ball, E. Tabeau and Ph. Verwimp finished their evaluation “upon request of those which have invited us to take part, as well as the general public, and all others interested in the victims’ aspect of the 1992-1995 war in Bosnia-Herzegovina, including families of victims possibly interested in the DATABASE, historians trying to determine the truth on the Bosnian war, politicians who have questions related to victims in their political programs, NGOs who work on the prevention of human rights violations in the Balkans, observers of the process of reconciliation in the region, international and national courts prosecuting individuals responsible for violations of international humanitarian law and the laws and customs of war, in the conflicts in Bosnia and Herzegovina in the period 1992-1995, as well as media. All those who intend to consult this largest victim information database related to the 1992-1995 war victim data, for their own interest or research, will find this evaluation to be useful and didactic.” (Ibid.)

The **General Findings** present the following theses by the authors:

- The IDC Database includes 96,895 cases (up to July 2006) which relate to every individual victim which has been “killed or has otherwise died in war-related circumstances, or disappeared during the war”. This, according to them, is the number of individual cases which they refer to as “active”, of the total number of collected and registered cases which equals 246,736. The database, which includes the total number of 246,736 cases is, according to the authors, comprised of “several reports” contained in the register on the total number of cases;

- The figure of 96,895 is not the total number of victims in Bosnia as many have considered, unlike the authors, but “should be considered the estimate minimum number of victims, and not the total”;

- The IDC statistics Database on victims has been collected from various sources, mostly, “from individual informants, such as witnesses, relatives, friends, neighbors, etc., who have voluntarily offered this information, or from general sources on war-related victims, such as news reports, books, lists of missing persons, NGOs, government sources, etc.”. With this in mind, their serious critical remark relates to the lack – “non-collection of standardized documents” which could be used as process points in the verification of the interviewee’s statements. Therefore, their critique is rightfully directed to the lack of verification of the reliability and authenticity of data entered into the database.

- The IDC Database which they refer to as “the largest existing database on the 1992-1995 war victims”, “must not be used in its own right, but rather with other sources on war victims or incidents and episodes thereof”. The suggestion presented by the authors is significant, as it is in the function of “preventing the bias in terms of the statistics, and the creation of a historically wrong picture, or an attempt to avoid disinformation in the general public”.

We can agree with the authors when they describe the database as a “**register of population losses**”, and not the overall number of “**1992-1995 war victims in Bosnia**”, but the number should not be considered as minimum, but rather, as they say, “**an estimated minimum number**”

of victims". Also, we can agree on the need to more rigorously control data, as well as a possible control point in using "**standardized documents**" for data, but we must not lose count of the following important facts:

- First, the issue in question is not research, especially not scientific research;
- Second, in accordance with this, there is no available scientific and research project, or an overall scientific-operative document which, among other things, contains and includes instruments with which data can be collected from available and relevant sources, and based on which a database can be created. Data control is inevitable in all stages and phases of the research process, from the preparation, through the collection of data, their inclusion into the database, processing and management, as well as final analysis and their use, in testing the hypotheses of research projects, up to the creation, presentation and application of results in social and scientific practice;
- Third, the IDC Database is rightfully referred to as a **population loss registry**, and not as a research project, by the authors of the evaluation. However, the Database – created on the base of the IDC register – is based on a selective and individual use of **various lists by social subjects** (i.e. using indirect findings). In this case, duplicates of victims' names have been removed and an integral register has been created using the procedure of duplicate elimination based on simplest comparison which does not yield efficient results of their own work, but rather using other people's results, and various methodologies, principles, criteria, perspectives, motives, interests, aims, purposes and uses. Therefore, it is hard to conceive and construct a single database in this manner. It makes sense that exactly this database is indeed the largest one, because it includes (adopts) other databases based on their own registers. A similar methodology has been used by E. Tabeau and J. Bijak in the creation of their 2003 ICTY database, which is probably larger than that of the IDC, as their "minimum number of confirmed war-related death cases", which is bigger (102,622)

than the IDC reported number (97,207). If the starting point of approach is the same or similar, then the question is how come the said difference between the two databases appears, particularly reading from E. Tabeau on how the IDC database is the largest, if her own database is probably larger. With this in mind, here is another logical question: how come E. Tabeau could have accepted a cardinal mistake by the IDC, i.e. **the larger number of “soldiers”, or combatants, in relation to civilians**, in the situation when her own results speak exactly the opposite.

The position of the authors that the “inclusion of many cases only brings marginal improvements as most cases will have already been included in the database” implies a serious, but also layered question which relates to its integrity. The first layer of questions relates to the possibility of inclusion of new cases – i.e. findings on victims, whereas the other layer relates to the possible marginal improvements, as the authors claim, “most cases will have been included into the database”. It is curious that renowned researchers such as P. Ball, E. Tabeau and Ph. Verwimp, by pointing out serious critical remarks in relation to the other registers and databases, consider the IDC database an “exceptional achievement”⁵⁷, as they thus present a logical inconsistency in the relation to their own remarks related to its creation, the need to control data, and the minimum number of victims.

The research into victims of grave breaches of international humanitarian law in every country, including in Bosnia-Herzegovina, demands an organization and implementation of predominantly empiric research, which in type is diagnostic, prognostic, and in character longitudinal and panel-based, and in time long-term, permanent research. The closure of possibilities to reaching new findings and their inclusion into the existing database is one issue at stake; the other problem which is of questionable character in this case stems from the fact surrounding the author’s assessments of the database, such as criteria, postulates and approaches on the overall victims which started from the IDC database.

⁵⁷ Ibid, p. 6. The IDC database, according to the mentioned authors, represents an “exceptional achievement of all those who have taken part in the project”.

Researchers and scientists of the level of P. Ball, E. Tabeau and Ph. Verwimp should not afford themselves to glorify empiric, vulgar, indirect research results in the form of induction and generalization as produced by the IDC. If, honestly, the mentioned researchers support such a relation and approach in the research of victims in Bosnia-Herzegovina, as carried out by the IDC, then not only do we seriously object to these remarks, but also doubt their intentions, motives, interests, and scientific ethics.

In the further part of the text (the Evaluation), titled “**Data quality and incompleteness of reports**”, the authors present “data points” which have been checked within the “personal identification” and the “identification of events (i.e. death or disappearance)“. The inter-subjectivity in the process of communication includes possibility of verification of data in the function of truthfulness. In the process of verification of data, we must necessarily present the criteria, conditions and procedures of verification. It is not clear as to what exactly do authors refer to when they use **data, information** and **report** as concepts - the latter not mentioned explicitly, but rather implied in **data**, which also includes some data on **personal and event identification**. The users of the text - evaluation are not familiar with what exactly are the data points that need to be included in descriptions of personal identity or the concrete event. Certain lines of the text claim, in continuation, statements such as: “the evidence is less complete and characterized by one omission only“, then “incomplete records“ - where the authors imply those bodies of evidence which “are missing values merely by one dimension”, followed by a statement on how “this can easily be repaired” - a certainly confusing sentence. Therefore, the authors of the text present their evaluations, but - we rightfully ask - based on what? There is a serious question as to how could something be repaired “easily” through additional work when, in the meantime, the source of empiric data is not alive anymore, having changed address, forgotten what they talked about, or similar.

One of the lines of the document claims that “missing values are not the problem of the database. The missing values are a problem of the reporting process, as this discusses informants who were neither capable nor asked to provide certain pieces of information to team members at the IDC, which has resulted in the incompleteness of the database”.

Based on the presented point of view, one can conclude that the Database is good, yet the problem was created during data collection, and that the missing data in the Database is a consequence of collected data, and within it, of the lacking complete coverage of certain positions.

The previously presented position acknowledges that the Database was not created on the basis of instruments for data collection, as a clear content for the research project, as well as that the data was not collected on the basis of own instruments based on reliable and valid theoretical and logical definitions of terms and their categories, and determined variable indicators and research subjects. We present all of these as serious drawbacks which would not have happened had the research been achieved on the basis of a proper scientific research project, and had the data been collected based on the instruments as an integral part of the research project, as the basis for creation of a database, including the plan for data alignment and processing. This way, the evaluation is partial, segmented, unrelated etc., so that the evaluation which says that the IDC Database is good is unacceptable, yet that the data which it has is incomplete, where even the percentage of data - in numerical terms - for the lacking data, is given?! It is clear that the analysis is based merely on the dissolution of the whole into individual segments - parts, and that these are being evaluated. However, it cannot be acceptable as a finite judgment on the Database itself and the quality of data within it, having our serious critique in mind. We are under the impression that the Database has been constructed independently from the project itself, as a basis of its construction, and that the data obtained from various sources had merely been "inserted" into it. The main reason of this serious drawback in the Report is the lack of proper, own scientific research, but rather the uncontrolled - unverified acceptance of data from other secondary and even tertiary sources, and their introduction into the mentioned Database, which ultimately leads to a finite number called, by the authors, the minimum estimate of the death toll, with the application of simple comparison and selection by means of eliminating the duplicates of victims' names.

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P. Ball, E. Tabeau and Ph. Verwimp have devoted special attention to the *status of victims*. Just as E. Tabeau and J. Bijak in 2003, and the IDC in 2005 and 2007, they distinguish *civilians* and *soldiers*, which is not in line with the provisions of international humanitarian law.

The authors of the evaluation point out that the IDC report, when determining the status of victims (“**civilian-military status**”), which in the database is referred to as the “**wartime status**”, “**based on official military records and other relevant sources**”, imply also that IDC personnel has visited “366 military and civilian cemeteries and collected records and photographs of soldier memorials”, and other relevant sources “used to determine the individual’s status”. In this case, the authors stress that the “wartime status was apparently strictly based on available sources, and no random decisions were made related to the proper attribution.”

Speaking of sources, the authors distinguish military and civilian sources, and conclude that the “**wartime status’ demonstrates the report on the individual victim in military, as opposed to civilian sources**”, where, according to them, “**some 40% of the victims were listed as civilians, and some 60% as soldiers (including police officers).**” The result of the use of such sources, mostly official “military” lists where the basic criterion is the registration of individuals on the basis of their status (civilian/”soldier”) is the increased number of the “military” victims, which is an evident, obvious forgery based on gross simplification and obvious falsification.

The authors seem to forget the fact that official, “military” records of certain armed formations were created once the aggression had been terminated, and thus cannot represent primary, relevant sources. They do, however, point out that the IDC had used “other relevant sources” apart from military lists. However, they do not list these relevant sources, which could lead us to conclude that even “official military records” are considered as relevant sources which, essentially, are not accurate. Certain important sources (i.e. regular and extraordinary combat reports) are at the basis of “official military records” and have the status of primary

sources, whereas the “official military records” are secondary sources. If the complete induction and productive synthesis is carried out in an accurate way, then it can be probable that the data contained in secondary sources can be considered accurate and truthful.

One frequently used concept by the authors is the term “**relevant**” – as in **relevant sources**, **relevant data**, whereby they do not seem familiar with the actual content of ‘relevancy’ as a specific linguistic determination which has not been concretized in the given example. If we use the term **relevant**, it implies that what we speak of important, when it is used with another, accompanying word such as **relevant source** of data or other **relevant sources**. These statements point, thus, to important, significant data sources, which are qualified as data sources, yet with no precision given on them. Research praxis, just like contemporary academia, does not distinguish military and civilian sources. Furthermore, although burial monuments are, mostly, a relevant source of data on material losses which tell us that the grave contains human remains and that there is certain data on the stone which allow us to establish, partially, the identity of the buried person (i.e. name and surname, the name of the mother or father, the dates of birth and death), but not information on the status of buried persons. As we have said: this data aids identification, but it does not inform us on the status.

The further text will see us reviewing another frequent term and its significance, which will allow us to form certain conclusions. It is the concept of **registration** – as in **registered** in the process of data collection from certain subjects – individuals who collect data in order to establish the victim status. The use of registration/registered in the context of the IDC’s “*Victim Card*” points out the significance of not knowing the basic postulates and theses in scientific research. In order to explain this, our remarks include the following:

- First, the lack of knowledge on the rules of definition and definitions of concepts in the process of scientific research, its role and function;
- Second, the lack of knowledge on relations of definitions of concepts and their classification with the instruments of data collection, as well as the lack of knowledge on the relation of indicators, instruments, and research procedures;

- Third, the use of the mentioned concept has a subjective meaning which has not been made objective in line with the demands of certain criteria and therefore requires inter-subjective controllability, meaning that the data thus obtained cannot be considered reliable and authentic, even when received in the most valid way. Therefore, many civilian victims have been **registered** as military victims, or combatants, which is a fact that does not correspond to the factual social situation. The authors of the Database evaluation have also claimed that **“their attention was directed to the fact that certain victims who were registered as soldiers in official military records may also have been registered as civilians in civilian sources, and vice-versa”**. There are two reasons, according to the authors, for this phenomenon: first, “as authorities had to create certain military records as a response to the demands of the victims’ relatives’ demands to provide post mortem benefits for the dead”, and “as some families may have considered it would be an honor for them to bury their loved ones in military cemeteries or publish their names in soldiers’ lists, even if the true circumstances of death are not related to armed conflict”. Such practice, claim the authors, “probably lead to **an exaggerated number of registered soldiers, and a reduced number of registered civilians** in the sources”, which does not correspond to the factual state.

The status of victims can be determined on the basis of relevant sources whose relevance is demonstrated by the data features, characteristics, time and place of creation and authorship, which demonstrates the authenticity of the data provided by such sources. Every serious researcher knows that not all sources provide accurate and valid data, and that some sources even include wrong, false data, deliberately forged data, or use mechanisms of data control and validity assessment methods. Only on the basis of what has been said can we approach a final analysis of the data and the testing of hypotheses in the research project based on the collected and processed data. Unfortunately, without any critical approach and using secondary sources, the IDC has adopted “military records” which, according to the evaluation authors, “are generally more complete”, and treated them as finite results, as was rightfully indicated upon by the authors of the IDC Database Evaluation.

Starting from the assessment that the supreme priority is the **“improvement of the register of civilian victims”**, the evaluators claim that the IDC Database evaluation **“based on the ‘wartime status’ must be postponed until the point when more complete data is available on civilians”**. **“Military records and civilian sources must be reviewed again and, if possible, revised”**, in the authors’ opinion. Although the authors have, in an academically correct manner, pointed out the serious drawbacks of the IDC database, and the need to revise it, the results were presented – through some Sarajevo-based media outlets – as the pinnacle of scientific work⁵⁸ and the final reach of research, which has led us to rightfully ask whether some media representatives are in the position to give out such evaluations on the scientific validity of given data.

Well aware of the errors and drawbacks in the IDC **“population loss register”** and acquainted with the provision on the status of victims in international humanitarian law (*CIVILIAN and COMBATANT*, as opposed to *CIVILIAN and SOLDIER*), the authors have especially pointed out **“the importance of stressing out how the”** IDC **“information on ‘war status’ does not present accurate insight in the relation to the victims fallen in conflict and non-conflict situations”**. The use of such a “wartime status” marker by the IDC **“does not inform us of the legitimate victims, according to the international humanitarian law or the laws of war, as the ‘wartime status’ is merely a measure of whether a certain person was a member of a military or police formation at the time of death or not, or whether he or she was in general a civilian or combatant”**, and, **“as such it offers a good basis for further, more specific research into the question of the totality of victims in conflict, or the proportional amount of civilian victims”**, claim the authors.

According to P. Ball, E. Tabeau and Ph. Verwimp, the IDC database authors were **“fully aware of the mentioned distinctions”**, and tried **“to throw certain light into the issue of ‘combatant vs. non-combatant’”**. However, this attempt, **“at this stage, cannot be successfully completed as the quantity of missing values in the status of combatant (i.e. level**

⁵⁸ “DANI”, June 29, 2007, p. 14.

2-suffering) is 96%, which disqualifies the use of this value in any analysis”.

It is obvious that from this perspective of the “population loss register” of the IDC is a typical **example of a forgery**. Exactly for these reasons, both the number and percentage of civilians are smaller in relation to the figures for soldiers, and vice-versa. This also confirms the fact that the IDC had never carried out research of its own, but had rather **adopted existing registers of various subjects**, created a cumulative list of victims, within which a certain level of comparison had been carried out, and then – by using selection and the method of elimination – they had excluded so-called duplicates and determined the number of “killed and missing” persons.

The same situation relates to the data on the “**cause of death – military formation**”; namely, the IDC has, according to the evaluation authors, had the intent of providing answers as to “which military formation had caused the death of the victim”. However, this has been yet another failure, as according to the authors, “**again, some 85% of values in this field are missing**”, meaning “**that its utilization is not possible at this stage**”. Also, the part of the IDC database “**which concerns mass graves (some 2,217 victims registered as exhumed from mass graves) is largely incomplete**”.⁵⁹ The IDC has, unconvincingly, provided the reasons on use of data on mass graves to the authors in the way that “**at this stage, exhumations are not due to be analyzed, and that they only play an auxiliary role in the Database**”.

⁵⁹ Patrick Ball – Ewa Tabeau – Philip Verwimp, THE BOSNIAN BOOK OF THE DEAD: DATABASE ASSESSMENTS, SUMMARY REVIEW, June 14, 2007, p. 4. With this in mind, the authors point out to the fact that the “overall number of human remains exhumed from mass graves (with five or more remains sets) in Bosnia-Herzegovina, at the end of 2005, was registered to be 10,790, with the Federation Commission for the Search of Missing Persons. This overall number of identified persons (due to as yet unavailable identification as well as remains confusion) was reduced to 8,724 persons. These numbers do not include statistics given by Republika Srpska authorities, nor by the Croat component of the Federation Commission. In this moment, the statistics is much higher.” (Ibid, pp. 4-5).

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According to P. Ball, E. Tabeau and Ph. Verwimp, the IDC database **“represents an extraordinary achievement, for all who have worked on the project”**. This evaluation, however, is denied by the authors giving guidelines for **“further activities related to this source”**. Namely, they claim that the quality of information should be enhanced, and their scope enlarged, **“by checking registers not yet marked as active and complete”**. This task, according to the authors, will take up a serious amount of time, yet it is a manageable task. However, the **“most useful task”** which, according to the authors, **“needs to be done”**, is the verification of the IDC Database in relation to other sources, such as the 1991 Population Census, and the mortality databases in the Federation of Bosnia-Herzegovina and Republika Srpska.⁶⁰ It is beyond our grasp to see how one can speak at all of the identity of victims and the authenticity of the research without using the mentioned sources, particularly the 1991 Population Census. These sources, just like the 1997/1998 and 2000 electoral lists, are unavoidable. Furthermore, these sources were also used by E. Tabeau and J. Bijak in their research. Unfortunately, these sources remain a mystery for the IDC.

Pointing out at the mentioned sources, the evaluation authors have mentioned sources **“of data on the victims of war in Bosnia-Herzegovina”**, which, according to them, are **“generally extensive”**, and the number of registered victims in these sources. These sources are, in essence, lists created by certain social subjects. They include:

- The mortality database for the Federation of Bosnia-Herzegovina, established in 2002 by the **Federation Institute of Statistics** in Sarajevo, which includes 25,000 “war-related records” and 50,000 “records related to natural deaths”;
- The Republika Srpska mortality database, established in 2005 by the **Republika Srpska Statistics Office** in Banja Luka, which

⁶⁰ Ibid.

includes some 16,000 “war-related records” and 50,000 “records related to natural deaths”;

- The list of missing persons of the International Committee of the Red Cross, which includes some 22,000 records;
- Lists of missing persons, including lists from the commissions for the search for missing persons in the Federation of Bosnia-Herzegovina and Republika Srpska, the list from the International Commission on Missing Persons (ICMP) in Sarajevo, and several published lists, including those for Prijedor and other municipalities;
- “Official and military records of fallen combatants and military and police personnel from the ministries of defense of the Federation of Bosnia-Herzegovina and Republika Srpska: some 50,000 records”;
- Records of exhumed and identified persons from the missing persons’ commissions from the Federation of Bosnia-Herzegovina and Republika Srpska, as well as the ICMP⁶¹;
- “Census of Family Households in Sarajevo”⁶², created in mid-1994 (Some 6,000 death-related records for Sarajevo by mid-1994);
- Many other lists by various NGOs, and
- The “Bosnian Book of the Dead” database.⁶³

Mentioning the listed and used sources which include quantitative indicators as well, the authors are right in stating that “**every listed**

⁶¹ Ibid, p. 6. With this in mind, the authors state: “Only those which have been identified by DNA comparison methodology have recently reached the 8,000 mark in Bosnia-Herzegovina”.

⁶² Ibid. This refers to empirical research by the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo.

⁶³ Ibid. The authors refer to data from the MAG Citizens’ Association from Sarajevo, archived at the Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo.

source is unavoidable in seeking answers to specific questions which seek to be answered”, stressing that, **“when the issue at stake is a statistical review or count of the victims in a war, none of the sources, if used alone, may be considered sufficient”.** With this in mind, they claim that none of the sources **“may be considered complete and objective in terms of the 1992-1995 war in Bosnia”,** and claim that the IDC Database is **“by far the largest and most complete source in this context”.**⁶⁴

This claim – that the IDC Database is **“by far the largest and most complete source in this context”** on **“war victims in Bosnia-Herzegovina”** – is contradictory to the claims made above by P. Ball, E. Tabeau, and Ph. Verwimp. This is a **derived synthetic sum of data from various sources,** or rather, **a compilation of different, incomplete data from various sources,** based on which it is not possible to determine the overall number of victims, which has also been established by the authors of the Database, and especially not their status. Therefore, based on the mentioned source, it is not possible to determine the truth on the victims of genocide and other forms of crimes against humanity and international law committed in Bosnia-Herzegovina, at the end of the 20th century. Even more so as P. Ball, E. Tabeau, and Ph. Verwimp claim that **“the best, approximate estimate will be provided from results gathered from many various sources, and on the basis of many different approaches in methodology”.**⁶⁵

Having evaluated the IDC Database, the authors “gladly” recommended it for use for various purposes, stating that it represents methodologically correct statistics on the “victims of war in Bosnia-Herzegovina”.⁶⁶

⁶⁴ Ibid, p. 6. With this in mind, the authors also claim that the IDC Database is a “unique and valuable source, and it deserves its place among the sources on the victims of war in Bosnia-Herzegovina from 1992 to 1995” (Ibid, p. 7). The part of the text which recommends the IDC Database also lists it as a source of data on the victims.

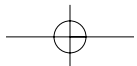
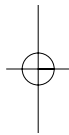
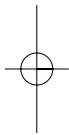
⁶⁵ Ibid.

⁶⁶ Ibid, p. 7. The IDC Database is recommended by the authors as it **“advances the process of reconciliation in Bosnia-Herzegovina by presenting transparent, methodologically correct statistics on the victims of the war in Bosnia-Herzegovina”,** for which – when statistics are being presented – **“one needs to stress the distinction between minimum figures and more complete assessments”.** (Ibid)

Even this qualification is not correct and, among other things, it is opposed to the serious remarks they have directed to the IDC in the context of the status and finite number of victims.

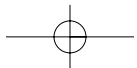
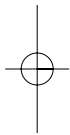
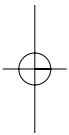
The authors also recommend the **“propagation of approach and methodology used in the establishment”** of the IDC Database. To propagate a false approach and a non-existing methodology is indeed absurd. The construction of historical truths and the education of young researchers on the basis of the IDC Database, which the authors refer to, is an evident, obvious forgery and a wrong approach. The recommendations on the **“propagation of the need to compare”** the Database with other sources of data on the victims, events, and “episodes of war”, as well as the use of the IDC Database **“in order to carry out research phases in the preparation of trials at international and/or national courts in cases of violations of international humanitarian law”**, and **“for the purpose of academic research, including forensic expertise and testimonies at court proceedings”**, are of similar nature.⁶⁷

⁶⁷ Ibid.



PART THREE

CONCLUDING REMARKS



Concluding remarks

Having presented the scientific and theoretic postulates and the methodological approach in the research of the victims of genocide and other forms of crimes against humanity and international law, analytical reviews of some research results, as well as an analytical reviews of certain results of victim research in the Republic of Bosnia and Herzegovina, and of the evaluation of the IDC Database, we can create an integral, theoretical synthesis of the findings and their major drawbacks, which reduce the reliability, authenticity and purposefulness appropriate to the needs and demands of scientific and social practice.

The attention of the researchers has been focused on scientific research which intends to reach findings on the overall number of genocide victims, which demands the discovery, determination and presentation of the markers and quality features of the phenomenon being researched, and its quantification, dimensioning, spread, duration, repetition, intensity, etc. This question receives attention from almost all forms of science and scientific disciplines within their fields of study and research.

Of course, the mentioned question is of specific interest, without exception, for almost all researchers, because directly, but also from a postponed perspective – in the nearer or wider future – it bears doubtless major consequences to the development, recovery and stability of a society, social community, or state.

Starting from the presented postulates, upon which our approach to the interest, enquiry, and research is founded, the mentioned questions have been of high importance and interest in Bosnia-Herzegovina both during and in the aftermath of the aggression and genocide, and in the focus of science and politics, domestically and abroad.

These concluding remarks aim to divert the attention of the users of this text to the reasons as to why we have underlined the importance of the question of overall number and status of victims of crimes against humanity and international law. These questions are, or can be observed, in a relation of conditionality and interdependence, because the overall number of victims also includes the question of the status of victims, which, among other things, also includes the question of increased mortality and a significantly reduced natural growth rate, which are in a direct relation to armed conflict, aggression, and genocide.

There is no need to inform either the core academic audience, or the wider academic public, of the extreme subtlety and complexity of the approach and research of this issue.

Various kinds of research exist, and various subjects – to various motives and interests – carry it out. Every one of them is simultaneously in a certain social and political relation to the researcher and the researched, or to the subjects and objects of research.

Research has its scientific and social significance, social and scientific objectives and social and scientific justification.

Research of the overall number of victims of the grave breaches of international humanitarian law and their status in Bosnia-Herzegovina is more complex, because the answers to these questions also provide arguments in the theses on the character of the armed conflict in Bosnia-Herzegovina at the end of the 20th century, and to the findings on the conquest-directed and genocidal intent on the part of the aggressors and their collaborationists.

The analytic review was directed at the specifically presented findings and data from E. Tabeau and J. Bijak, and the IDC records, as well as at the critical review of the IDC Database evaluation as prepared by P. Ball, E. Tabeau and Ph. Verwimp.

Let us use the final part of the text to synthetically indicate upon the severe drawbacks to the mentioned findings and the possibility of manipulation in the scientific, social and political practice conditioned by these drawbacks, and the possible far-reaching consequences related to Bosnian-Herzegovinian society and Bosnia and Herzegovina as a state.

The first, biggest and most serious drawback of the previously mentioned authors is reflected in the non-scientific approach to research and the determination of the total number of victims. Any serious scientific research of the victim count needs to be based on a completed scientific research project, verified through a process (stage) of preliminary research. Research project documents answer the questions of scientific argumentation and approach to investigation, as well as the way of organization and implementation of scientific research. The scientific part of the project answers issues related to the identification of the subject of research, and the deduction of the subject of research, demonstration of various findings surrounding the status, character and initial and starting role of various findings, basic categorical notions are given and classified, as well as various operational concepts, presenting the temporal and spatial markers to the research, and the determination of its scientific discipline. Furthermore, the research subject helps us deduct and determine the aims of the research – social and scientific, and the research subject, in line with scientific aims, allows us to deduct and present hypotheses and indicators of the subject, hypothetical attitudes and variables.

In addition to hypotheses and indicators, a specific segment in the scientific segment is the method of research through which certain scientific paradigms and methodological approaches to the research are demonstrated, as well as the type and kind of research, the methods of research, sources of data and findings and samples for such research, unless it is based on samples, that is to say, it should state and point out that the research is conducted based on complete observation. The final part of the scientific portion demonstrates the scientific and social justification of a certain form of research. The other part of the project document, the organizational/operative part, contains and includes research plans (timelines, personnel plans, material/technical and financial plans), plans of data processing and deduction, and instruments whose creation is based on certain designated and mentioned factors of the research subject, defined and classified concepts of realities – i.e. factors of the subject of research, variables and indicators of positions of individual hypotheses.

Although the scientific approach to the assessment of the overall numbers of victims has led us to point out various important questions at the center of scientific projects, upon which scientific research is based, we take this opportunity to point out the research project, its significance and role in the organization, direction, management and implementation of research, and the presentation of scientific results, while pointing out their scientific and social purposefulness and applicability. The reasons for which we do this are serious enough, as the mentioned authors and subjects have demonstrated various errors in the essentially non-scientific process of assessing the overall number of victims – direct or indirect, within which framework we also discover the special question of the victims' status. All these findings must be based on appropriate arguments and exposed to inter-subjective control, which serves the determination of truthfulness of the scientific findings. We have, therefore, also partially compared the findings by E. Tabeau and J. Bijak, on the one hand, and of IDC, on the other hand, which has demonstrated significant differences in their estimates of the total number of victims and their status. What is of particular concern are the differences in the overall number and status of victims, whereas the research subject is identical, and the used sources, the methods and procedures of inquiry, are very similar. According to the E. Tabeau and J. Bijak estimate, the overall **minimum** number of victims is 102,622 persons, which includes 55,261 civilians and 47,360 “soldiers”, whereas the IDC number of “killed and missing” equals 97,207, including 57,523 “soldiers” and 39,684 civilians. The 2003 (minimum) victim count by E. Tabeau and J. Bijak is larger than the IDC database, by 5,415, although the number of “soldiers” in the IDC Database is larger by 10,163 than the (minimum) results by E. Tabeau and J. Bijak.

It is not possible to reach a profound, broad finding on the overall number of victims – direct and indirect – and their status, without analyzing all of the defined categories of victims and their key socio-demographic markers. Unfortunately, E. Tabeau and J. Bijak, just like the IDC, devote all their activities to the assessment of the overall number of killed/missing victims and their status, while completely ignoring such important categories as the forms of crimes and methods of commission, including questions of socio-demographic markers.

One of the basic questions which we want to research into more detail is the question of the necessity of elementary, initial findings on a certain issue, in the fields of science, theory, practice, and others. How can something be researched without any prior basic findings or a clear vision of the subject in question – which is a trait particularly characteristic of the IDC work. Not wishing to get involved any further into the elaboration of the mentioned attitudes, we are particularly concerned by the fact that these results have been presented as almost finite, almost in the sense that, perhaps, a few thousand victims may be missing, making them ultimately finite. We will not enter the debate on the ethic value of such declarations and the insults to the victims' piety, but we do wish to point out the significant growth of so-called natural mortality in the Bosnian-Herzegovinian society, not merely during the aggression, but in particular in the aftermath of the aggression and genocide, demonstrated to us by the statistics on the increased mortality, particularly in younger and relatively young people, stemming from non-characteristic causes of death (cancerous diseases, heart and brain attacks, increased suicidal and psychological illness rates, PTSD and the enormous growth of socio-pathologic phenomena and problems which destroy the natural social tissue of the Bosnian society which, up to the aggression, was quite healthy. What we can say is that this is surely not the gift of the God, but it has its roots and causes in the aggression and genocide, and in the far-reaching consequences they have created to the Bosnian society and state.

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The especially significant, very complex and subtle question is that of the determination of the status of victims (*civilian – combatant*). This question or problem is significant for science, too, particularly the contemporary political and military history, and for social and political practice. From the perspective of science, the determined status of the victims of the one or other category can be used as an argument in the confirmation of the hypotheses of the research project on the character

of the armed conflict, whereas from the perspective of social life, the status of the victim contributes to the realization of certain entitlements and benefits for the victim's family.

While determining the status of victim(s), or rather determining whether the killed or injured person was a civilian or a combatant (or vice-versa), relevant documentation from the time of the armed conflict (either international or internal in character) is of crucial importance and without it, one cannot fully, accurately and truthfully present status-related findings. In the case of Bosnia-Herzegovina, *exempli gratia*, these are **regular** and **extraordinary combat reports**. In relation to this, let us provide a concrete, empiric example, which relates to the Army of Republika Srpska, a collaborationist army of the Federal Republic of Yugoslavia, or one of three strategic-operative components within the Yugoslav Army. Namely, the Command of the Sarajevo-Romanija Corps (Forward Command Post – IKM-1, village of Nišići), Strictly Confidential, File No. 20/15-2/47/2, has delivered, on October 3, 1994, to the Main Staff of the Army of Republika Srpska, the Headquarters of the Sarajevo-Romanija Corps in Lukavica and the Headquarters of the Drina Corps the following **Extraordinary combat report**, which reports that their forces, “using all available methods, have carried out an attack against the Polom structure, which they have occupied, and carried on with attacks in the direction of Moševačko Brdo. The mentioned attack had inflicted upon the enemy significant losses, and various weaponry and ammunition was confiscated.”⁶⁸

⁶⁸ Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, SRK [Sarajevo-Romanija Corps] HQ, IKM-1, village of Nišići, strictly confidential No. 20/15-2/47/2, October 3, 1994, *Extraordinary Combat Report as of 2200 hrs* – to the VRS (Army of Republika Srpska) Main Staff and others.

There are many such relevant documents, also accessible through other armed forces. In relation to the Army of the Republic of Bosnia and Herzegovina, we can point out, *exempli gratia*, the “*Evening Reports*” of the 502nd Famed Mountaineer Brigade of the Army of the Republic of Bosnia and Herzegovina, of January 14th and February 17th, 1994, which state that the “**units have carried out active combat activities**”, on the occasion of which several combatants were injured or killed (Institute for the Research of Crimes against Humanity and International Law of the University of Sarajevo, 502nd Famed Mountaineer Brigade, January 14, 1994 – to the HQ of the 5th Corps; Ibid, Army of the Republic of Bosnia and Herzegovina, 502nd Famed Mountaineer Brigade, February 17, 1994 – to the HQ of the 5th Corps).

During **combat operations**, occupying the Polom structure, the Army of Republika Srpska has registered the following losses:

“A) KILLED

1. MILAN DOROSLOVAČKI, SENIOR ENSIGN FROM ZVORNIK, DK [Drina Corps; remark by the author]
2. GORAN VUKOVIĆ, *COMBATANT* FROM ZVORNIK, DK
3. RISTO RIKIĆ, *COMBATANT* FROM ZVORNIK, DK
4. ZDRAVKO AVRAMOVIĆ, *COMBATANT* FROM ZVORNIK, DK
5. NN /”ROČKO”/, *COMBATANT* FROM ZVORNIK, DK
6. ZORAN KRAJIŠNIK, *COMBATANT* FROM 1. LPBR, SRK [First Light Infantry Brigade of the Sarajevo-Romanija Corps; remark by the author]
7. ONE *COMBATANT* FROM THE 1. RPBR SRK [First Romanija Infantry Brigade of the Sarajevo-Romanija Corps; remark by the author], FOR WHOM NO DETAILED DATA IS AVAILABLE AS YET

B) SERIOUSLY INJURED

1. MIĆO SAVIĆ, *COMBATANT* FROM ZVORNIK, DK
2. DRAGAN SIMOVIĆ, *COMBATANT* FROM ZVORNIK, DK
3. IGOR MOR, RUSSIAN FROM THE 1. RPBR, SRK
4. BORO GAVRILOVIĆ, *COMBATANT* FROM THE 1. RPBR, SRK”⁶⁹

The mentioned example allows us to doubtlessly conclude that, starting from the perspective of international humanitarian law, the mentioned persons have the **status of combatant**, and not the **status of civilians**. However, for many people which have been registered as killed “soldiers” in official military records, used by E. Tabeau and her

⁶⁹ Ibid.

colleagues, and the IDC, one cannot confirm their status of combatant – unlike the case of the relevant source mentioned above – , i.e. they cannot be confirmed to be, in Tabeau's/Bijak's or IDC words, *soldiers*, as these are individuals which have civilian status. We have seen that this is not only a scientific impermissibility, but also a legal mistake.

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Continuing our conclusive remarks, we will also point out to some of the more important omissions in the research of E. Tabeau and J. Bijak, as well as in the “population loss register” of the IDC, by illustrating them in concrete examples:

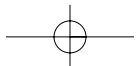
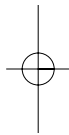
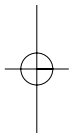
- No scientific research project document was drafted, based on which scientific and empirical research can be organized and carried out;
- The subject of research has not been sufficiently defined, which includes the presentation of existing findings on the subject of research, the presentation and definition of category examples and derived concepts, and the classification of clearly demarcated factors important to the subject of study, as well as the time frame of the study varies, which is particularly characteristic for the IDC;
- The lack of valid scientific definitions, used terms and concepts, and their classification, which should have been at the basis of the creation of instruments for data collection, such as victims' categories, notions of civilians/soldiers/combatants, status of individuals, forms of crimes, methods of commission, causes of death et al., and which would enable the social reality to be discovered and identified;
- The lack of respect for the legalities of true thought – i.e. of the laws of permanence and development, which is particularly related to the issue of status of a certain person (*combatant*), and the

possibility of the change of this status at any moment, or the factual status of the individual at the time of the commission of the crime;

- The ignorance of the role and importance of the source of data in relation to their validity and reliability, which has contributed to the lack of use of primary sources of data, which are relevant in the concept of their integrity, relevance, authenticity and truthfulness of the findings they offer. The basic criterion for the primary feature of the sources are the author, contents, authenticity, authority, method of creation and purpose of use, as well as the place and time of the creation of the document. These are, among other things, the war and operative logs of different units, regular and extraordinary reports, daily bulletins, various reports on events, military units' records on the killed or injured members, duty records, and documents of health institutions on murders (confirmation of deaths) or injuries, or of the burial societies on deaths, et al.;
- When determining the status of victims, E. Tabeau and J. Bijak, or the IDC, did not use crucial and authentic documents (of various provenience), without which no absolutely valid answer to this question may be given;
- The non-existence of a proper instrument for data collection, based on which, together with the data processing and unification plan, the conditions are made to enter the data continuously or successively;
- The ignorance of methods of data collection and their incorrect choice, as well as the unconscious, non-critical, irresponsible application in the data collection process;
- The lack of educated, qualified personnel – on-site (field) researchers – who would be involved in the process of data collection. We note that the case involves not only the lack of field researchers, but also the lack of professional scientists who take on specific subject and its aspects and methods in a permanent and systematic way;

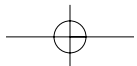
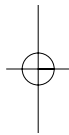
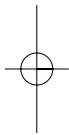
- The non-critical and indirect adoption of data from various subjects' lists, created mostly for their own purposes and aims;
- Just like the IDC, E. Tabeau and J. Bijak have predominantly used the same data sources, which can be perceived as secondary, even tertiary sources, based on which significantly differing results have been presented, both in terms of the qualitative definitions of the subject of research – status of persons, as well as their quantitative features – total numbers of victims;
- At the beginning of their activity, the IDC had “taken over” from the State Commission on the Collection of Facts on War Crimes some 75,000 names of “killed and missing” persons, in order for them to record – from April 19, 2004 to June 21, 2007, a total of 22,207 new names of “killed and missing” persons. The total results of others' and their own work were represented by the IDC in the form of a summary register – i.e. a register of the registered, whereby they failed to respect the provisions and demands of basic analytic methods of scientific thought and research;
- The research that was carried out by E. Tabeau and J. Bijak, as well as the summary register of “human losses” by the IDC was mostly financed by the Government of Norway;
- The subsequent register of “human losses” by the IDC was created to partially confirm the research results by E. Tabeau and J. Bijak with their particular involvement in promoting the IDC, or rather, its Database on “human losses”;
- A special problem is reflected in the fact of comparing results of research (of the mentioned subjects) due to the difficulty to define a general comparable value as the basis of comparison. The research by E. Tabeau and J. Bijak does carry features of scientific research, whereas the “research” by the IDC Association is a typical example of dilettante research. With this in mind, the lack of comparables makes it impossible – or significantly more difficult – to compare the results of subject-based research, and therefore, we are not surprised to see the qualitative and quantitative differences in the research results of the mentioned subjects.

- Unfortunately, it is important to point out that neither E. Tabeau nor J. Bijak, nor the IDC, have presented the names of the victims accompanied by appropriate identification particulars, which almost completely excludes the possibility of inter-subjective verification and comparison of data to secure their truthfulness;
- The presented and described method of work by the IDC obviously has no features of scientific research, nor has it been carried out based on scientific research, nor did it demand a qualified, educated research personnel and special funding. Such an approach and work method could and can be applied by any individual and/or organization, and they would obtain results similar or identical to those presented by the IDC. Therefore, for example, only in the course of one day can data be collected (i.e. lists adopted) in an electronic form, based on which a database of several tens of thousands (even hundreds of thousands) different names of victims can be collected;
- Having in mind those who have commissioned and financed the research by E. Tabeau and J. Bijak, as well as by the IDC, the researchers engaged, the results achieved, the approach to research, the role of the subjects involved, their functions and tasks, etc., the probable conclusion arises that the IDC is just a segment, a detached department of a broader, international political project.



IV

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