Tribunal vs. Truth: ICTY and TRC in the Case of the Former Yugoslavia

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The International Tribunal for the Former Yugoslavia (ICTY) was established after a series of atrocities took place between the Serbs and Bosnians from 1992 to 1995. The tribunal received harsh criticism from all around the globe for not taking serious action and for being unable to bring to court the top generals responsible for many atrocities in the region. As a result of this criticism, another alternative to the tribunal, a Truth and Reconciliation Commission (TRC), has been brought up over several years. The commission would place an emphasis on truth rather than (or in addition to) justice. This paper analyzes what these institutions can do, and the possibility of an impasse they both could face.

I. Introduction

The conflict between the Serbs and Bosnians from 1992 to 1995 led to the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Being the first of its kind in history, the tribunal set out to try the accused leaders of the Serbian regime for crimes committed against humanity. At the same time, the tribunal faced many challenges

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both from Bosnia and the international community regarding its mission and role in the establishment of justice, its credibility in such a mission (after a long delay and misrecognition of the atrocities in the region) and its power to do so.

Based partly on the doubts and challenges against the ICTY, the idea of a Truth and Reconciliation Commission (TRC) in Bosnia-Herzegovina has been entertained over the course of several years. The concept of TRC springs from a much more comprehensive sense of justice; it places emphasis on the victims rather than the criminals and is based on a belief in reparative justice. The TRC’s evaluations are future oriented and large-scale, providing for ‘lessons learned’ and projecting into the future. Central to the TRC concept is its inherently dominant mission to acknowledge “truth”.

This paper will address the pros and cons of both the ICTY and TRC in a comparative perspective. Taking as a starting point the differences in the basic conceptions of these institutions, I will also attempt to determine to what extent the assumption of a dichotomy between them finds support in the related discourse headed by academic literature. In addition this paper seeks to deconstruct the very dualisms (such as that the former seeks justice whereas the latter is geared towards reconciliation) and demonstrate what they can really do as much as the impasse they both face. After all, the very concept of TRC is challenged by more ‘traditional’ forms of justice. As a result, this study will open up a comparison between the “truth” of the commissions and the “justice” symbolized by the tribunal.

II.　How It All Started

In July 1995, thousands of Muslim Bosnians poured into Srebrenica - a town declared as a “safe” area by United Nations (UN) in 1992. In the same year, the Christian Serbian Army set out to wipe out all other religious and ethnic groups in the region despite being a minority. Those Bosnians who had escaped from on the roads or surrounding towns that had already been cleansed fled to the Srebrenica “safe” zone in the belief that UN troops would protect them from the Serbians. Contrary to their expectations, UN troops primarily consisting of Dutch and French soldiers proved unable to protect them and, even worse, failed to put effort to prevent mass-killings by the Serbian Army and by that, made the latter’s job easier; the UN troops did not launch any air strike or fire a single bullet against the Serbian Army. Later, the troops claimed in their defense that they were not authorized to do so. An alternative explanation is that, by believing the Serbian General Mladic, who promised that he would allow the Bosnians to leave the town unharmed by trucks provided for by his army, the UN commanders ran into a deliberately set up trap. First, truck by truck, all men were deported out of town and thus separated from their families. Subsequently, children
were taken, and finally the trucks were filled with women all before the eyes of the UN troops. Serbian soldiers, having killed some UN soldiers and taking their UN helmets, approached the Bosnians posing as UN troops. Despite Mladic’s promises, the trucks never brought the Bosnians to freedom and peace. Instead, they were transported to mass graves, which were found only later; obeying Milosevic’s orders, the soldiers tried to erase any trace of the graves. In this single event of four days, 7,500 people were killed.  

In the Bosnian conflict, the overall casualties are even more shocking: more than 250,000 lives were lost, and out of the pre-war population of 4.5 million, 1.8 were displaced or exiled from Bosnia. More than 30% of all residential buildings were destroyed, and almost all public, cultural and civilian institutions such as hospitals, schools, and mosques were demolished. Further, the 4.5 million population was diminished to 2.9 million people.

Facing the enormous flow of media pouring into the region, the United Nations (UN) in May 1993 established the International Criminal Tribunal for the Former Yugoslavia in The Hague of the Netherlands under Security Council Resolution 827 and chapter VII of charter of UN. The accusations and challenges by both the domestic and the international community against the ICTY are already obvious; the UN was accused of reacting too late to the atrocities in the region. Even in the presence of its own troops, it did very little to prevent even small scale crimes committed by the Serbian regime. Kofi Annan, the former UN Secretary General has admitted that, “the UN will always be haunted by Srebrenica Massacre.” What followed after the establishment of the Tribunal did not make things easier, either; as we will see, fifteen years after its emergence, the tribunal has neither been able to bring most of the major actors of the atrocities into the courtroom, nor has it been able to establish enough credibility partly due to lack of sincerity and of cooperation on the

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establish enough credibility partly due to lack of sincerity and of cooperation on the part of powerful Western governments.

Richard J. Goldstone, the former Chief Prosecutor of ICTY and effectively the head of the Tribunal, narrates in his *For Humanity: Reflections of a War Crimes Investigator* the innumerable difficulties he faced when trying to put the tribunal into action in a time when everybody was spreading out blatant messages. In a casual meeting, Edward Heath, the former British Prime Minister, asked Goldstone why he had accepted such a “ridiculous” job as a war crimes investigator for the Former Yugoslavia, and went on to state that, “if people wished to murder one another, as long as they did not so in his country, it was not his concern, and should not be concern of the British government.” Although the statement at first startled Goldstone, he also admitted that the British prime minister was just echoing openly what many leading politicians in major Western nations were saying in private, and what many of them still believe. This instance demonstrates explicitly the insincerity of the International Leaders upon whom the very proceedings and results of the Tribunal, as we will see later on, depend.

Then, why, in the first place, did the international community come up with such an institution as the International Criminal Tribunal? The answer to the question requires a brief historical sketch going back to another tragic event in the history of mankind; that of 1945. Before World War II, nations—not individuals—were accountable in the face of an international law violation. The problems which arouse on the level of international relations were solved on a state-to-state, or a government-to-government basis, rather than on a personal one. The actions of a particular regime were accountable; or the misdoings of a state or a government could only be articulated rather than questioning about an individual fault or intent. “It was not until the trials at the end of World War II that a substantial case law on [the concept of individual criminal responsibility] was established.” The articles of The Charter of the International Military Tribunal prepared in 1945 by France, Great Britain, Russia and the United States, which laid down the principles of Nuremberg, state clearly “individual responsibility” (although some certain terms are left undefined). The London agreement of 8 August 1945 establishing the Nuremberg Tribunal was historically the first treaty to recognizing ‘crimes against humanity’. These crimes distinguish themselves by recognizing (criminal) liability for offending humankind, rather than for injuring individu-

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8 Greenwood, Christopher, *The International Tribunal for the Former Yugoslavia*, *International Affairs* (Royal Institute of International Affairs 1944) (Volume 69, Number 4.), October, 1993, pp. 641-655.
als as immediate victims. Thus, “For the first time,” states Overy, “the leaders of a major state were to be arraigned by the international community for conspiring to perpetrate, or causing to be perpetrated, a whole series of crimes against peace and against humanity.”10 The UN affirmed the crime against humanity in 1946, and war crimes were stated openly in the Geneva Conventions of 1949, which are recognized by the international community.

Therefore, the Holocaust changed the case of individual liability in international war crimes irrevocably - or we just assume so, over-generalizing the results of the Nuremberg Trials to future and prospective proceedings, which is quite problematic looking at what followed in the Tribunals (the articulation of individual liability did not necessarily bring about the power to bring the indicted to the court), which means that retrospectively speaking, the legacy of the Nuremberg trials is still an unfulfilled project. On the basis of the Nuremberg Trials lay the need to indict Nazi leaders as well as the urgency to state the fact that Nazi leaders do not represent Germany—thus individualizing the crimes. Yet, above all, the main desire was not to see other genocide by sending out the message to the world that criminal leaders will not get away with their atrocities. Unfortunately, it is also most questionable to what degree this desire has been realized. As Goldstone, the former Chief Prosecutor at the Hague Tribunal has stated, “The hope of ‘never again’ became the reality of again and again.”11

Based on such a background, and particularly on the legitimacy of Geneva Conventions, the UN established the ICTY. However, maybe not because of the previous experiences of Nuremberg and the explicit definition of international war crimes and crimes against humanity, but due to intense and global pressure of the international media, which kept showing disturbing footage from the region to the world, the UN had no choice but to establish the Tribunal. It is true that the UN had the legal means and authority to establish a tribunal given the clear justifications established after the WWII, yet the reluctance of the international community (i.e. the political leaders, not the international public) inhibited the emergence of a war crimes tribunal regarding the Yugoslavian context; had it not been the spread of public opinion on a large scale in the digital age of the twenty first century, the tribunal would not have taken place. The reluctance on the part of the international leaders is illustrated by the fact that after years of its establishment, the tribunal was still lacking primary funding, which belated its proceedings if not for the generous donation of

$1,000,000 by the Pakistani government, as Goldstone seems to imply. The generosity of the Pakistani government can be explained by the fact that many victims were Muslims and seen as ‘brothers’ by the Pakistani. It is most likely that the ICTY could have never initiated its proceedings without this donation. The tribunal is also said to have been established to hide the UN’s inaction in the region.

III. Mission Unaccomplished

All these controversies and challenges notwithstanding, and perhaps just because of these very issues, the ICTY was finally provided with utmost power, authority, jurisdiction, and an almost omniscient rule of mandate starting from 1991, the date when very the first atrocities began to take place, until an indefinite time in the future when NATO and UN peacekeeping troops in the region are no longer needed as peace is stabilized. However, the mandate of the tribunal did not mean immediate results, or to put it more clearly, the authority was not realized into practice: “For the most of its two years, the ICTY had no defendants in custody even though it already had issued thirty-four public indictments.” Securing the apprehension of the indictees would not only become a problem in the formative years of the tribunal but also be one of the defining elements for the rest of its course.

The mission of ICTY is summarized under five categories on the official website of ICTY of UN. The first of these are “spearheading the shift from impunity to accountability” and “strengthening the rule of law.” As these are the most obvious and fundamental grounding of the tribunal they hardly require any more explication. The message that no matter who you are, at whatever position you are, you will be held accountable for your crimes is the strongest code the ICTY has been trying to send out to the world, thus aiming a prospective and pre-emptive stimulus in the hindrance of further atrocities as well as targeting at past crimes in the service of justice. Despite the simplicity of the basic idea behind the tribunal and its effective rhetoric, what happens in reality, however, is a cliché example of the clash between theory and practice. Even after fifteen years of the initiation of the proceedings, the number one criminal Slobodan Milosevic, the then president of Serbia, died ‘not guilty’ as his trial had not been concluded after about two decades. The cases of other leading figures are even worse; Radovan Karadzic, the then president of the Bosnian Serb Republic of Srpska, who is indicted by ICTY with ample evidence against him, has never been brought

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12 Goldstone, Richard J., For Humanity: Reflections of a War Crimes Investigator, at p. 78.
13 Malhi, Gurjot, An Experiment in International Criminal Justice: The Philosophy, Methodology, and Working of the International Criminal Tribunal for the Former Yugoslavia, at p. 196
to court; he is actually one of the most wanted men in the world according to BBC. The fate of Ratko Mladic, Karadzic’s military commander who played the leading role in Srebrenica massacre, is also missing, not even mentioning that these were the de jure persons in command rather than many others who were de facto perpetrators, the latter being incompactly difficult to be indicted as evidence is hardly available. Goldstone narrates how he pushed the world leaders, the United States particularly, to arrest these persons and how they not only ignored the legal power of ICTY but also insisted on not catching a figure such as Mladic in a time of elections in the USA. Moreover, not only Pentagon but also NATO and European leaders are most reluctant to arrest these criminals. Bearing in mind that ICTY has focused on top ranking only, officials given the huge number of perpetrators, the inability and inertness of the ICTY becomes obvious.

“Establishing the facts” is another mission ICTY has set out to do, and this may be the one area in which the tribunal has been at least partly successful. The crimes committed in and around Bratunac, Brecko, Celebici, Dubrovnik, Foca, Prijedor, Sarajevo, Srebrenica and Zvornik, to name a few, have largely been recognized and acknowledged. However, the process was neither an easy nor a quick one. As one of the officials of the tribunal, Malhi describes the intense and expensive inner-workings of ICTY. The institution is divided into three main divisions; the Chambers, which is consists of 14 different judges, a Registrar, and the Office of Prosecutor. Analysts, investigation teams, language staff, criminal professors, historians, and research officers are only some of the examples of the wide-ranging personnel employed by ICTY. All costs add up to a budget of $96,443,900 as of 2001. However, the fact finding of the tribunal is focused on behavior of individuals rather than on the collectivity and much emphasis is put on the question of which high-ranking officials are to be indicted and to what extent they are guilty rather than general or detailed facts about the nature of the events in the region. The tribunal, as such, inevitably represents the Kafkaesque side of justice; numbers, pages, endless rooms and officials, and paperwork to complete which would take an infinite number of years. At least, Carla del Ponte, the UN’s chief crimes prosecutor is optimistic (!), by 2010, the work of the ICTY will be completed. Criticizing the meticulous proceedings and preparations, however, is

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not to suggest the tribunal some sort of superficiality, although it is generally agreed that things could have been much more swiftly run (if the international leadership were more eager for a conclusion). Rather, the intricately labyrinthine job of the tribunal might be balanced by a TRC, which would have a much more gestaltian approach. Thus the victims of the crimes in question, those who are most in need to be aware of the proceedings of the tribunal, might be lost in the details and a truth commission would be a solution.

“Bringing justice to thousands of victims and giving them a voice” and “accomplishing international law” are the final, and probably most problematic, goals of the tribunal. Given the millions of people killed, exiled, deported, tormented, injured, or deprived of their property, such a mission is impossible from its very beginning; it is simply impractical. Furthermore, one might argue to indict even only one person requires several years, piles of documents, and lots of judges, lawyers, defendants, prosecutors, and persecutors, which makes it why many believe the ICTY is bound to be unsuccessful in this regard. Although, it is claimed that “Through its work, by holding senior individuals responsible for the crimes committed in the former Yugoslavia, the Tribunal is bringing a sense of justice to the many thousands of victims across the region,” the tribunal, according to its critics, has proven unable to hold serious individuals responsible as we have seen renders the argument invalid. Waller indicates gravely that many Serb war crime suspects still enjoy popular support; both Karadzic and Mladic are free and most probably in Serb-controlled territory.21

Before going on our analysis with the truth commissions, we should give the tribunal its due place rather than rhetoric of blame. As of 2007, ICTY had indicted 161 individuals, some of whom are top-ranking officials. Most recently, in December, 2007, Gen Dragomir Milosevic, a major figure, was sentenced for orchestrating the Sarajevo siege.22 Although the figures are not most promising given the time of a decade and a half which passed since the founding of the tribunal, they suggest the strict, disciplined, and quite detailed nature of the investigations, thus leaving no question about the validity or reliability of the proceedings. “The primary goal was not to achieve convictions but rather to ensure that those indicted would enjoy fair processes and procedures. That goal was by and large achieved”23. The second major success of the tribunal is its contribution to the valorization of the international law, and ultimately, humanity. By putting on the table the Geneva Conventions and other related international laws, and by stressing the rule of law, and pointing its finger at responsible parties, the sense of justice is established before the global community, at

21 Waller, James, Becoming Evil: How Ordinary People Commit Genocide and Mass Killing, at p. 263.
22 For a detailed list of indictments and proceedings of the ICTY, please visit the official website www.un.org/icty.
least in theory if not in practice. Another important aspect of the tribunal is that, unlike the previous conception that international law applies when inter-borders-activities take place, the court approached atrocities that took place within borders with precision. This suggests a major shift from state-centered to international humanitarian approach, which increases both the power and the credibility of the tribunal. The last, but not the least, and perhaps the most important accomplishment of the proceedings is that it considered mass rape to be a war crime and treated it as such, unlike the treatment of such atrocities in the trials after the WWII. Mass rape was committed by an enormous number of Serbs as a method of ethnic cleansing, and the case was better documented than ever in history. ICTY listened to many women, and recognized rape as a war crime against humanity. This fact becomes even more significant especially when we bear in mind that “rape of the women’s body symbolically represents the rape of the community itself.”

IV. Another Alternative: Truth

However, rape was applied systematically as a major ethnic cleansing technique, and the tribunal does not have the ability at all to listen to even a fraction of the thousands of sufferers, let alone mentioning many other victims from many other cases. The issue brings us to one of the strongest arguments lying behind the idea of establishing a Truth and Reconciliation Commission (TRC) in the area. The victims in the region mostly claim that workings of ICTY hardly ever touch on their experiences, thus providing them with a sense of injustice, rather than its positive counterpart. Those who have been able to attend to the proceedings of the tribunal as witnesses or participants are so few that they cannot even work as a representative sample of the whole nation. The success of the TRC in South Africa has also boosted interest in such a commission.

The logic behind a TRC in Bosnia can be grouped under three categories. We have already started discussing the first of them: the need to enable many more victims to participate in the process of creating and establishing justice. As two of the strongest defendants of a TRC in Bosnia-Herzegovina, Kritz and Finci argue, “Trials will appropriately only provide
In this respect, a TRC can be conceived as a mirror image, a reverse institution of the tribunal. Whereas the emphasis of ICTY is on the criminals and perpetrators, that of TRC is on the victims. Taking its very name from the criminals, ICTY tries to prove which perpetrators are not guilty as much as trying to find the guilty. Lots of defendant lawyers and many other innumerable officials are working in the service of the indicted, while victims are only a temporary and transient part of the whole procedure. Moreover, as we have seen, indictments of the tribunal are long, laborious and highly expensive. On the other hand, as its South African counterpart has proved, a TRC can listen to thousands of victims without the least amount of paperwork, bureaucracy, and in the most cost-effective way (when compared to ICTY). We should not, however, stretch the mirror-image metaphor too much as the idea that TRCs only listen to victims and their experiences is not only a fallacious one but also a wrong premise regarding the core logic of these commissions. TRCs do listen to perpetrators, but not from the vantage point of the criminals; not trying to see whether they are guilty, but from the perspective of the victims, and how the information gained from the perpetrators can be used in advantage of the sufferers. It can be justly argued at this point that ICTY has already been doing this mission; but once we remember the limited scope of the tribunal, a need for a more comprehensive and inclusive system becomes obvious. Claude Jorda, the president of the ICTY as for 2001, suggests in a speech given on the idea of a TRC in Bosnia (from which we will quote extensively) that since the tribunal is focused on top officials, the fate of the lower-ranking officials can be submitted to the commission. In addition, he argues that these perpetrators should be encouraged to participate voluntarily in the workings of the TRC and in conjunction with ICTY, mitigating circumstances can be suggested for these individuals as a stimulus to their participation.

This issue of “mitigating circumstances” opens up the question of amnesties, a highly controversial topic with respect to TRCs. As for the case of Bosnia, the issue lies at the core of the difference between the tribunal and a prospective commission. When the idea of a TRC is first uttered, the ICTY was said to have negative attitude against it because of the South African example, one which had enormous authority and power such as amnesties. However, once it has been acknowledged that a Bosnian TRC, like many other examples in Chile, El Salvador, or Chad, may not and most probably will not have the power to authorize any sort of amnesty, the ICTY changed its attitude as Jorda’s speech already suggests.

The problem arises from the fact that if TRC in Bosnia has the power of amnesty, there will be a severe clash between the authorities of TRC and ICTY; the former can try to provide amnesty for a perpetrator, who might be found guilty by ICTY, which means that the institutions will render each other’s proceedings invalid. This is a major setback, however, as these bodies are supposed to work in cooperation with each other—thus completing the missing aspects of one another—rather than in a form of competition or rivalry, which we will turn back later on. Moreover, TRCs are flexible and adaptable by nature. The commission in South Africa does not resemble the one in Chile, nor does the one in Sierra Leone have equal perspective and authority as its counterpart in Argentina. So, usually and for good reasons the power of amnesty is not conferred to TRC, and in the presence of the Tribunal it makes little sense for the Bosnian commission to have it.

Each of the described TRCs does not only have different powers, but they also have different priorities. “Acknowledgement of truth” is the second category which we will look at regarding what a truth commission can do, and it is the area where another major difference between a Bosnian TRC and the others exists in terms of their mission’s priorities. As its name already suggests, establishing the truth is the foremost aim of any TRC, which is generally hidden from the society. By saying that the truth is hidden I mean the intricate web of discourse of the international leadership, which shows a reluctance to recognize what happened between 1992 and 1995 in the Former Yugoslavia as a genocide, or still worse, anything close to it. The type of recognition which is clearly visible in the discourse, let’s say, about the Holocaust is still missing in the Yugoslavian context. Thus, it is understandable how the mere acknowledgment of that truth is supposed to soothe and provide victims with at least a minimum sense of justice. The concept of spreading truth also bears the notion of making the suffering of the victim public, and of enabling the domestic and international society to recognize their victimization. Sachs explains that “Acknowledgement involves an acceptance not only existence of a phenomenon but of its emotional and social significance as well.”

This way, ‘knowledge’ turns into acknowledgement; it is already ‘known’ that many people died and many more suffered. “Yet, the human and personal dimension had been extruded, the pain shut out.” However, when the ‘facts’ turn into ‘narratives’: dull histories into personal stories; and data into individual names, the statistics are transformed into a three-dimensional space. This, in turn, can be of a healing effect to the victims.

However, the obvious generality of this mission is blurred once again when the specificity of the case is taken into account, thus creating and multiplying different sorts of missions. “[W]hat happened in the dark in Chile and South Africa,” explains Goldstone, “happened

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in the open in Rwanda. There were denials and lies in the former, while there were boastful admissions in the latter. Whether truth commissions have something new to tell the victims depends on such contexts” (Exposing Atrocity). Furthermore, when we turn back to the case of Bosnia, the truth is claimed to be everywhere, but in multiple forms; the truths of the Muslim Bosnians, those of the Serbians, and finally those of the Croats. In UNESCO Courrier, Finci argues, “In Bosnia, such a commission is not needed because of a hidden truth, but because of multiple "truths," each with a distinct ethnic vein. Nationalists from the three ethnic communities involved in the recent war propagate a history that portrays their group as the one and only victim of mass abuses, depicting the other two as evil perpetrators and monsters”

Every nationalist group tries to establish, solidify and make official its own version of truth based on the demonization of the ‘other’ and victimization of their own. This is most problematic given the theme and the name of the commission; Truth and Reconciliation. The basic premise is that the former leads to the latter, and to a certain extent, it is a valid assumption as we have stated in the previous paragraph. However, each of these terms brings about myriad problems. To begin with, the ‘Truth’ per se might not exist at all; the assumption that there is a mathematical precision regarding the uniqueness of Truth is fallacious. In “Different Kinds of Truth,” Sachs explores the issue regarding the TRC in South Africa, which might project some light on a prospective TRC in the case of the Former Yugoslavia. She lists four basic types of Truth: microscopic, which is detailed, focused and measurable (i.e. the truth of Science); logical, which is arrived at by deductive and inferential processes; experiential, the one which is ‘deep and profound’, the type of truth which one can understand only by individual experience (i.e. epiphany), and finally dialogical truth, based on an interchange between people. It is already obvious that beneficial as it is, such a classification is totally arbitrary and can easily be expanded (or, for that matter, narrowed down). Margalit, on the other hand, contextualizes Truth, the type which is implied by a TRC: “uncovering and disclosing shameful, painful and distressful facts that people try hard to conceal from others or from themselves.” In both of these instances, then, ‘truth’ has a personal connotation; it is first individual and then (by way of acknowledgement) public; it is dialogic and communicative. To put in another way, this type of Truth is requires narration, which is the basis of storytelling. Then, again, we end up where we begin: the ‘truth’ of storytelling is most slippery; “mutable, fluid and above all

deviant - that have to be constantly produced from the guts, bodies, and voices of actors.”

This type of truth is also based on rhetoric and can easily be manipulated by politics and ideology. Moreover, the slippery ground of the conception of Truth also makes the perpetrators advantageous. In his defense on the International Tribunal, Milosevic represents his version of Truth which defies the court and its legitimacy.

According to him an independent Serbia is the ultimate Truth: “So, what was an understandably natural right for all others --Germans, Russians, English, French, Spaniards and Italians -- in the 19th century to live in a single state, was to be denied to the South Slavs, that is to the Serbs, forever. Their aspirations for national unification were called a heresy and presented as a threatening specter.”

This is indeed an interesting approach to Truth, but Milosevic’s historical approach to truths are not surprising given the fact that he sees it in June 28, 1389, the date of the Battle of Kosovo, when Serbians were defeated by Ottoman Turks, as the starting point of Serbians’ ‘aspirations’. It is well known that on the 600th anniversary of the Battle, Milosevic delivered a public speech to 1 million people where he declared the ‘Serbian heroism against Europe’.

Another form of truth, however, can easily be found regarding the consequences of the Serbian ‘heroism’, that of microcosmic and scientific, and for that matter mathematical and logical states (based on a multiplicity of sources): The dead count by Research and Documentation Center in Sarajevo has reached 97,901 (the figure which is the least amount in any given toll) as of January 2007 Of the 97,901 documented causalities in Bosnia-Herzegovina, 83 percent of civilian victims were Bosniaks, 10 percent Serbs and more than 5 percent Croats. CIA reports that 90 percent of all the war crimes in Bosnia were committed by Serbs. The Bosnian government estimates the death toll at around 200,000

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35 For a more comprehensive analysis of what this date means in the Serbian history, see Gow, James, The Serbian Project and Its Adversaries: a Strategy of War Crimes McGill-Queen’s University Press, Montreal, 2003.
36 For a complete transcript of the speech see: http://www.slobodan-milosevic.org/spch-kosovo1989.htm
37 Research and Documentation Center Sarajevo, 8 Feb. 2008, Available online at: http://www.idc.org.ba/aboutus/Overview_of_jobs_according_to_%20centers.htm
and record around 1,326,000 refugees and exiles. Furthermore, between 20,000 and 44,000 women were systematically raped by Serb forces.\(^{39}\)

It might be only one type of truth to say that Milosevic and his men set out for an ethnic cleansing of Muslims in the region and a population of 4.5 ended up with 2.9. Yet, claiming that this is the version of Bosnians is as meaningful as claiming that the statement Holocaust occurred is the version of the Jews. Arguing that Serbians had plausible reasons stemming from the Tito regime, going all the way back to the World War II is to argue Hitler had just arguments against non-Christians. It is an unfortunate instance to see the politics of rhetoric even in scholarly articles, and as this is a diversion within the topic of this paper, suffice it to say that the instance shows the difficulty of establishing that obvious truth and how meaningful it can be once it is done so.

As what should be called as ‘lies’ are sometimes called different versions of ‘truths’, especially in the field of historiography, a new generation full of hatred emerges as each ethnic youth is raised by learning to hate the ‘other’, and this is why a truth commission should be established without further delay for the service of a shared truth to be accepted by anybody in the society. Moreover, the media, intellectuals and all sorts of public participation should be encouraged and integrated into the commission so as to solidify strongly the common truth established by the TRC. Jorda states, “[Commission’s] ultimate objective would be to fashion a collective memory of the war, that is, one shared by all the citizens of Bosnia and Herzegovina whether Serb, Muslim or Croat.”\(^{40}\) This is the first and foremost way for a lasting peace and brotherhood in the region, although, as we will see later on, this is wishful thinking, and maybe why it can be conceived as too idealistic to be true and thus not useful.

Finally, “large-scale evaluations, reparations, and projections to the future” is the final possible mission, I will analyze, a prospective TRC can set out to accomplish in Bosnia. On several occasions, we have seen how ICTY focuses on individual cases, positioning its sources around the perpetrator and thus reaching to a result mostly, and in almost all cases, only pertaining to the fate of that one perpetrator (although we should also acknowledge that the fate of that one perpetrator can be of utmost importance in the eyes of the victims). However, a lasting peace requires first an in-depth analysis of larger historical, social, economic, cultural, and religious structures to lead to the diagnosis of the problem(s) within these structures that paved the way for the conflicts and atrocities in the region. Then, what

\(^{39}\) Wikipedia gives a comprehensive bibliography of official and governmental links on these tolls and more, 8 Feb. 2008. Available online at: http://en.wikipedia.org/wiki/Bosnian_War#Casualties

follows is the treatment which can only be accomplished through the projections provided for by the commission in a report thoroughly prepared by the commission. “This analytical work must be carried out first and foremost as a pedagogical exercise,” explains Jorda, “It must educate the generations of today and tomorrow and teach them a lesson in history while also possibly implementing a programme of national mobilization”. Reforms in educational practices, changes in historical ‘information’ or we should say ‘narrative’, or very simply, the impulses of society to re-think one’s own relation to the community around oneself are some of the practical ways on how to make that society undergo a soothing treatment with the aim of bringing peace. “In this way, the TRC process will help the people of Bosnia and Herzegovina to explore together what in their socio-cultural make-up resulted in the especially cruel and inhuman nature of this latest breakdown of their society, and thereby avoid the same mistakes in the future”\textsuperscript{41}.

Such practices are never within the scope of court rooms, not even mentioning the case of ICTY. Furthermore, without such broad projections, even if each and every perpetrator is punished, and every victim provided with sufficient financial reparations, a prospective conflict between newer generations stays solidly and dangerously in the path of peace. Apart from these large scale prognostications, the TRC should also narrow down its scale of reparations to the level of each victim as much as possible. Financial, material, or educational assistance should be provided in the light of the data TRC has accumulated. This is also a major part of the message that ICTY sends out to the world: those responsible cannot get away with what they have caused. This means that even if the perpetrators are punished, as longs as the ethnic cleansing has reached its purposes, a full sense of justice is nowhere to be found. The pre-war conditions, let it be demographic, social, or economic, should be restored as much as possible; otherwise, neither ICTY or TRC’s missions are achieved, but that of Milosevic. Both Bharucha states that this was one of the major mistakes in the South African TRC. While the victims continued to wait for the meager reparations, the perpetrators of violence have returned to their older (or newer) positions as the beneficiaries of the South African global economy.\textsuperscript{42} “Reconciliation without reparation, it would seem, is at best a wish-fulfillment,”\textsuperscript{43} and at worst perpetuation of injustice for the victims.

Yet, is it as easy as we scribble these lines? Can the results of an ethnic cleansing be really cleansed or like other issues related with TRC, is it wishful thinking? The ultimate question

\textsuperscript{42}Bharucha, Rustom, Between Truth and Reconciliation: Experiments in Theater and Public Culture, at p. 374.
\textsuperscript{43}Bharucha, Rustom, Between Truth and Reconciliation: Experiments in Theater and Public Culture, at p. 374.
is: can a TRC complete the missing part of the ICTY puzzle? The answer to these grave questions is not very promising; the gap between theory and practice is still existent both in the case of a prospective TRC and in the case of ICTY. It was already mentioned that the acknowledgement of truth is the basis on which a lasting peace can be established, and suggestions were presented how a TRC can try to achieve that “How can reconciliation be achieved,” asks Todorovic if, on the other hand, “there is no readiness to confess to having committed a crime, if there is no readiness to face up to the painful truth, if the truth is concealed and justice is obstructed, and if there is no joint attitude in relation to the past and the future” 44.

The current situation in Bosnia proves this case once more. Although ICTY in conjunction with the UN declared gravely that those who had been deported, exiled or who had escaped from the area were free to return to their homes, and that peace-keeping UN and North Atlantic Treaty Organization (NATO) forces will help them to do so, those who have returned are not very hopeful. In the past years, the Serbians have made the most out of the absence of the Bosnians; they have built war memorials to demonstrate the bravery (!) of their Serbian soldiers at every possible corner, have replaced former Bosnian shops and markets with their Serbian counterparts, and toppled down the demographics of most cities The pre-war 47 percent minority Serbs turned into 90 percent majority as for 1995 45.

The case of the city of Kiseljak is an important example of how reconciliation under the current circumstances can never have its way in the region: “In Kiseljak, the huge war memorial in the central square speaks of Croat heroes who died in the struggle for a national homeland from 1941 to 1995 [notice the first date] (in 1941, Croat soldiers fought for the fascist Ustasa regime that cooperated with Nazi Germany). In Kiseljak, there is no memorial for the Bosniaks who died when the Croat army attacked to expel the Bosnian population” 46.

The exiled and the deported have returned, but the question of whether they feel welcome does not have the most positive answer. On they contrary, in many parts of Bosnia, they are made to feel they do not belong. This is why Bosniak Nusreta, when asked whether she could ever live with her Croat neighbors again, exclaimed, “Now? Never! There is no more of that life together!” 47. In a chapter about the Other, Waller mentions the concept of social death of the victims. This social death can happen in two ways; before or after the atrocities

45 Bringa, Tona, Reconciliation in Bosnia-Herzegovina, at p. 188.
46 Bringa, Tona, Reconciliation in Bosnia-Herzegovina, at pp. 196-197.
47 Bringa, Tona, Reconciliation in Bosnia-Herzegovina, at p. 194.
take place. In the former case, he cites the example of historian Marion Kaplan on the social death of Jews in Nazi Germany: “Well before the physical death of German Jews, the German ‘racial community’—the man and woman on the street, the real ‘ordinary Germans’—made the Jews suffer social death every day.” 48 Whereas in this case, social death was an antecedent for genocide, in the context of the Former Yugoslavia, it is a result, a consequence of the atrocities. “The social death of victims may come after the extraordinary evil.” 49 Examples like this arouse serious questions about how a TRC can do it work in this society. On the other hand, It can also be argued that it is this very context where everything seems to argue against reconciliation where a TRC is most needed; its foremost mission is to provide a background for peace in a place where hatred for the other rules. Yet, reconciliation can only take place when both parties show a strong will to recognize the atrocities, and the current situation shows that the Serbians are not ready for that recognition; honoring their martyrs with war monuments is a much more attractive option for them, it seems. Most of the Serbian politicians and leaders are also in their pre-war positions, and these are the leaders who are supposed to get into action for a TRC and then apply the following social reforms the results of which would put their positions at stake in the first place. One cannot be a writer-director-actor in this context; the ones who are supposed to judge cannot be the suspects at the same time. This is one of the main reasons why ICTY itself argued against a TRC beforehand; it can be abused by nationalist leaders in a counter-productive way against ICTY.

Reconciliation, moreover, can usually take place when both parties are equally guilty. “Reconciliation,” states Margalit, “unlike repentance, is a symmetrical relation: both sides in a conflict have to settle down and resolve their bitterness by accepting and admitting their shameful deeds toward each other as a way of restoring harmony.” 50 This is why, she further explains, no one can ask for reconciliation between Jews and Germans; nothing was symmetrical between them; it was all one sided. The previously given data suggests that the nature of the conflict in the Former Yugoslavia is a similar one; rather than a ‘war’, it is mostly conceived as a systematical killing of civilians.

Other than the reality above, moreover, even the core notion of a TRC is a controversial one. The emphasis of the commission on reconciliation shows its foremost function of healing victims rather than punishing criminals. However, this very concept—healing victims without punishing perpetrators—may be a fallacious argument from the beginning as the premise of healing victims is in most cases based on punishing perpetrators. The problem

50 Margalit, Avishai, Is Truth the Road to Reconciliation, at. p. 63.
rises from the fact that to think of reconciliation without justice may be sometimes illogical. Furthermore, most victims think of ‘reconciliation’ as forgiving perpetrators. The ultimate question about whether the victims are relieved by their working or is it a system of relieving the perpetrators also lies unanswered. The basic assumption that ‘truth’ will have a healing impact on the victims is a most troubling, if not an invalid, one. Moreover, the psychoanalytic model of liberating oneself, as is the case of acknowledging truth, might just have the opposite effect; reliving the past can recreate the experience of trauma, and make the humiliation anew. “The effect of the TRC to reenact the past seems to undermine the very idea of healing its wounds.”51 It is also true, on the other hand, as Martin Luther King, Jr. once said, “An eye for an eye leaves everybody blind,” which might well be the summarizing mantra of any TRC. To facilitate the process even further, forgiving the perpetrators is not a prerequisite for the victims. Yet, as much as the victims waive their claim that the perpetrators should be punished, the latter should demonstrate sincerity, regret and remorse. For reconciliation is but only a mutual process.

V. Either Or Both?

In conclusion, while evaluating the efficiency of the International Criminal Tribunal for the Former Yugoslavia and a prospective Truth and Reconciliation Commission in the region, it is better to think of them as complementary rather than either/or terms. Both have serious deficiencies as well as serious powers in service of justice, peace, and truth. The minute-detail justice of the tribunal is balanced by the general perspective of the commission; the emphasis of the ICTY on perpetrators is replaced by the TRC’s focus on the victims; and whereas the former aims at punishing, the latter strives to heal. However, these are not to be conceived as justly differentiations but as helping remarks on the understanding of the two, not as black and white distinctions but as overlapping areas. A TRC without an eye on the perpetrators is as unthinkable as a tribunal without a place for victims. Furthermore, both confront the past, acknowledge atrocities in different veins, try to forge a collective memory, work for reconciliation, advance toward a historical emancipation, and above all, serve justice and truth.

However, the case of Bosnia-Herzegovina shows us that neither can function properly without the sincerity of both the international and domestic community. It does not make sense to establish a tribunal if it does not begin to act even after several years of its creation. And after it does begin to act, a decade and a half should not be the duration of one single case; celerity - not hastiness - and competency should be its driving forces. When it comes to declaring some of the high-ranking officials as guilty, the international commu-

51 Margalit, Avishai, Is Truth the Road to Reconciliation, at. p. 63.
nity, UN and NATO, and particularly the United States, should follow the tribunal’s decisions and put the perpetrator behind bars in its most literal sense. As long as politics and self-interest govern the international agenda, neither the establishment of a tribunal nor the argumentation of pros and cons is of any use. As for a truth commission, on the other hand, the society should first see the strict and sincere sign which should come either from the tribunal or any other international community that perpetrators cannot get away with what they have done. So that those filled with hatred can come to an understanding that there is no way out but only the way of peace and brotherhood, which will lead to the essential compromises from any side, any ethnic group, or any religious pact. If pre-war leaders of the Former Yugoslavia leading to the atrocities are tried and found guilty, punished by the tribunal and replaced, then the new leaders can take bold steps towards a truth and reconciliation commission. Unless the pre-war conditions are imposed in a most effective way by the tribunal, the ground will not be ready for a TRC. As long as perpetrators live behind the bars, their ethnic brothers can get rid of the shame, which will otherwise always be a barrier to unity. Thus can the lethal victims of the Srebrenica massacre rest in peace, and their relatives live in peace.