

# **SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION AND THE INTERNATIONAL COMMUNITY\***

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There are an astonishing number of countries undergoing dramatic transitions. Peru, Mexico and, of course, Serbia are amongst the most recent. These countries and many others are considering the South African experience as a possible model for their attempts to come to terms with their past.

It is important to recognise that it is neither possible nor desirable to impose the South African model on any other society. This is not to suggest that there is nothing that South Africa can contribute to other countries experiencing transition. On the contrary, I think the South African experience can inform and influence many of those countries which are undergoing transitions from dictatorships or authoritarian rule to a new form of democracy. These countries include Argentina, Chile, El Salvador and Guatemala and Eastern and Central European countries such as Hungary, the Czech Republic, Poland and Bulgaria. These countries share with South Africa a number of similarities. They include a shift from totalitarianism to a form of democracy; a legacy of oppression and serious violations of human rights; fragile government and a precarious unity; a commitment to the attainment of a culture of human rights and a respect for the rule of law, and a determination to strive to make it possible for past violations never to be repeated. There are other countries which could also look to

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\* I deal with this question in some detail in my book, *A Country Unmasked* (Oxford University Press, 2000).

the South African model for some guidance. These are countries which are aspiring to democracy but remain in conflict. Examples include the former Yugoslavia, Rwanda and Cambodia. I would go even further and suggest that there are some mature democracies which are undergoing challenges to their own incomplete transitions and who find it very difficult to come to terms with their past. Examples are the recent challenges to Japan by the Korean “sex slaves” and China’s demand for an unqualified apology for atrocities committed by Japanese soldiers before and during World War II. Further, Switzerland has recently been accused of alleged collaboration with Nazi Germany and withholding accounts of victims of the Holocaust. A number of major German corporations have only recently reached a settlement in terms of giving compensation for thousands of Jews and others who were used as slave labour during World War II. It should not be forgotten that there was at least a degree of complicity by American companies in the use of people as slave labour. It wouldn’t be stretching matters to refer to the challenge to the United States, with its residue of denial and misunderstanding flowing from the bitter experience of slavery which still impacts on contemporary life in that country. In recent months I have spoken at many universities and colleges in the United States. Almost without exception the first question from the audience is, “Do you think that the United States should have a truth commission?” and without exception the question is asked by an African-American. They make it very clear that they believe it is crucial that such a commission should be established to deal with the unresolved tensions and questions relating to slavery.

I have little doubt that the South African experience speaks to many of these situations and may well have something unique to offer, but I want to underline that South Africa had a number of features which are not necessarily congruent with other societies. Therefore, if the South African model is to be considered by any other society, it will have to be on the basis of that society’s experience, history, needs, and resources.

When South Africa was trying to find ways of coming to terms with its own past, we considered many models. We looked at a variety of countries and areas including Argentina,

Chile, El Salvador, Germany, Bulgaria, Hungary and Czechoslovakia (now the Czech Republic). We realised early on that we would not be able to replicate any of these models, but sought instead to learn from their successes and failures and apply those features which matched our own experience. Whilst we are indebted to those countries and borrowed much from some of them, we also created something unique which arose out of our own particular and peculiar circumstance. This is certainly the advice I would offer anyone approaching us in relation to their own situation. Therefore, although I and several of my fellow Commissioners have been asked to assist in many diverse situations, the first sentence I utter is, “The South African model cannot be imposed on any other country.”

Aryeh Neier, in his review of the Commission’s report writes “Of the nearly 2 dozen ‘truth commissions’ world-wide during the past decades – most in Latin American and Africa – the South African Truth and Reconciliation Commission is the best known and by common agreement has played the largest part in helping a divided nation to come to terms with its past.” He continues

*Its significance goes far beyond the borders of South Africa. The Commission’s work is a factor in the thinking of people in many other countries about how to deal with questions of individual or collective responsibility for great crimes committed under the authority of their own governments. To cite one current example, in the wake of the forced exodus from Kosovo in the early months of 1999 and the NATO bombing that eventually ended it, some Serbs are now looking to the example of the TRC in South Africa as they consider how to understand what took place, where to apportion blame and whether they can join with other Balkan tribes in planning a future in the new Europe.<sup>1</sup>*

There is another very important reason why we ought to not impose our own country’s experience on others, which is quite different from the one I have outlined above, but of equal if not greater importance. Despite the heavy emphasis on the

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1 Aryeh Neier, *Review of Truth Commission of South Africa report*.

duty to punish, the fact of the matter is that in the majority of transitions, the deciding factor has not been international law. Many scholars and commentators argue that, in practice, decisions made by transitional governments around issues of retroactive justice are not choices at all and moreover, are little affected by moral or legal considerations. Rather, such decisions on the form that justice can take – be it trials, truth commissions, ad hoc international tribunals, amnesty – are dictated in most instances by the mode and politics of the particular transition.

Modes of transition can be defined by four categories: (1) full defeat in an armed war (for example the post-World War II treatment of Germany), (2) transition through a dictator's loss in an election (for example Chile), (3) transition through compromise and negotiations (for example South Africa) and (4) transition from a long-standing Communist regime (for example Eastern European countries).

Each mode presents its own set of institutional and political constraints which in turn delineate the form of justice, from the most retributive model (prosecutions and trials) to more restorative models of justice (truth commissions and lustration) to no justice at all (impunity). In the context of a military victory (category 1) the only restriction is the victor's own sense of justice and long-term strategic considerations. For instance, Germany's military defeat in World War II was absolute in that it had lost both political and military power. The Allied forces, because of their total victory, were able to opt for the most retributive model, the Nuremberg Trials.

Where transitions from a totalitarian government occur after elections (category 2), greater political restrictions arise. Very often the former dictator maintains a strong power base (whether in the military or in civil society) and has passed, prior to his departure, laws to grant amnesty for past human rights abuses. The new democracies, faced with an unstable political and social situation and no clear legal remedy, often seek an amalgam of retributive and restorative models of justice, via truth commissions, reparations and limited prosecutions.

Where transitions occur through a process of peaceful negotiation between the democratising force and the previous totalitarian regime (category 3), the political constraints become even more heightened. Negotiation politics require, first and foremost, compromise. Thus, in a country that is attempting to accommodate all factions in a new democracy, justice by necessity becomes a restorative project of establishing moral, if not legal, truth. In such contexts, justice takes the form of truth commissions and limited amnesty. South Africa is a noteworthy example of this approach.

In the particular cases of transitions from totalitarian Communist regimes to democracy (category 4), political constraints all but preclude more retributive forms of justice. The nature of communism's teaching and practice arguably had two discernible consequences: (1) to rob even dissidents of initiative and the will to act against those in authority over a very long period of time, resulting in a weakness or absence of civil society and (2) to create a technocratic government of such pervasiveness in society that large numbers of individuals in communist countries achieved a level of complicity with the regime unparalleled even by other non-communist totalitarian regimes. Post-totalitarian transitions to democracy in former communist countries are thus characterised by little retribution in the form of trials and little truth-seeking in the form of a truth commission. Instead, these nations took refuge in general laws of lustration, which only implicitly admit a history of misdeed by barring the guilty from future participation in government.

Interestingly enough, Timothy Garton Ash, referring to the problem of dealing with the past in Central Europe, makes two points:

*I would say two things. First, the problem is unavoidable. It is intrinsic to the path chosen. Second, I believe with benefit of hindsight that all the countries of Central Europe could and should have tried the expedient of the truth commission – although without involving the quasi-judicial business of granting amnesty as happened in South Africa. A truth commission before which the political leaders of the former regime and those accused of crime under it have to testify brings both greater public knowledge*

*of the misdeeds of the past and a formal, almost ceremonial, acknowledgement of the victims. It symbolically draws a line between the new era and the old without calling for forgetting or even necessarily forgiving. It is probably the closest a non-revolutionary can come to revolutionary catharsis.<sup>2</sup>*

While I agree with Ash that truth commissions could well have been useful in many countries in Eastern and Central Europe, I am not sure that I would be as dogmatic about excluding amnesty in every case. It would be extremely difficult to persuade former political leaders and those accused of crimes to testify unless there was some carrot to encourage that confession. Furthermore, as we have seen, the socio-political circumstances sometimes demand some form of amnesty in order to achieve peace.

Thus, a country's particular mode of transition and level of political restriction define the parameters of the choice between the competing theories of retroactive justice. The more that peaceful coexistence is a stated goal of the transition, the greater the political restrictions faced by the transitional government. Moreover, history bears out that as the level of restriction increases, transitional societies turn away from retributive models and towards more restorative models of justice.

To sum up, one must proceed cautiously when asked to assist other countries in transition, bearing in mind that the socio-political situations are very different in each country. It is these circumstances which often dictate the limits to which prosecutions can go and indeed where successful truth commissions can be held. Timothy W. Ryback, writing on the conflict in Bosnia, comments,

*Since November 1995, when Dayton halted the Balkan slaughter, Bosnia has been awash with well-intentioned foreigners. In just the past year or so, the Pope has come to preach tolerance, Princess Diana to clear land mines (less than a month before her*

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2 New York Review of Books, 18 November 1999, p.18.

*death), U2 to hold a 'goodwill concert', Woody Harrelson to make a politically relevant film and Bianca Jagger to, well, many people in Bosnia are still trying to figure that out. 'Bosnia is like a desperately ill patient with a different physician treating a different symptom every day,' says Chris Bennett of the International Crisis Group, a human rights monitoring organisation in Sarajevo. Bosnia's 1997 aid directory registers more than 400 foreign organisations working in the region.<sup>3</sup>*

We must be careful not to barge into situations of conflict offering solutions which may be unworkable or which may even exacerbate the conflict. It is always preferable to be invited, and even then one should tiptoe into traumatised societies with great sensitivity. That is not to say we should do nothing. Many societies do not have the resources to bring about even a semblance of normality, of restoration, accountability, and reconciliation.

Not only are individual states deeply influenced by their own socio-political circumstances when deciding how to deal with their transitions. The international community, international organisations, and single countries often determine their course of action on the basis of political considerations and self-interest. A single example will suffice. In an essay in *Time* on 27 September 1999, Charles Krauthammer asks the question, "Why did the US go to war over Kosovo but not East Timor?" He acknowledges that the Australians headed up the somewhat belated entry into East Timor, but points out that there are a number of stark differences in US policy vis-à-vis East Timor and Kosovo.

*Firstly, the peacekeepers did not bomb their way into Timor as they did into Kosovo; they waited for permission from Jakarta. Before intervening in Kosovo the West had championed the case of Kosovo. East Timor, on the other hand, had been championed by no-one. Thirdly, there will be no American infantry in Timor. The US will help others go in but they will not be babysitting the Timorese as they are the Kosovars.*

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3 Timothy W. Ryback, "Violence Therapy for a Country in Denial", *New York Times Magazine*, 30 November 1997.

Why was America so deeply involved in Kosovo and the backing of the extreme action of the Nato bombing of Serbia and so absent in real assistance towards East Timor? Krauthammer argues that the real reason is that “Serbia does not count for the US; Indonesia does.” In other words, because the former Yugoslavia has no strategic importance for American foreign policy, the US could very easily bomb Serbia in order to bring an end to the Serbian offensive in Kosovo. Serbia is not on the United States’ map, but Indonesia controls the Straits of Malacca and has the largest population in the Muslim world. To sum up, in the words of Krauthammer, “When China oppresses Tibet, Russia ravages Chechnya or Indonesia reduces East Timor to rubble, we do not intervene. China, Russia and Indonesia matter. But Serbia doesn’t. So when Kosovo is overrun, we strike.”<sup>4</sup>

It is clear, therefore, that even when one is in areas which are in conflict and receive the attention of international agencies, it is not always legal and moral considerations that come into play but instead the limitations of the international organisations concerned or the political self-interest of the major powers. For all these reasons we must proceed cautiously and with circumspections if we are to be successful in sharing the South African experience with the international community.

Many countries have indicated their interest in learning from the South African model. These include Ethiopia, Indonesia, Cambodia, Nigeria, and Sierra Leone. In the rest of this chapter I shall discuss the cases of the former Yugoslavia, Rwanda, and Northern Ireland.

The tragic violence which has characterised the Balkans for over a thousand years erupted in an epidemic of killing, assault and destruction in the period between 1992 and 1995. The ethnic cleansing which took place then is reminiscent of what took place in Rwanda where neighbour fell upon neighbour. The immediate response of the international community to this

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4 *Time*, 27 September 1999.



bloodletting was the appointment of the international Tribunal for Former Yugoslavia based in the Hague. The responsibility of that Tribunal is to identify individuals who shared major responsibility for the upsurge in violence and who either ordered or took part in the killings. Indictments would be served upon identified individuals, arrests would be attempted and successful prosecutions and sentencing would follow. This was an extremely important response and it was hoped that this would result not only in those people chiefly responsible being brought to trial and punished, but that it would also act as a serious deterrent in the future.

The Tribunal has certainly had its moments of success but the work has been limited and less than a dozen perpetrators have actually been sentenced. I have always felt that a war crimes tribunal as a response to a major human tragedy would inevitably be limited. If the last word is punishment then there is very little likelihood of or hope for any measure of restoration and reconciliation of the societies concerned. It is not a question of whether there should be a tribunal but whether a tribunal on its own is sufficient response to the frequent outbreaks of crimes against humanity, ethnic cleansing, and genocide. At the moment, in Bosnia there are three separate communities living side by side, but peace is only maintained by the presence of a large peacekeeping force. It is important that over and above the work of the Tribunal there ought to be a complementary attempt to try to bring a measure of unity, stability, even peace and reconciliation, in that territory. Otherwise the danger will be that the moment the peacekeeping force is removed the violence will flare up again.

In July 1997, the United States Institute of Peace (USIP) in collaboration with the OSCE<sup>5</sup> Office for Democratic Institutions and Human Rights and the Council of Europe sponsored a workshop attended by 21 justice officials from the Federation of Bosnia and Herzegovina and Republika Srpska. In an address delivered by Neil Kritz on behalf of the USIP at an international conference on war crimes trials in Belgrade in

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5 Organisation for Security and Cooperation in Europe.

November 1998 he reports that there was no intention at the beginning of the workshop to push for a truth commission. However, during the workshop itself the head of one of the war crimes commissions in Bosnia declared that he and his colleagues “are in the process of creating three conflicting versions of the truth and if we keep going along this path, 50 years from now our grandchildren will fight again over which one is correct.”<sup>6</sup> According to Kritz there was almost unanimous agreement from all three major ethnic groups that a truth commission should be appointed and USIP was asked to assist in the subsequent development of the idea.

Since that time, Neil Kritz and several of his colleagues have done a great deal of hard work consulting and holding meetings in Bosnia and in other countries to try and measure the level of support, or otherwise, for the establishment of a truth commission. During this time there has been a great deal of heated debate and controversy as to whether or not there should be such a commission. This despite the fact that in a letter attached to the Dayton Peace Accords there was a suggestion that a commission of inquiry should be appointed. At the same workshop in 1997 all Bosnia’s ethnic communities recommended the following,

*Beyond prosecution, the establishment of a historical accounting of abuses suffered during the war can contribute to the process of healing and reconciliation. Under current arrangements, however, the work of the three war crimes commissions represented at the Round Table risks producing three conflicting versions of truth and history ... one joint truth commission should be established for Bosnia and Herzegovina including appropriate membership from each ethnic group and an international chairperson to provide a collective forum for victims on all sides of the conflict and to establish one consensus history regarding these painful matters.<sup>7</sup>*

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6 Neil J Kritz, “Is a Truth Commission Appropriate in the Former Yugoslavia”, *International Conference on War Crimes Trials*, Belgrade, 7-8 November 1998.

7 *Ibidem*.

*Despite this apparent support for the idea of a commission there have been many dissenting voices, including the former President and Prosecutor of the War Crimes Tribunal for Former Yugoslavia. Their argument is that the establishment of such a commission would confuse people and would make the work of the Tribunal much more difficult. Richard Goldstone, the first Prosecutor of the Hague Tribunal, however, differs from this view. He has argued at a number of conferences that he sees no conflict between the Tribunal and a truth commission and regards them as complementary rather than contradictory. Furthermore, more than 100 political, religious and intellectual leaders in Bosnia and Herzegovina have endorsed the idea of a truth and reconciliation commission and the Citizens Alternative Parliament, a key NGO in Bosnia, has issued an appeal to the Presidency to establish a commission without delay. They argue as follows, "A national consensus and acknowledgement of the abuses suffered by all victims during the recent war and an analysis of the factors which facilitated these atrocities is a prerequisite to any process of reconciliation. The attainment of a lasting peace in our country is threatened by the development of multiple and conflicting versions of the truth regarding these abuses...we believe that it is in the best interests of all people of Bosnia and Herzegovina and their collective desire to avoid renewed conflict in the future, to establish the national Truth and Reconciliation Commission. The Commission should, in a professional and objective manner, examine and report on the nature of the abuses suffered, and the societal, political and historical elements which made this pattern of abuse possible. Based on this examination, the Commission should also develop recommendations for steps to be taken to deal with this painful legacy and to prevent the recurrence of such inhumanity in Bosnia and Herzegovina. Such a broad historical accounting is a necessary complement to the crucial judicial process of determining individual criminal responsibility".*

*The members of the Truth and Reconciliation Commission should be chosen through a process in which the public plays the primary role. Individuals selected must be of a high moral standing, unimpeachable integrity and objectivity, and be credible to all the public as representing an honest search for the truth regarding*

*our common history rather than the interests of any ethnic or political group.*

*The Commission should be provided all due legitimacy and support by the government, but must be wholly independent and autonomous in its work. The people of Bosnia and Herzegovina, and the generations yet unborn, deserve no less.<sup>8</sup>*

In a discussion I had with the chairperson of the Citizens Alternative Parliament he pleaded for assistance from South Africa. It was his view which, according to him, was shared by a large number of NGOs in Bosnia, that not only should such a commission be established but that the South African model was the one that attracted them. I told him then, as I have told many others who have made similar appeals, that if support for this proposal could be clearly demonstrated and if the representivity and the depth of the support could be established beyond doubt, I would have no hesitation in lending assistance in any way that was required.

Towards the end of 1999 I received an invitation from Neil Kritz and USIP to attend a conference in Sarajevo to consider whether or not there was sufficient local support for the establishment of a truth and reconciliation commission and if so, to work out an agreed programme of action for the establishment of such a commission in that deeply divided territory.

The conference was held in Sarajevo on 3 and 4 February 2000. If ever I needed a reminder that Bosnia was not South Africa, the weather on the day of my arrival in that formerly besieged city jogged my memory! I had left Cape Town the previous day in the middle of a glorious summer, and the temperature in Bosnia was below freezing. The entire area was covered with snow and, at first, it was impossible to land, but after flying in a holding pattern for more than an hour we landed in almost minimal visibility.

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“Appeal to the Presidency to Establish A Truth and Reconciliation Commission”, Tuzla, August 27 1998.

On the night of the third, a dinner was arranged by local organisations, attended by many key leaders from Bosnia as well as international guests who would be speaking at the conference. During the discussion at the dinner it was stressed that the official sanction of the Presidency was necessary if the proposed truth and reconciliation commission were to be viable, and that there must be very careful cooperation with the International War Crimes Tribunal in The Hague as well as with other relevant national and international organisations. It was emphasised that it would be extremely important to involve the inter-religious council based in Bosnia, whose members were apparently very suspicious that many of those advocating a truth commission were former communists.

It was explained to the visitors that the people attending the conference the next day were part of a broad coalition of those who felt that a truth and reconciliation commission was important for Bosnia. As one person put it, “We have many truths but we should try to reach a consensual memory rather than to continue with contested truth.” Some suggested that the truth commission should not be confined to Bosnia and Herzegovina, but should involve the entire region: Bosnia, Croatia, and Serbia. One prominent NGO leader emphasised the need for truth and trust to go together and said there would never be real stability in Bosnia without a truth and reconciliation commission. A point that was stressed over and over again by many of the leaders who sat around the table was that the truth commission, while dealing with the past, was critical for future generations, otherwise “we will relive our tragic past and our grandchildren will fight with each other as we have done.” A final comment came from a very old man, who said hesitantly, “Bridges and buildings are being repaired but we are still divided ...[I]nside we are in ruins.” I came away from that dinner very concerned about the formidable obstacles to the establishment of such a commission but deeply moved by the overall commitment of those whom I had met.

The public conference was held in the Herzegovina Hall at the Holiday Inn Hotel on 4 February. This was the only hotel in Sarajevo which had remained open throughout the siege, and it was badly damaged by mortar shells – an apt setting to consider truth and reconciliation! There were approximately

150 delegates and observers at the conference. The delegates were drawn largely from Bosnia and Herzegovina, and the observers were from international organisations and foreign embassies. The embassies represented included France, the Scandinavian countries, Italy, Holland, Switzerland, the UK, Canada, and Russia. David Jacobs, the South African ambassador to Greece, also attended. He was very supportive of the proposal to establish a truth commission in Bosnia after his experience of the TRC in South Africa. The delegates represented a wide cross-section of civil society, in particular various victims' groups, missing persons' institutions, youth groups, women's groups, and ombudsmen.

The chairperson for the morning was Jakob Finci, who was very active in the small Jewish community in Sarajevo as well as in other human rights works. The first two speakers focused on "Why do we need truth and reconciliation?" They were Vehid Sehic, who represented the Forum of Tuzla Citizens, and Miodrag Zivanovic of the Alternative Ministry Council in Banja Luka. Sehic emphasised that Bosnia was a multi-ethnic, multi-cultural, multi-religious community but that its people lived in a straitjacket of three major ethnic groupings and that this reality had been exacerbated by the Dayton Peace Accord, which placed people permanently into three different groups. He was deeply concerned that unless there was a major direct attempt to mould the three communities into one group coexisting and cooperating with each other, the former enmities would begin all over again. He further stressed that truth was necessary for reconciliation. Zivanovic, an academic by profession, emphasised that what was needed in Bosnia was a responsible society, and that the starting point for responsibility and accountability was the search for truth; for this reason alone he felt that it was imperative that a truth commission should be established in Bosnia, and possibly for the entire region.

The first international speaker was Richard Goldstone, very well known in South Africa for the work he did on the Goldstone Commission and as a judge of the Constitutional Court. In this setting, however, he was probably better known as the first Prosecutor of the International War Crimes Tribunal

in The Hague, and therefore could speak with authority and integrity on the need for a truth commission alongside the Tribunal. Referring to the South African model, he stressed that the proposed commission in Bosnia should never be seen to contradict the work of the Tribunal and therefore there could be no amnesty as part of the commission. Nevertheless, there should be an investigative unit in order to corroborate the stories told to the commission by victims. At all times precedence should be given to the Tribunal, and the commission should complement its work.

I followed Richard Goldstone and in my address I emphasised yet again that “South Africa is not Bosnia and never will be.” But I did go on to say that there were some similarities:

*Violence, a litany of human suffering, crimes against humanity, the loss of human and social dignity, the lies, half lies, denial, and the deep longing for peace and stability are common to both Bosnia and South Africa. The South African Commission was an opportunity for ordinary people to get on with their lives and this may well help victims in Bosnia as well. The approach, the strategy and the structure will be very different, but the elusive search for accountability and peace is universal and human rights are indivisible.*

I outlined the starting point of South Africa’s Truth and Reconciliation Commission, the problems we experienced, the resources we had, the strategies we adopted, and the unique features of the South African model. I went on to quote Albert Camus: “Truth is as mysterious as it is inaccessible and it must be fought for eternally.” My point was that we would never succeed in South Africa or Bosnia in finding the whole truth, but if one could find a common truth accepted by the various ethnic groups as a basis for building a future then the commission would be worthwhile. Finally, I said that if I had my way I would take all the delegates and let them attend one hearing of the South African Commission; once they had listened to the stories told by so many different people in so many different ways, they would be in no doubt about the cathartic effects and the healing possibilities of truth-telling.

Neil Kritz of the United States Institute for Peace reminded the conference of the long discussions that had taken place over the past two years and emphasised that no commission could be imposed from the outside, but that it must have the support and trust of the local people. He stressed that there was no time to waste, that myths become expanded and hardened, and that it was important, therefore, for civil society to be actively engaged in deciding whether or not to set up the necessary internal organisation to consider the preliminary work for establishing a commission. He referred to the various models that Bosnia might want to consider, such as El Salvador, which was a wholly internationally organised commission, Guatemala, which was a local process headed by an international chairperson, and the South African model, which was initiated and led by South Africans themselves. He said there was a need to consider how broad the commission's mandate should be and how long the commission should operate, but emphasised that how a country dealt with its past would strongly influence its future.

Two representatives of the Hague Tribunal, Gavin Ruxton and James Stewart, were very critical of the proposal to establish a truth commission in Bosnia and advocated extreme caution. They felt that the timing was wrong and that the Bosnians should wait until the work of the Tribunal was concluded. They argued that the necessary preconditions for a truth commission did not exist, and that they could not see support from within Bosnia for such a commission. They were sceptical about the possibility of reaching a definitive truth in a divided society. The proposal that the commission should last for only twelve months, they argued, was unrealistic. In particular they stressed that a commission should not be imposed from outside, for this would be counter-productive. Its independence would be in question because of the existence of the Hague Tribunal, there were bound to be overlaps between the two bodies, and the commission could come to be seen as an alternative to the Tribunal.

These were strong criticisms and had a considerable impact on the dynamics of the conference. It was clear from a number of the delegates' statements which followed that they saw the intervention by the Tribunal representatives as arrogant and



uninformed. They were particularly critical of the suggestion that the timing was wrong and that it was too soon for a truth commission. Several pointed out that discussions about establishing a commission had been under way for more than two years. One prominent ombudsman said that the Tribunal itself was taking far too long and that ordinary people couldn't wait ten or twenty years for the truth to be known; in a divided country the need for reconciliation had to be addressed urgently. She warned that if the Tribunal maintained its opposition to a truth commission, this would only create further divisions and tensions. Domestic courts were ineffective because of political factors, she added, and those appearing before the courts could not be certain of a fair trial. She was of the view that any overlap between a truth commission and the Tribunal could be overcome and that they owed it to their younger generation "not to lead them toward revenge."

The president of the Serbian Civil Council emphasised that his institution was committed to building peace and therefore strongly supported the commission. There was a need, he said, not only to reach a common truth but also to build trust and establish standards of human rights to prevent future atrocities. It was important to determine the magnitude of the suffering, to allow victims to be heard, to investigate the plight of refugees and displaced people, and to build confidence in the future. The speaker was aware that gaining consensus would be difficult, but said that the work had to start immediately if the needs of the people were to be addressed.

A particularly passionate contribution was made by Natasa Kandic, representing the Fund for Humanitarian Rights in Belgrade in the former Republic of Yugoslavia. She stressed that,

*the people can't depend only on the Tribunal – we have to do something about the victims and the need for reconciliation. How many victims have appeared before the Tribunal? We must demonstrate care and compassion. We must create a space for the victims to tell their stories. We, the ordinary persons, must take action. We don't have the information that is necessary. There are people who are living in contradiction. We must build collateral for the future. We must help the children who fought in the war*

*and the children yet to be born. Without this there can be no justice.*

She also made a very strong appeal for a regional commission including Croatia and Serbia.

It became clear as the conference moved to a conclusion that the overwhelming majority of delegates were strongly committed to the establishment of a truth and reconciliation commission and that they were determined to press ahead with the next steps that had to be taken. Among the recommendations were that a working committee should be established as soon as possible, and that the draft statute which had been published in 1998 should be reviewed in the light of the criticism from the Hague Tribunal.

In response to the representations from the Hague Tribunal, Richard Goldstone said that in his view the arguments in favour of a truth commission in Bosnia were overwhelming. Then he made this very powerful statement: "Insofar as South Africa is concerned, if I had to choose between criminal prosecutions and the Truth and Reconciliation Commission I would choose the TRC, which has done far more to reconcile and heal than any criminal prosecution." These were powerful words, and they were soon backed up by further responses from the floor. A key human rights worker asked who could be harmed by the truth and gave his own answer: "Only those who are afraid of the truth. We must proceed. It is important for the democratisation of Bosnia. We must have perseverance. We must be patient, but action is urgent." A youth representative, Tanja Neskovic, added her own support:

*What can I do to live in this country without hatred? We are not predestined to hate. We need a comprehensive truth, not isolated from the Tribunal but part of the whole jigsaw puzzle. But the Tribunal itself is not the whole puzzle, it is only part of it. I want to listen, but I also want to be heard. There is no future without history. We need truth and reconciliation as a solid foundation to build a good house. At a recent meeting of 160 young people from all over Bosnia there was strong support for the truth and reconciliation commission.*

It is important that there is clarity about the roles of tribunals and truth commissions. In the next few years the International Criminal Court will become a reality, and it would be a tragedy if all future interventions in post-conflict societies were to take the form of trials and prosecutions only. The situation in such societies is ambiguous and traumatic, and we should leave the door open for different models to meet different situations. I am confident that a truth and reconciliation commission in Bosnia would make a tremendous contribution to the future peace and stability of that country.

On the final day of the conference, at a meeting of key NGO leaders, a working group of fourteen people was elected, with a tough and long agenda in order to take the process further. The commission for Bosnia will certainly be debated vigorously and hopefully consensus will be reached during 2001. I have no doubt that the South African model will figure prominently in the structure and objectives of the commission.

A final point: there is one clause in the draft statute that I hope will not be changed. It concerns the need to uncover “the existence and actions of individuals who refused to participate in the prosecution of their neighbours and who, at grave personal risk, maintained their sense of humanity and attempted to protect their neighbours of other ethnic or religious groups from abuses.” This emphasis on telling the “good stories” is something which I think many other commissions could learn from. I am sorry that we didn’t do something similar in the South African Commission. There were many people who told us stories of people from “the other side” who assisted them in moments of great crisis, but we never sought to elicit the “good stories”, and perhaps it should still be done before we forget how much good there was as well as how much evil.

In 1999, I was invited to join a group of people from Kosovo, Serbia, Macedonia and adjoining countries, to discuss the implications of the conflict in Kosovo and the NATO bombing. The meeting was held in Budapest under the auspices of the Open Society Institute. It was a remarkable meeting with many disagreements as to future policy and strategy. One of those who attended was Sonja Licht, President of the Soros Founda-

tion in Belgrade. She asked if we could have a private discussion at the end of the day's proceedings. We met over dinner and she expressed interest in the South African experience and asked me for further information. I immediately stressed the difference between South Africa and Serbia but gave her an outline of what we had attempted to do here. She asked me then if I would agree to visit Belgrade. I suggested that she should consider the matter a little further and if she still felt the same she should contact me in South Africa. It wasn't long before I heard from her confirming the invitation. I was going to speak at a meeting in Cape Town on the work of the TRC and suggested to her that she should attend that conference to test out whether or not there was anything that South Africa could in fact contribute to the Serbian situation. She came to South Africa, attended the conference, and told me afterwards that she was more convinced than ever that the South African model was the one that she felt could be of assistance to herself and people like her who were in opposition to Slobodan Milosevik and sought to move towards a democratic alternative in Serbia.

I went to Belgrade in October 1999. The journey there in itself was quite interesting. Serbia is under very strict embargo and there are no flights in or out of Belgrade. I flew to Budapest and was driven for three hours to the Hungarian/Serbian border. I got out with my suitcase, stood in the rain and waited for someone from the other side to meet me and assist me across the border. Being a great fan of Le Carré, I had visions of a dramatic arrest or a refusal to allow me into Serbia and the like. In actual fact it went off very smoothly. There was a delay, but it was because the computers were down! I was questioned closely by the Serbian authorities but finally allowed to proceed. We then drove for a further three hours to Belgrade where I stayed at the Moscow Hotel. Belgrade showed all the signs of a country enduring a very stringent economic boycott with many black marketeers in the streets and people marching every night in opposition to Milosevik and his policies and a tense, brooding atmosphere overshadowed everything and everyone. I met with a wide cross-section of people including alternative academic organisations, students, NGOs, independent media, and representatives of the Orthodox Church. At

the end of these meetings where I attempted to outline the procedures followed by the South African Truth and Reconciliation Commission, I met with a representative group to see whether we ought to take it any further. There was unanimous agreement that the South African model did have a contribution to make, particularly in the area of truth-telling and the need to come to terms with the truth of Serbia's involvement in the Kosovo, and in "ethnic cleansing", and to give people an opportunity to express their own views and ideas not only about the past but also about the future. We agreed that there ought to be a public conference and that invitations would be extended to a wide cross-section of people from Serbia and several international representatives as well and that I would give the keynote address. I intended to emphasise that while South Africa is very different and a long way from Serbia, it might have some clues to assist the people of Serbia to enter a more normal and more democratic climate. In the letter of invitation to the conference, the organisers wrote as follows,

*After ten years of war in this region, which has claimed thousands of lives, driven tens of thousands into exile and ruined the existence of hundreds of thousands more, the political situation in Serbia has begun to change significantly. As demonstrated by the local elections at the end of 1996, and the mass three-month-long demonstrations the same winter, the ruling regime in Serbia has started to lose the support of the population. That support has further declined and the regime is now only supported by a minority of Serbian citizens. It is our belief that very soon democratic and legal elections will lead to a change in the present government and a return to power of pro-democratic forces in Serbia.*

*However, a mere change in the ruling parties, even a change in the type of political system, are not enough for Serbia to take a decisive and steady step along the path towards developing into a modern democratic state. Besides political transformation and economic reconstruction, the country is also in dire need of spiritual and moral renewal. After decades of communist monism, there followed a period of widespread mobilisation of nationalist feeling which shaped the way of thinking of a large number of people and which forms the cultural terms of reference for a whole generation. Nationalism in Serbia was, indeed, the deliberate*

*plan of the political elite, but actively participating in that plan were, likewise, many of the country's intellectuals, and the resulting views were accepted and upheld by most of the population.*

*As we have pointed out, the consequences of this plan were extremely serious and in order to start removing them, we feel that it is essential to confirm the truth about the prevailing objective circumstances (historical and structural, internal and external, collective and individual), and similarly the truth about the participants (be they members of the political elite, intellectuals and ordinary people, those who gave the orders, ideologues and those who carried the orders out) who executed this tragic plan on the political scene. Ascertaining the truth will enable us to establish the responsibility for what happened in the region, and both, we believe, will be of value not only in helping to build a new Serbia, but also in ensuring that in other circumstances certain historical events will never occur again.*

*We are conscious that what we strive for entails a long and complicated process. We want to start that process, learning from the experiences of others. For this reason, we intend inviting to Belgrade a number of people who have traveled similar paths in their own countries and whose positive experience may help us to form our own route towards the spiritual revival of our society.*

The conference and consultation were to take place at the end of April 2000. Unfortunately, the Serbian Foreign Ministry refused me a visa and I was unable to attend. I was devastated, not only because we had spent several months planning the event but also because I felt deeply for those who were struggling to keep alive the hope of democracy in Serbia. Fortunately, two of the invited speakers, Pepe Zalaquett from Chile and Patricia Valdez from Argentina, did not require visas and were allowed in. I have since heard that the attitude of the Milosevic regime has hardened and that several opposition leaders have gone into hiding. I keep in regular touch with the brave Sonja Licht, and we are working on other ways in which I can be of help to her and her colleagues, who fight a lonely battle.

Early in 1999 Jacques Paauw and cameraman Rian Oberholzer visited Rwanda. The result of that visit was an astonishing video entitled, “Les Genocidales” broadcast by the SA Broadcasting Corporation on television channel 3 as part of the Special Assignment programme. It tells the remarkable story of Enos Nsabimana.

Nsabimana was a middle aged Hutu man who in April 1994 joined in the orgy of killing when, acting on instructions from his government to “kill the *inyenzis* i.e., the Tutsi cockroaches” he killed his next-door neighbour. In a bizarre act, he kept the decapitated head.

He is awaiting trial, together with 125 000 others of his countrymen, for the crime of genocide. What was amazing about the encounter between Paauw and Nsabimana was that the latter still retained his neighbour’s skull which he held out, as Andrew Donaldson in the Sunday Times of 11 April 1999 describes “like a begging bowl.” Donaldson, in referring to this striking image, suggests that the man was begging “not for forgiveness but punishment. It was as if only a trial and his subsequent sentencing could put to rest his troubled soul.”<sup>9</sup> It is not clear whether Nsabimana was actually begging for punishment but certainly it is true that he was haunted by his killing of his neighbour, his confinement in prison for close to five years, and his confusion and bewilderment as to how he ever became involved in such ghastly behaviour. Nsabimana was like so many other Hutus who listened to the appeal on Radio-Télévision Libre Des Mille Collines which urged all decent Hutus to exterminate the Tutsis. Tragically every segment of Rwandan society participated in the massacre of between 500 000 and 1 million people over a period of three months. These included doctors, nurses, teachers, priests, nuns, businessmen, government officials of every rank, even children.<sup>10</sup>

The RTL M was widely listened to by the Hutu population and was one of the major reasons for the involvement of so

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9 Sunday Times, 11 April 1999.

10 Lawyers’ Committee for Human Rights, Washington DC, July 1997, p.4.

many in the massacres, urging “Let whatever is smouldering erupt ... at such a time a lot of blood will be spilled.”<sup>11</sup>

This is not the appropriate place to deal with the history of Rwanda and the events which led to the appalling genocide. Suffice to say, however, that massive human rights violations have characterised recent history in this country. “The first large-scale ethnic massacres in the history of Rwanda were incited by the authorities and occurred in the 1950s.” Since that time there have been other serious human rights violations and as the then Minister of Justice, Dr. Faustin Nteziyayo, indicated in a speech at a conference in Geneva in 1998, people of the stature of Sir Bertrand Russell and Jean-Paul Sartre described the massacres of the Tutsis in Rwanda in December 1963 and January 1964 as the most barbarous and systematic acts of genocide committed since the Jewish Holocaust under the Nazis during World War II.”<sup>12</sup> But previous massacres almost faded into insignificance in relation to the genocide which took place throughout the country in 1994.

The genocide not only left hundreds of thousands of people dead and injured and homes destroyed, but whatever legal structure had previously been in place in Rwanda was almost entirely destroyed during the period of the massacre. It was therefore impossible for the courts to prosecute the offenders. Most of the buildings, offices and resources were burnt or destroyed; almost all of the judges and lawyers had been killed or had fled the country and it is estimated that “only 40 magistrates remained after the genocide.”<sup>13</sup> As a consequence Rwanda appealed to the United Nations and requested the establishment of an international tribunal. In November 1994 the UN established the International Tribunal for Rwanda which was closely linked with the already established Tribunal

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- 11 Gourevitch, Philip. *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda* (New York: Farrar Straus and Giroux, 1998).
  - 12 From an unpublished paper delivered by the then Minister of Justice, Dr Faustin Nteziyayo at a conference held in Geneva in December 1998, organised by me at the request of the Swiss government.
  - 13 Madeline Morris, “The Trials of Concurrent Jurisdiction: The Case of Rwanda”, *Duke Journal of Comparative and International Law* (Spring 1997), p. 353.



for Former Yugoslavia. Ironically, Rwanda was the only member of the Security Council which voted against the appointment of the very tribunal that it had asked for. There were a number of reasons for this. Firstly, the Tribunal did not provide for the death penalty. Secondly, the seat of the Tribunal was going to be in Arusha, Tanzania, and not in Rwanda. Thirdly, the proposed period of 1 January – 31 December 1994 for consideration was believed to be far too limited. Fourthly, the Rwandese government was critical of the composition and structure of the Tribunal. Finally, Rwanda was concerned that the Tribunal, based in a neighbouring country, would have far greater precedence and access to resources than the very poorly equipped courts in Rwanda.

Nevertheless, both Rwanda and the international community were concerned that those who had been involved in the massacre of the Tutsi population had to be brought to justice and prosecuted.

There were considerations early on concerning the appointment of a truth and reconciliation commission in Rwanda. The TRC in South Africa was asked to send a delegation to Rwanda to share with them the insights we had gained in our own attempts to deal with South Africa's past. A delegation under the leadership of Hlengiwe Mkhize spent a week in Rwanda consulting and sharing in particular the early drafts of a policy for reparation for victims. A few months later a high level delegation from Rwanda visited South Africa at the invitation of the TRC and spent a week talking not only with members of the Commission but also many people in government and relevant NGOs. Dr Nteziyayo, in the course of his address at the Geneva conference already referred to, stated "Much attention has been devoted to the question of uncovering the truth about the genocide and other crimes against humanity committed in Rwanda and whether or not a truth and reconciliation commission should be established. It is essential that the people of Rwanda and the international community should be aware of how such a cruel crime was conceived, planned and carried out."<sup>14</sup> He referred to an earlier

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14 Faustin Nteziyayo, unpublished paper at conference in Geneva in December 1998.

conference held in Rwanda which urged the establishment of procedures whose sole purpose would be a comprehensive documentation of the genocide. The conference went further and recommended that a committee of distinguished persons be established to document this crime in the form of a memorial authority, documentation centre or other suitable body. Although the conference did not specifically recommend the appointment of a truth and reconciliation commission, it did recommend “that the government of Rwanda undertake all possible measures to ensure that those who suffered or died at the hands of their fellow citizens are at least secured the dignity of remembrance and truth.” Nteziyayo said that this excerpt underscored the need for truth, “whatever means are used to uncover it, and the vital importance of interaction between such a mechanism and the court system so that complementarity can exist and information exchanged.”<sup>15</sup> A very important and interesting development is the decision by the Rwandan government to introduce participatory justice in the search for truth, apart from court action. This approach draws on customary law procedures such as Gacaca. The word “Gacaca” in the Kinyarwanda language refers to the grass that village elders sat on as they mediated the disputes of rural life in Rwanda.<sup>16</sup>

The main strength of this traditional approach would be to try to resolve the impossible situation of bringing all those incarcerated for five years, in intolerable conditions, to trial, and the direct involvement of the population at grass-roots level. Nevertheless there are some very real concerns about its use as a method of seeking accountability and reconciliation.<sup>17</sup>

Firstly, there is no certainty that Rwanda has the personnel and resources to put such an ambitious procedure in place. Gacaca assumes that there will be 10 000 tribunals acting concurrently within the existing system and all these people

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15 *Ibidem*.

16 *International Herald Tribune*, 25 April 1999.

17 Stef Vandeginste of the University of Antwerp (Belgium) delivered an excellent paper on this subject at the All Africa Conference on African Principles of Conflict, Resolution and Reconciliation, November 1999. The paper is entitled “Justice, Reconciliation and Reparation After Genocide and Crimes Against Humanity: The Proposed Establishment of Popular Gacaca Tribunals in Rwanda.”

are to be elected. Secondly, there are bound to be strains and problems arising from having an international tribunal, a national tribunal and a local grass roots procedure such as Gacaca. It is difficult to know how problems which will inevitably arise are going to be resolved. Thirdly, bearing in mind that Gacaca was a system instituted for the resolution of fairly basic day to day problems involving theft and the like, it is not easy to see how this system can deal with the question of genocide without trivialising the whole approach. Fourthly, traditional customary law consisted of old men of the village who were regarded as the wise elders mediating between victim and perpetrator. The fact of the matter is that the majority of people living in Rwanda now are women, who will have to be included if the system is going to work at all. Further, the new population, as a result of the massacre, consists of fewer older men and many more young people who would have to be included in the process as well.

A further concern amongst many within Rwanda and in the international community is that Gacaca could be seen as a short cut to amnesty without adequate acknowledgement and accountability.

It is easy to be critical of the Rwandan government, but those of us who are outside of that situation should be very careful; it is one thing to be critical of a decades-old custom, but it has to be borne in mind that neither the Tribunal appointed by the United Nations nor the Rwandan courts are going to be able to bring about the criminal accountability which is their aim. Some other way must be found. It should not be beyond the wit or ability of good people in government and beyond government in Rwanda to adapt the ancient custom in order to deal with an almost intractable problem. Whatever else is true, the international community must not abandon the people of Rwanda. They have endured unspeakable horror and deserve maximum assistance. If criminal prosecution is not the whole answer and if Gacaca is unworkable, then other ways must be found to resolve the current crisis. Without prescribing to the authorities in that country, I would urge that some form of limited amnesty should be given serious consideration. One can only imagine the resentment building up amongst those

who have been incarcerated for five years or more in intolerable conditions. If we are to seek justice we must do so with justice. The cycle of violence must be broken and difficult as it is, some attempt towards forgiveness on the basis of accountability must be sought.

Several of us who have been part of the South African Commission continue to receive requests to visit Rwanda and to be of some assistance in their on-going struggle and if time and opportunity are available, we will certainly continue to do whatever we can. It is particularly important not only for Rwanda's sake but also for the sake of the wider region because whatever happens in Rwanda will impact on Burundi and the Congo. In the final analysis, what happens there also impacts on Africa and it is in South Africa's interests to be of some assistance to a country whose people have been so savagely decimated.

The final example that I want to offer in terms of the role that the South African experience might play in other societies is that of Northern Ireland. A number of South Africans have spent considerable time there, at the request of political parties and officials, NGOs and churches, sharing with them not only the experience of the Truth and Reconciliation Commission but also the whole negotiation process that led to free elections in South Africa.

I have visited Northern Ireland on several occasions, meeting representatives of a wide range of organisations. In February 1999 I was there under the auspices of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and Victim Support Northern Ireland.

Before leaving for Belfast, I met with United States Senator George Mitchell (through the good offices of Professor Harvey Dale, a colleague of mine at New York University). In the hour we spent together I was enormously impressed with his insights and his wisdom. Mitchell had played a key role in securing a commitment to the Good Friday Agreement, the 1998 agreement which enabled the different factions to set up a form of local government in Northern Ireland. He is held in the highest regard by all the players in the Northern Ireland

drama. Even those who resented an American being appointed as chairperson of the peace talks admire his patience, impartiality, and skills. Mitchell told me then that although a political settlement was crucial, that on its own would not ensure a peaceful society. Elsewhere he has written, “It is important to recognise that the agreement does not, by itself, provide or guarantee a durable peace, political stability or reconciliation. It makes them possible. But there will have to be a lot of effort in good faith, for a long time, to achieve these goals.”<sup>18</sup>

Mitchell emphasised to me that Northern Ireland is essentially a victim community. Both sides, Loyalist and Republican, see themselves as victims under siege, and have long memories. As a result, there is an absence of trust, and the need to overcome this mindset is even more important than the serious problem of decommissioning arms, of the Irish Republic Army in particular, which has proved a major stumbling block. Nevertheless, Mitchell told me that the time was not ripe for any comprehensive truth-telling process, that the situation in the country was too fragile, that there should be more visible signs of reconciliation before such a process could begin. I suggested to him that it might be impossible to reach any meaningful reconciliation without some truth-telling. This was certainly the view of many whom I was to meet.

During my visit I met a large number of groups and individuals. The following questions were raised by the organisers of my visit:

*As we in Northern Ireland observe how South Africa faces these challenges, what can we learn from their experiences? How do we begin to deal with the damage we have inflicted on each other and to ourselves in 30 years of conflict if ultimately we are to achieve personal and community healing? In particular, how do we remember our history yet find creative ways of moving on? In so doing, how do we preserve our new-found peace while building unity and reconciliation?*<sup>19</sup>

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18 George Mitchell, “Towards Peace in Northern Ireland”, 22 Fordham Intl, LJ 1136, 1138.

19 *All Truth is Bitter: A Report of the Visit of Dr. Alexander Boraine, Deputy Chairman of the South African Truth and Reconciliation Commission, to Northern Ireland* (Belfast: NIACRO and Victim Support Northern Ireland 1999).

The objectives the organisers and a wide range of their colleagues set for themselves included the following:

*1) to conduct a comparative perspective of shared truth and healing between South Africa and Northern Ireland; (2) to explore the transitional processes evident in moving away from conflict to accommodation and compromise; (3) to conduct a critical examination and analysis of what would be appropriate for and sensitive to our needs in Northern Ireland; (4) to start a debate and develop thinking, initially within key constituencies, on approaches to truth and reconciliation, which in turn enters the public domain; (5) to explore the public discourse surrounding truth and reconciliation, in particular the use of terms such as “victim” and “perpetrator”; (6) to establish a working group comprising key activists to prepare reports and make recommendations to political and community leaders; and (7) to explore the issues of symbolic reparation, at a personal, community and national level.<sup>20</sup>*

In the draft report, recognition is given to the “significant differences between the South African and Northern Ireland experience”, but in the course of discussions a number of fundamental questions were identified which relate very closely to the South African experience. The agencies underlined this by stating, “Whilst the particular TRC mechanism may not be judged to best suit the needs of Northern Ireland, the importance of truth-telling, the position of victims and the need for reparation and reconciliation are all themes that have significant implications for Northern Ireland.” The overwhelming majority of the individuals and groups I met during my visit stressed the importance of meeting the needs of victims and confronting perpetrators in a way that would enable that divided society to move on from conflict. Most of the people I met recognised in particular the importance of truth-telling over and above the need for a political settlement. As the draft report stated, “If there was one factor, one truth, that emerged from the visit it is in itself the importance of establishing truth, and as far as possible an agreed truth, as a vital means of moving on from conflict.”<sup>21</sup>

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20 *Ibidem.*

21 *Ibidem.*

A number of similarities between Northern Ireland and South Africa were identified by the organisers of my visit including the following: firstly, the level of suffering. Whilst many more people were killed in the South African conflict, for a small community such as Northern Ireland the number of people killed, injured or having related victims represents a significant proportion of that community. As in South Africa, the suffering in Northern Ireland has taken place over an extended period of time involving at least three generations of people.

A second similarity identified by the people of Northern Ireland themselves was that in both countries there was a conflict that neither side could win. In Northern Ireland there are two sides to the conflict, neither of which will accept defeat or indeed can be defeated. A critical question is, is it possible to achieve a reconciled community where surrender or defeat is required by one side or the other? Here stress was laid on the problems of decommissioning which, of course, were later resolved in the short term by delaying the actual implementation of decommissioning after the setting up of a joint executive. This similarity also reveals a significant difference. In South Africa, the two warring parties were aware of their strengths and their power, whilst in Northern Ireland both the Unionists and the Nationalists feel under threat and perhaps subconsciously feel their minority status.

Thirdly, because of the extended period of conflict, both in South Africa and Northern Ireland, we are damaged societies. There are many thousands of victims of violence, many thousands of people who can only envisage these societies in the context of warring cultures and of conflicting political aspirations. Like South Africa, Northern Ireland has many young people and adults who have little or no knowledge or experience of or contact with people of other cultures with whom they share a common country and common destiny. Like South Africa, Northern Ireland has many people who believe that acts of political violence must still be a potential part of the solution. In both societies healing is of primary importance and will take a very long time to achieve.

A fourth similarity is a lack of awareness of the abnormal nature of the societies. Northern Ireland has known conflict for so long that it has come to be accepted as “normal” and many have little knowledge or vision of a society which is not at war with itself. This was certainly true in South Africa over a considerable period of time and the societies could learn from each other in this regard. Abnormal societies, whether they be in Northern Ireland or South Africa, require abnormal or unusual solutions.

Fifthly, both societies have often been dishonest and are haunted by truth. I said during my visit, “Dishonesty has permeated the history of this lovely and tragic land. Truth haunts us all.” But I said this against the background of my own society which has sought to deny its culpability and complicity. In Northern Ireland, as in South Africa, people live in a world of different and contested realities. Whatever process is followed in Northern Ireland, one objective must be to establish a truth that the majority of both communities accept; a shared Protestant/Catholic, Unionist/Nationalist, Loyalist/Republican memory.

A final similarity was the apathy and denial experienced in both countries. In Northern Ireland, as in South Africa, most who have suffered come from the disadvantaged sections of the community. It is also the case that those who have suffered least and who have benefited most from the conflict over the last 30 years in Northern Ireland reflect an apathy to that situation and lack motivation to work hard for change. The draft report concludes, “In the development of truth that is accepted on all sides as the truth the apathy of the better off must be addressed. Truth and progress require at least the acceptance, but hopefully the commitment, of all sections of society in Northern Ireland.”<sup>22</sup>

When the draft report was issued there was no clarity as to whether the two major groupings, the Unionists and the Nationalists, would bury their differences in order to implement the Good Friday Agreement which called for a new joint executive and for decommissioning.

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22 *Ibidem.*



The peace process has been tortuous, with successes and setbacks, but there does seem to be a large group of people in Northern Ireland who, whatever the developments may be on the political front, feel very strongly that some form of truth-telling should take place in order to come to terms with the past, to recognise that there are victims on both sides and to acknowledge responsibility for the previous conflict as a basis for future development towards a human rights culture. What form this truth-telling will take is still very much a decision for the future.

Clearly there is a major difference between the nature and the role of the state in South Africa and that in Northern Ireland. South Africa has a new democratic state with a majority party determined to try and deal with the past and move towards genuine reconciliation. In Northern Ireland they will have the same state working in a rapidly changing political environment in the United Kingdom, England and Europe. If the truth-finding process is to be introduced, it would be preferable for the state to be part of that process. The only alternative would be for an NGO or a collection of NGOs to organise and mount such a truth commission, which of course would lack resources and authority. One thing that is clear is that any process of truth-telling would have to be accepted as legitimate by all Northern Ireland traditions. It would have to be seen to be independent and must have the necessary overall support to conduct its proceedings in a way which reinforces that independence.

When the draft report was issued in July 1999, under the title "All Truth is Bitter", I was sent a copy and was asked to make a response to a fairly lengthy document which was going to be widely distributed in Northern Ireland. I wrote,

*I don't want to add very much to the report and the issues outlined for discussion by yourselves. I think you have captured all the critical points and you have certainly heard enough from me!*

*I write this response against the depressing news that the Peace Plan has collapsed and I can understand how disturbed and*

*depressed you are. I think very deeply of your beloved country and I remind you that the South African process to peaceful negotiations was often aborted and sidelined and the only advice I can offer is that you dare not give up and there is hope in action.*

*To both Unionists and Nationalists I send you the words of the Polish activist and co-editor of the foremost newspaper in Eastern Europe, Adam Michnik. He spent years in prison under the Communist regime in Poland and spoke with deep feeling when he was with us in South Africa. "The image of the enemy is a moral and political burden because you are negotiating with someone whom only yesterday you called an oppressor, a murderer or a terrorist. You promised your followers that this person would be severely punished as a reward for the oppression they had lived through. Your followers meanwhile are telling you justice requires punishment. They ask: 'How can you negotiate and talk to a person who is responsible for all the disasters of our people?' ... I am negotiating because I have chosen the logic of peace and abandoned the logic of war. This means my enemy of yesterday must become my partner and we will both live in a common state. He may still be my opponent but he is an opponent within peace, not within war."<sup>23</sup>*

*In Northern Ireland and in South Africa we simply have to learn to live together, otherwise we will continue to kill one another. This is the stark choice. We don't have to like each other, but we have to coexist with mutual respect.*

*I hope that good sense will prevail and that the next steps towards a joint executive and decommissioning will take place and that peace will break out in your beautiful country.*

I received an invitation to return to Northern Ireland in March 2000, where I spent a few packed days meeting with a wide range of people and groups. Once again the hosts were Victim Support Northern Ireland and the Northern Ireland Association for the Care and Resettlement of Offenders. This was a follow-up to the earlier visit of February 1999 and coincided with the launch of the publication based on that visit,

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23 Alex Boraine *et al.* (eds.), *Dealing With the Past*, p.16.

“All Truth is Bitter.” Among the groups whose representatives I met were the major political parties, organisations working with victims, the two major ex-prisoner organisations, Epic and Coiste na n-Iarchimi, the Human Rights Commission and the Protestant and Catholic churches.<sup>24</sup>

The mood was very different from that of a year before. Because of the dispute over the decommissioning of weapons, the British Secretary of State for Northern Ireland, Peter Mandelson, had suspended the Executive and the Assembly in Northern Ireland, and the government of that territory had returned to the United Kingdom. I visited Stormont where the Parliament is housed. It is a magnificent building set upon a hill and it seemed bizarre to have such a great facility with no government. Politicians were wandering around not sure what to do in the absence of formal sessions of the Assembly.

The politicians I talked to, on both sides of the political spectrum, were depressed, and the consensus was that the Executive would not be reinstated before 2001 at the earliest. This seemed likely, particularly in view of the challenge to David Trimble, the leader of the Ulster Unionist Party, who was the first minister in the Executive before the suspension took place. He and many other key political leaders had visited the United States and the White House that year to mark the celebration of St. Patrick’s Day, and he had made a public statement there which indicated that he was willing for the Executive to come together even though there was no guarantee that the IRA would give up their arms. This brought strong criticism from his followers, and instead of being reappointed almost as a matter of form, he was challenged by the Rev. Martin Smith, who is even more to the right than Trimble. Despite announcing his challenge only four days before the conference of the Unionist Party, Smith gained 43 per cent of the vote against Trimble’s 57 per cent. This was a tremendous shock, putting Trimble in a precarious position and virtually tying his hands. Furthermore, the result suggested that those Unionists who had not been happy with the Good Friday

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24 The organisations working with victims included the Victim Liaison Unit, the Social Services Omagh, North Belfast Survivors of Trauma, Cost of the Troubles, and Wave.

Agreement had now come out of the woodwork, were more confident, and were going to make absolutely sure that any agreement met with their preconditions.

One of those preconditions was the retention of the name of the Royal Ulster Constabulary, the official title of the police force in Northern Ireland. This has always been a matter of dissension, because most of those serving in the police force have traditionally been drawn from the Protestant community; as a result it has been viewed with great suspicion by the Catholics. The Patten Commission had recommended that the name should be scrapped and replaced with a new name which would indicate a new approach and a new spirit to policing in Northern Ireland, and certainly a much more inclusive approach. To his credit, the chief constable, Sir Ronnie Flanagan, whom I met, supported the Patten Commission's recommendation even though he was sentimentally attached to the old name and symbol. He issued a statement describing the position taken by the Unionists as counter-productive. However, the motion passed at the Unionist conference made it clear that the retention of the name was now one of their demands before the Executive could be reinstated.

Clearly the situation had hardened and the pessimism and depression that I experienced among many of the political leaders was understandable.

The same mood of pessimism had spread beyond the political leadership into civil society, and most of the people I talked to were disappointed that just when it seemed that the elusive prize of permanent peace was within their grasp. It had once again been spurned. Even though the ceasefire seemed to be holding, there was a sense of uneasiness and uncertainty among most of the people I met.

Despite this major setback, a number of new initiatives had been taken which should not be overlooked. The Patten Commission made some very far-reaching recommendations which, if carried out, would certainly bring long-term benefits. In addition, an inquiry into Bloody Sunday was in full swing; despite the huge costs involved and the time and resources that

were tied up, this was a powerful signal that accountability was important for the new society. I was also once again enormously impressed by the quality of the people I met who were caring for ex-prisoners and for victims and their families. People such as Harold Good, Oliver Wilkinson, and Dave Wall are sterling examples of so many who by word and action are building the new society. While one often wonders how it is possible for so much evil to exist in the world, it is also a wonder to me that there is so much good and so many people who are so generous with their time and energy in caring for others. This is certainly a solid foundation on which to build. I was particularly impressed this time by my discussions with the two main ex-prisoner associations, one Nationalist, the other Loyalist. Of all the people I met, the ex-prisoners seemed to be more thoughtful, more committed to peace, than anyone else. Their experience in prison had clearly sobered them and had made them rethink the situation. They expressed regret for the loss of life and a determination that they would do everything in their power to ensure that there would not be a return to violence. The ones I spoke to were all working full time in the ex-prisoner associations. They told me something of their childhood, their involvement in the conflict, their arrest and imprisonment, and their new determination to work for peace. Many of them feel rejected by the very people who had encouraged the actions which led to their incarceration.

On my last day in Belfast the official launch of the booklet “All Truth is Bitter” was held. The booklet was a compilation of the lectures and speeches I gave in February 1999 and the responses and questions from the various organisations, groups, and individuals I had met. In summary, the compilation is a comparative report looking at the experiences of the Truth and Reconciliation Commission in South Africa and considering the lessons Northern Ireland might learn from that process to inform the search for peace and reconciliation. It was made very clear, however, that there was no intention of imposing the South African model on the vastly different situation in Northern Ireland. Speaking at a press conference I stated,

*Northern Ireland is a place where communities share a common space, but no common history. There is very little doubt that this*

*lack of a common history has fueled the culture of conflict that has beset Northern Ireland for generations. Political agreement of itself will not change this society. Unless one begins to discover some common truths as to what has taken place here – painful truths – then no sufficient political consensus can emerge or lasting reconciliation can take place.*

I added “everyone we met agreed that we need to manage the trauma of victims and to deal with victims and ex-prisoners in a way that enables all to move on from conflict.”

In this context most of the people I met accepted the need for truth-telling. However, some felt that truth-telling would be too traumatic and that it would be better to leave people in permanent denial. From my own experience in South Africa, I think “collective amnesia” is a short-term solution and a society intent on denying the past simply will not work. Conflicts must be transformed, not simply ended. I also tried to indicate my own understanding of the difficulties which lay ahead:

*The process of truth-telling needs to be truly comprehensive if common truths and an agreed reality are to emerge. Yet I found little to suggest a compelling, political or moral authority emerging from the peace process to sanction any kind of truth commission at this time. To achieve reconciliation, first there must be an acknowledgement of what has happened and who has suffered. We must move away from a hierarchy of victims. A key indicator of success will be that victims will not be used or abused as part of some ongoing political conflict.*

I concluded my remarks by saying,

*For the process to work as in South Africa, it needs to hear evidence both from victims and from ex-prisoners. It also needs to hear evidence from the state, from its political masters and from its agents. This is even more complicated in Northern Ireland where authority at different times has been exercised locally and from Westminster and when at all times that authority has been contested.*

As I reflected on yet another visit to that troubled land, so deeply divided, whose violence has been so intimate, I thought

again that there needs to be a common commitment which transcends the age-old divisions, a commitment which is shared and explored across the divide of Loyalist and Nationalist. Perhaps one of the best things that could emerge are small groups who would deliberately cross that divide in order to seek commonality rather than division – a kind of liberation zone which could be the precursor of a larger and wider common community. It is groups like these that can engage in a search for an ever-widening acceptance that if there is to be enduring peace, there has to be a common foundation on which to build. It is crucial to break down ancient suspicions and rebuild trust. This in turn could lead to the beginnings of the fashioning of a common memory, where widely divergent groups can accept that Northern Ireland is in many ways a society of victims, that the time to condemn and to blame must come to an end, and that the time for healing must begin.

I was pushed very hard by the media to speak in favour of a truth commission. I stressed that a firm, enduring political settlement without a return to violence was the first priority, although I did add that this goal was insufficient, and that if a damaged and deeply divided society was to be healed, some form of accountability was also essential. Truth-telling could play a major role in achieving that aim. What form that truth-telling should take is up to the people of Northern Ireland.

Soon after my visit I received a further invitation from the organisers, asking me to return to Northern Ireland for a much longer period. The suggestion was that I should stay for a couple of months. I am not sure whether this will be possible, because of so many other requests that come from other countries. One thing is certain, however, and that is that those who have participated in the South African experience of negotiation politics and the quest for truth and reconciliation have a major responsibility not to intervene or to tell others what they should do, but to respond to requests as they come as far as is humanly possible.

In early May 2000, there was a remarkable turn in fortunes for the stalled peace plan. Gerry Adams, the leader of Sinn Féin, had persuaded Tony Blair and Peter Mandelson that instead of

the IRA surrendering their guns, they would show their caches to independent observers and prove that the guns were stowed away and would not be used! This was a novel approach to say the least. But it could and did break the deadlock. By the narrowest of margins, Trimble persuaded the Ulster Unionists to return to the Executive and in the last week of May power was returned from the UK to the Assembly in Stormont.

Who are the observers who enjoy the trust of the IRA? They are former Finnish President, Martti Ahtisaari, who has a distinguished record in mediation, and former ANC Secretary-General, Cyril Ramaphosa. Ramaphosa played a central role in the successful negotiated settlement in South Africa and after a spell in Parliament has become a very successful businessman. A patient, deliberate man of very special talents and commitment, it is not surprising that the IRA felt he could be trusted. In addition, the ANC has special links with Sinn Fein and thus with the IRA. This could be a downside because of Unionist suspicions about his impartiality. But knowing Ramaphosa personally, and having watched him at work in the negotiation process in South Africa, I have no doubt that he will very quickly demonstrate his commitment to peace rather than take sides.

So another chapter begins in the agonising search for peace and stability. The accord remains fragile and much remains to be done to achieve a degree of stability and the guarantee of peace. In this ongoing search, civil society will undoubtedly be called upon to play a major role in breaking down barriers and building peace.

The role of South Africans in Northern Ireland is yet another indication that our country, which received so much assistance from the international community during its years of oppression, is now in a small way able to repay that by sharing with not only the countries referred to above but many other parts of the world, some of the lessons and insights which have come about through the Truth and Reconciliation Commission.



It is clear that in the coming months and years many of us who have been directly involved in the TRC will be called upon to assist countries in transition. This in itself is an endorsement that the South African experience was worthwhile and important way beyond the country's borders.