

## MEMORY, HISTORICAL RESPONSIBILITY, TRUTH AND JUSTICE: THE BALKAN WARS

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**ABSTRACT** In 1998, during a fieldtrip in the former Yugoslavia, I interviewed members of associations of internally displaced persons (IDPs). They were petitioning the authorities to recover their homes and properties because they wanted to “go home”. They also wanted the truth told about their families, communities and the war. They presented me with photos of houses or farms, anonymous letters threatening them if they would not leave, photos of missing family members and legal papers. And they wanted justice. They wanted that those responsible for killing their kin and neighbors and driving them from their homes should be punished. Based on these and other experiences I investigate four institutions designed to learn the truth about contested historical events and their interpretation: the international criminal tribunal, the truth and reconciliation commission, the outsider commission, and political agreement between adversaries.

**KEYWORDS** ethnic conflict, justice, collective memory, truth commission

*Ethnic conflict is caused by fear of the future, lived though the past.*

Vesna Pestic

*Mistaken ideas always end in bloodshed...but in every case it is someone else's blood.*

*That is why some of our thinkers feel free to say just about anything.*

Albert Camus

A former political prisoner who returned to Prizren after the Kosovo war told Mark Baskin (U.S. political scientist): On my way to work each day I greet the judge who sentenced me to nine years in prison.

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## THE SEARCH FOR MEMORY, TRUTH AND JUSTICE AT THE GRASSROOTS

In Ljusci Palanka, in Bosnia, the Association for Return to Prijedor had compiled a book listing 3146 Muslim persons (nine to a page, about half with a photo) missing from the district, including 120 children and 400 women. They were working on volume 2. Most were dead and missing as a result of the ethnic cleansing of Prijedor district in the spring of 1992. I asked the leader of the group who was responsible. He said that “not all Serbs were complicit in the ethnic cleansing. Many were, but some helped the Muslims, some were killed by other Serbs, and some were so scared when ordered to kill that they wept, but then they killed”. He rejected collective responsibility for Serbs. His views were nuanced and complex, as historical truth is often.

In Bihac, there was a photo exhibition of 50 Catholic churches destroyed or damaged by the Serbs in the war. One photo of the church before, and one photo after destruction: memory preserved in photographs.

Elsewhere, people wanted memories erased and a new history written. In Banja Luka (the capital of Republika Srpska) in May 1993, fifteen mosques were dynamited and razed during the ethnic cleansing of non-Serbs – including the historic Ferhadija mosque, an architectural treasure. Overnight, the ruins and remains were buried in dumps, the site was bulldozed and left vacant as though it had never existed. It was not marked on any city map. There was no picture postcard of it anywhere to be found. In a nearby park, the busts of World War II partisan heroes were toppled or broken, lying in the grass. I asked my friendly hotel clerk to explain. He said they commemorated heroes in Tito’s Yugoslavia and people now want to forget they’d ever been part of it. After pressure from the international administration, the city issued a building permit to a Muslim foundation to rebuild the Ferhadija mosque. In May 2001, the ceremony for the laying of the cornerstone was disrupted by a hostile mob of about a thousand who attacked the two hundred and fifty officials as police stood by watching. Ambassadors and local Muslims sought refuge in a nearby Islamic center. Since then, it has been rebuilt.

These vignettes tell the grassroots story of memory, truth and justice. The victims seek to preserve the memory of their dead and missing and where and how they lived; they want their former property back, hope to return and insist on accountability and justice – the perpetrators meanwhile deny responsibility, want to erase memory and construct a fabricated history, and do not want victims to return. Local justice is problematic: some of the police, prosecutors and judges were the organizers of massacres and ethnic cleansing activities, together with party leaders and the military. They appropriated the

houses, autos, businesses, positions and savings of the victims, and robbed them of their foreign currencies.

The demand for justice and truth from one side in a violent conflict and the determination to deny this from the other side and insist on another competing truth, raises the question of how truth is established in contentious human affairs and what versions of history become accepted.

### INSTITUTIONS FOR TRUTH AND JUSTICE

Two methods of inquiry for knowledge and truth have been forged over the centuries: these are scientific inquiry and judicial institutions for determining the guilt or innocence of those accused of crime. The scientific method guides inquiry for knowledge about nature. It follows a set of rules and principles developed and tested over centuries, and keeps being adapted to new fields within science. Skepticism of inherited authority and acceptance of the findings of observations and experiments are at its core. Science defines its domains as natural phenomena and distinguishes them from spiritual, supernatural, and religious beliefs that are matters of faith not investigated with the scientific method. The scientific method is objective and impersonal. It holds that nature is impersonal and its laws independent of human interests, passions and wishes. Scientists study nature as it is and not as religious and political authorities believe it to be. Nature is invariant and lawful. Clarity and simplicity in theorizing are valued over ambiguity, elaboration and complexity. Science is public, cooperative and international: its publications, findings, instruments and techniques are a collective good for all mankind to share. There should be no private ownership and secrecy in knowledge. Scientists build on knowledge accumulated by previous generations of scientists. Theories and findings are provisional, not final. Dissent and debate ensure progress. Desire for recognition and fame, financial interest, national prestige, rivalry and competition may motivate the scientist at the stage of discovery but are eliminated from the logic of proof. Peer reviews of scientific work and replication of findings by other teams of scientists ensure that the discoverers are not the final arbiters of claims to knowledge. The scientific method has been spectacularly successful.

The adversarial method in the criminal justice system for determining guilt or innocence of those accused of crime dates to the Middle Ages when it displaced justice by oathing, private revenge and retribution by kinfolk. The adversarial method rests on the conviction that for getting at truth in human affairs, the strongest case for both sides should be made by advocates to a third,

non-interested party that decides the truth beyond reasonable doubt. There is a presumption of innocence until guilt is proven. Advocates for both sides have access to the same and all pertinent facts, are bound by the same rules for presenting their cases, and the same rules on evidence and trial procedure are enforced by an impartial judge. Truth emerges through vigorous probing and cross-examination of the material facts and human testimony, with false, unreliable, contradictory and ambiguous evidence discarded, conjectures based on such material made implausible and the remaining robust evidence allowing a judgment to be made about truth by the jury or a panel of judges. Trial errors are appealed through a higher court. The interest of the prosecution to convict, and the tools it has for swaying the jury with selective and biased arguments are balanced by the interests of the defense for an acquittal and the tools it has to counter omissions and weaknesses in the prosecution's case. This is the ideal. Like all institutions, justice is vulnerable to human error. Miscarriages of justice do occur, yet some are later corrected, and steps keep being taken within the legal profession, such as the use of DNA evidence, to improve criminal investigations and trials.

In politics and public affairs, the means for getting at knowledge and truth are deeply flawed. Political debate seeks persuasion and consensus rather than truth. The venue of public debate is mass media and political sites accessed through the media and the internet. Responsible research and reporting is overshadowed by superficial and sensational coverage of public issues that blur the line between fact, opinion, information, and entertainment. Misinformation, falsehood, a biased selection of facts, and fabrication are fair game and impair knowledge and truth seeking. "Balance" in the media confronts one story with another story, reminiscent of two siblings each telling a parent "I did not do it; she did it." Martin Kaplan refers to such so-called balance as "polarized pairs doing battle without a resolution" (Kaplan 2007). The jury in the "court of public opinion" are ordinary people who selectively expose themselves to views with which they already agree. Advocates for policy based on faulty knowledge do not pay the price for faulty judgment. When failure can not be covered up, denial of responsibility and blaming others is the standard response.

How are judgments about knowledge and truth made? Much of what we know and believe mirrors conventional wisdom, peer opinion, and other milieus where agreement and consensus are valued and are tickets to admission and good standing in a group. Truth derived from personal experience is a small part of what we know. We can "reality" test the hardness of stone, but not unemployment rate or health policies. Charles Lindblom writes that "I take it as undeniable that what people think about the social world...derives from

social interchange far more than from direct observation...for answers...you depend almost entirely on other people, including acquaintances, journalists, other people who reach you through press and broadcasting” (Lindblom 1990: 78). Belief gains truth value from confirmation in membership and reference groups. Belief gains truth value when it is the majority belief – vox populi, vox dei. Beliefs become convictions when trusted authorities voice them: ancestors, Founding Fathers, God(s), sacred texts, experts of many stripes and colors. Social knowledge is socially constructed and socially tested. The opportunity cost of checking the truth of all but a few of our beliefs other than by social testing, assuming we have the intellectual skills and resources to do it, is prohibitive. There is no escaping trusting other persons and institutions for getting to about knowledge and truth.

Public communications consist of a messenger using a message to persuade the public. The messenger is an interested advocate and uses well-known and proven means of persuasion – called the ‘art of propaganda’ –, appeal to passions (fear is especially powerful (Hovland et al. 1963), repetition, omission, stereotyping, exaggeration, misinformation, and so on.

The message is framed using metaphors, catchphrases and symbols. A frame is a mental structure which situates and connects events and people into a meaningful narrative. A study of mass media framing of nuclear power in the U.S. from 1945 to 1980 based on content analysis found that a small number of symbols and themes and icons framed public discourse on the polarity of “technological and scientific progress” accenting the benefits of nuclear power versus a “devil’s bargain” highlighting the dangers of out-of-control technology, with lesser used frames playing in a minor key (Gamson 1988). Uncertain, unfamiliar, complex, unobserved events and social units are framed by means of metaphor and analogy with the structure and moral values of what is certain, familiar, simple, and observed. Knowledge and truth are thus socially created through persuasive frames.

Social psychological and mass communications research has found that the recipients of communications – the public – selectively expose themselves to information they are likely to agree with, which is the dominant view in their social milieu, and selectively avoid information that they are likely to disagree with, which is also what is unpopular in their social milieu. Thus the recipient actively reinforces consensus. Beliefs persist because one keeps confirming them selectively and because one filters out contrary information. Other research (Muntz 2006) found that people tend to talk politics within homogeneous clusters. When people of opposite political views talk to one another they tend to avoid politics because they do not want to put at risk through disagreement a social relationship they value. A related social

psychological process (“cognitive dissonance”) modifies or changes contrary or “dissonant” information to make it fit into an existing set of beliefs and frame. Denial can be thus explained. When you greatly value your nationality, highly-valued information about it is easy to fit into one’s nationality frame, but this is not the case for damaging information, such as information about war crimes. The psychological dissonance between positive value for nationality and negative value for war crimes can be resolved in two ways. Many people simply deny or justify the war crimes (“it did not happen”, “they did it to us also” or “they did it first”), and a few develop a more complex view of theirs and others’ nationalities. Similar to denial, folk thinking about truth is deficient because it dismisses negative evidence as “exceptions”, thus false beliefs persist despite the accumulation of evidence to the contrary.

Social testing works much of the time for the routines of life. When I was six years old, I was convinced that the earth was round and not flat. How could that be? In my room, I could spin a round globe with all the oceans, continents and countries displayed in vivid colors. My parents and first grade teacher told me the earth was round. I had travel books with drawings of strange animals like camels and polar bears and mountains and palaces, and their locations could be matched to the globe. Why would my parents, teachers and the writers of these books want to deceive me? The thought didn’t even occur to my class mates and me. What they taught us was true, but had they taught us the earth was flat, like the pages in an atlas, we would have believed this as well. Nor would either belief have any consequences on our daily life, except in so far as disagreeing with our parents and peers would have meant being labeled weird or stubborn or stupid.

Social testing does not eliminate passion, interest, biased selection and omission of evidence, fabrication, and other cognitive and emotional flaws from judgment. It seeks confirmation for preconceptions and rejects organized skepticism. Social testing is the opposite of scientific inquiry and the adversarial process in justice for getting at knowledge and truth. It forges consensus within a group around a local truth. Another group coalesces around a different consensus and local truth. When these two confront one another in a public forum, one truth confronts the other truth, and there is no mechanism for resolving the dispute as in scientific inquiry and the adversarial method of justice.

The pursuit of memory, truth and responsibility takes place under flawed human conditions. When parallel and contradictory “truths” coexist, they can be manipulated by political entrepreneurs for a future round of violent conflicts, as happened with the memory of World War II atrocities and ethnic cleansing in Yugoslavia which was not cleared up by the Tito regime. How can

scientific inquiry and the adversarial mode of justice – that have demonstrated their worth in the pursuit of knowledge and truth – be incorporated into the “court of public opinion” for historical, political and policy debate? I will examine four institutions for historical truth that have attempted just this, and evaluate the results achieved: the international tribunal, as the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY); the Truth Commission, as in the South African Truth and Reconciliation Commission; other commissions, such as the Goldstone commission on the Gaza war; and cooperation between adversaries using political and academic institutions for changing biased national histories in school texts and curricula into a more truthful history, as France and Germany did after world War II.

Is it at all possible to establish factual truths for contested historical and current events, including assigning responsibility for actions and crimes in an adversarial judicial institution?

### **TRUTH ABOUT FACTS AND EVENTS: IRVING VS. LIPSTADT**

The standard for establishing historical truth in a trial was set by the British judge Charles Gray in his judgment on April 11, 2000 at the conclusion of Irving versus Lipstadt, the holocaust denial trial<sup>2</sup>. The trial turned on how historians used historical evidence. The plaintiff Irving argued that the facts about any complex human enterprise contain inconsistencies, gaps, and uncertainties and that, therefore, different interpretations of the same events are normal and legitimate. The defense established that Irving had practiced deliberate manipulation of data and deception, such as omission of contrary evidence, fabricating and altering quotes, and doctoring the historical record. These were not random errors and sloppy scholarship, but methods used consistently to stack the evidence in favor of Irving’s point of view.

In Gray’s judgment, the defense had proved beyond a reasonable doubt that Irving had created a body of data that was not truthful. Though not a historian with a university appointment, Irving had a good reputation as a military historian in some circles. Over the years he had written several books on the German military history of World War II and had located important materials in archives and interviewed German participants in key events. To prove that Irving had fabricated history in a trial was a tedious and expensive undertaking. The defense hired Richard Evans, a well-known historian of

<sup>2</sup> [www.holocaustdenial.net/trial/judgement/13.15](http://www.holocaustdenial.net/trial/judgement/13.15)

modern Germany, and he in turn put many graduate students to work checking hundreds of quotes and citations Irving had made in his writings to thousands of sources and documents located in dozens of archives. Irving vigorously cross-examined Evans and other researchers during his defense, trying to cast doubt on their methods and findings.

The judge concluded that in seventeen instances that were at the core of the trial, Lipstadt's contention that Irving had not done objective historical scholarship was true. In one instance, Irving had repeatedly written and said in lectures and media appearances that between one to two hundred thousand people died in the February 13 and 14, 1945 British bombing raids on Dresden. The defense demonstrated that Irving had based his numbers on document TB 47, which the Dresden archivist had told him was a forgery, and that Irving knew about other documents from the Dresden police and the office responsible for disposing of the bodies which listed deaths in the 20,000 to 30,000 range (which Irving contended were incomplete and unreliable without offering credible reasons for his opinions). Moreover, the defense produced the authentic TB 47 report, which supported other military historians' estimates of twenty-five to thirty thousand deaths. Judge Gray concluded that the fabrication and intentional omissions of evidence, bias, and advocacy – claiming to be scholarship – can be distinguished from sound scholarship and rational argument, using the same methods of proof as in a criminal trial for establishing the guilt or innocence of the defendant.

## THE ICTY

Could the truth be established for on-going or recent history through a trial? International stakeholders assuming responsibility for peace and stability in the Balkans created the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and exerted diplomatic and economic pressure on the governments of the adversarial parties to cooperate with war crimes investigations. Public opinion in these countries condemned the Tribunal's work as victor's justice and as collective punishment, a belief promoted and exploited by nationalist politicians and the trial defendants. Others argued that ascertaining truth and justice is not possible in an on-going violent conflict. The ICTY is very expensive and time consuming. It costs about one hundred million dollars a year. Of the estimated fifty thousand persons who were responsible for atrocities, war crimes and crimes against humanity, the ICTY will try about two hundred by 2012, mostly senior military and political offenders. For lower officials and ordinary citizens, state courts

have been set up in Serbia, Croatia, and Bosnia, and with assistance from the ICTY, have started prosecuting war-related crimes. The ICTY went ahead with prosecutions despite these criticisms and obstacles.

ICTY versus General Stanislav Galic. The UN Security Council mandate to the ICTY is “accountability and justice during extraordinary periods of lawlessness when national justice fails to do so”. The prosecutions were meant to cut through the fog of propaganda, misinformation and lies and create a public record of what crimes had actually occurred and which individuals were responsible for criminal acts: i.e. truth and justice. It wasn’t an easy task. The ICTY might indict an alleged war criminal, but had no power to arrest them, or to subpoena witnesses and documents. It had to get the cooperation of reluctant governments, especially Serbia, Croatia, and Republika Srpska, where public opinion regarded the indicted as national heroes. It had few resources to protect witnesses, and some were threatened and withdrew or altered their depositions. On the defense side, false witnesses came forward and documents were forged that claimed alibis for defendants, putting them far from the scene of massacres and other crimes. More important still, comrades who knew about the crimes did not testify against one another, and ministries refused to make available incriminating documents (e.g. the minutes of high-level meetings where crucial decisions were made about military operations and ethnic cleansing). Even electronic intercepts of military communications by UN forces and international observer teams were of limited value because they were coded.

Here is where science comes to the rescue in war crimes trials. There may not be a witness to a massacre, nor documentary evidence, but years later when mass graves are discovered and the bones exhumed, forensic specialists by painstaking methods establish the number, gender, and approximate age of the victims, the approximate date of the massacre, and from marks on bones and other objects like bullets and bits of clothing and buttons, they provide information about how the victims were killed (e.g. shot from behind) and what weapons were used. This information can be matched with the last sightings of detainees on buses and trucks who have since gone missing, and with the police or military units that rounded up the detainees. Ballistics experts can determine from the pattern of casualties and physical damage caused by explosions (e.g. mortar shells) which direction the shell was fired from and the approximate distance to the target, and this can be checked against information about military units at that location at that date recorded by UN or NATO peace troops. Similarly, the coroners who examine bodies for cause of death can determine which wounds are entrance and exit wounds, and which direction the bullet was fired from in relation to where the deceased was hit, and whether the bullet was of a certain caliber that is used for sniper

fire at long distance or an ordinary rifle used at shorter range. These methods and findings can and are challenged by defense experts, but the upshot is that scientific evidence in part substitutes for the documents and witnesses that are not forthcoming.

How were incriminating facts established in the trial of General Stanislas Galic<sup>3</sup> at the Hague before the ICTY? Galic was the commanding officer of the Bosnian Serb forces from September 1992 to August 1994, during the siege of Sarajevo. The prosecutor charged that Galic was responsible for a campaign of sniping and shelling civilians in Sarajevo which resulted in many deaths and injuries to civilians. The defense argued that the casualties were collateral to legitimate military activity, and resulted from targeting errors and stray bullets. The trial hinged on evidence about the number of civilian casualties and on whether they were caused by deliberate or indiscriminate shelling and sniping. The trial started on December 29, 1999 and ended on November 30, 2006 with the judges' verdict at a final appeal. A total of 171 witnesses were heard; fifteen reports by experts were submitted; there were 1,268 exhibits consisting of documents, reports, film, photographs, maps, and sound-recordings. It was a long, expensive and hotly-contested trial. My focus is on the number of civilian deaths from the fighting – a matter of fact – and the criminality of those deaths, i.e. intentional killing or collateral damage.

The prosecution's principal expert witness on civilian deaths was the demographer Eva Tabeau who headed the demography unit at the ICTY. The first task was to establish from military maps exactly which areas of Sarajevo were held by the Bosniak forces, and then to get an accurate count of deaths for the population of that area for the time period of the indictment. The number of deaths was discerned from death certificates at hospitals and matched with the records of funeral homes and triangulated with a 1994 household census listing dead, wounded and missing. Natural, accidental and criminal deaths were sorted out, and then military deaths. Military deaths were categorized by whether the deceased wore uniform or insignia, carried a weapon, and/or was listed as a death in official records – e.g. for the purpose of payment of death benefits to a family – and some other criteria such as location on the front line. The rest of the deaths were civilians killed in the fighting: of 3798 total deaths there remained 1399 civilians, of whom 617 were women, 295 children (0-17 years old), and 85 elderly persons.

The defense contested both the totals and many particular deaths. For instance it pointed to incomplete information and inconsistencies in autopsy reports, questioned the qualifications of some who performed autopsies and

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3 Case IT-98-29-1.

the technical facilities for post-mortems (interruptions in electricity supply, etc.), and argued in particular cases that the individual killed was military rather than civilian, or was collateral damage, i.e. a military target within a dense civilian population. These claims were disputed by the prosecution, using evidence. For instance, in the case of three girls killed by sniper fire while they were pulling a wheelbarrow loaded with cans of water, the defense claimed that there were Bosniak soldiers in the vicinity. The prosecution countered with testimony that there was no military activity near them, and similarly for other civilian deaths. The trial demonstrated that it is possible to establish quite accurately casualty figures that are hotly contested in an adversarial procedure by experts and witnesses.

In the Galic trial, the criminality of the civilian deaths in Sarajevo was also hotly contested. The defense claimed that the Bosniak forces fired on their own civilians to create an international incident. Ballistics and medical experts were called to establish the direction of fire, the caliber of the bullets, and entrance and exit wounds to contest such an interpretation of the deaths. A second line of defense was collateral damage. The civilian deaths occurred because the military targets were in close proximity to and mixed in with civilians. The prosecution provided evidence that in many instances that this was not the case. The prosecution further contended that when UNPROFOR warned General Galic about sniper and mortar fire at civilians, sniper fire and deaths ceased immediately and completely for a time, which indicated that he had command control over his soldiers, and that the sniping was not simply reckless firing by rogues. It argued from such evidence that there existed a campaign of attacks against civilians by the Bosnian Serb forces under General Galic. The defense countered that the number of deaths per month had actually decreased during Galic's command, but the defense showed that the decrease was due to civilians learning how to avoid being targets, the building of anti-sniping barricades, safer pedestrian routes, closing and moving schools, and shifting humanitarian aid distribution points out of sniper sight.

The judgment concluded that "the Majority (of judges) is thus convinced that civilians in Sarajevo were attacked directly or without distinction from SRK (Bosnian Serb Army) controlled territory...the exact number of civilian casualties from these attacks is not known. What is known is that hundreds of civilians were killed and thousands were injured in sniping and shelling incidents...the attacks were not isolated incidents but amounted to a widespread and systematic campaign...it is established that General Galic, as commander of the SRK, had effective control of SRK troops...that he was informed of the attacks against civilians committed by the SRK forces...the Accused was well aware of the unlawful activities of his troops". The defense tried to explain the civilian deaths

due to the “fog of war” and “collateral damage” frame. Based on the evidence, the judges accepted the prosecution’s “intentionality” interpretation of the civilian deaths, ruled out the “fog of war” and “collateral damage” frame of the defense, and held Galic personally responsible for war crimes.

The Galic trial demonstrates that it is possible, in an adversarial process, to discriminate between appropriate and inappropriate interpretations of the facts, or plausible and implausible “frames” for interpretation. This was also demonstrated in Irving versus Lipstadt: not only did Irving fabricate and alter factual evidence, but the pattern of omissions when there was contrary evidence and the choices he made when there was conflicting evidence were systematically biased rather than random. Irving consistently favored a benign interpretation of Hitler, Nazi and Wehrmacht intentions and actions, and consistently minimized and rationalized incriminating material, i.e. he used a pro-Nazi frame rather than the skepticism frame of professional historians (Evans 2000).

The Galic and a hundred other trials produced a wealth of information about specific events, crimes and responsibility for them. I call these ‘micro-level historical truths’. To make broader sense of what at times are discrete facts in a convoluted organizational and political context the ICTY asks “expert witnesses” to submit reports to the court. The experts are cross-examined by the defense, as all witnesses are. I followed the Seselj trial closely, having myself been an expert witness, and submitted a report titled “Vojislav Seselj’s nationalist propaganda: contents, techniques, aims and impacts, 1990-1994”, and having been cross-examined by Seselj himself for several hours. Yves Tomic, a French historian and political scientist, was the expert witness on Yugoslav politics and elections in the post-Tito era. Although much of what he reported was known from scholarly research and journalistic reporting, he also testified about little known events, such as the huge mass meetings of Croatian and BiH Serbs in Krajina in July 1989 (before the 1990 Croatian elections) to commemorate the historic battle of Kosovo, during which speeches were made for Greater Serbia and for secession of Krajina from Croatia. His testimony held up under cross-examination and is significant for the timing of the secession movement and Croatian nationalist reactions. Tomic’s main contribution to the court and not just to the Seselj trial itself was to summarize and give a reasoned interpretation to a mass of contradictory and contested information on what led to the outbreak of the Croatia-Serbia war. Other expert witnesses on the causes of the breakup of Yugoslavia, such as James Gow and Robert Hayden who had somewhat differing views and interpretations, were vigorously cross-examined in the Tadic trial. This will surely benefit the writing of a truthful history.

Raymond Theunens, a Belgian intelligence officer assigned to UNPROFOR and SFOR, was the expert witness on the military, security, and paramilitary organizations and operations in the Balkan wars. His testimony clarified a number of important matters on command and control in these linked-up structures, and on how to untangle the secrecy and purposeful ambiguity about obscuring responsibility for war crimes and crimes against humanity. For instance, his testimony established that the SRS volunteer (Chetniks) war staff had command and control in Slavonija and Baranja in the summer of 1991, and that the JNA opposed it – and that JNA military reports documented looting and abuse of civilians and other crimes by volunteers, and the fact that volunteers were integrated into the JNA only in December. Seselj admitted that he recruited, organized, and deployed SRS volunteers, but denied that he and the SRS political leaders had “military command” over their operations. He claimed that military command was transferred to JNA and Territorial Defense Forces (TDF) as soon as the volunteers entered fighting zones. The prosecution confronted Seselj with a video clip from Croatian TV where he was asked (in the summer of 1991) “are you commander of the forces here (in Croatia)?” to which Seselj answered, “yes, I have control, so far I have always exercised control...” To the ICTY court, Seselj explained “I really did say that I was commander and that I had control. I had general control over discipline and conduct; the TDF had control in the operational sense”. Theunens also described how military intelligence would routinely write reports saying that soldiers drew fire from buildings where civilians lodged, whether or not it was true, to justify attacks by combatants on civilian targets, and then pre-date the reports. For anyone perusing military archives with a view to interpreting the fighting, this is valuable information.

Expert testimony and reports are an important matter for Seselj’s trial because he is not charged with actually killing civilians himself, but with commanding and controlling the Chetniks who did commit crimes. Beyond that, a historian or anyone who seeks to understand Balkan warfare and ethnic cleansing may gain a lot of help from Theunens’ report and testimony, and that from other experts. From the micro-events reported by witnesses and documents, which were cross-examined and tested, and expert witness background and analyses, which were also cross-examined, plus other documents and evidence, historical memory converges around many agreed-on facts and a far narrower range of reasonable interpretations than when propaganda and social testing prevail.

Other Balkan truths. In addition to the adversarial method, sound social science research also gets at the truth about controversial matters of fact that were exploited by political leaders. Two instances from many that I have

examined concern the numbers of victims reported in propaganda campaigns. Serb nationalists accused Croats of killing seven hundred thousand Serbs in the Jasenovac World War II concentration camp. On the 60th anniversary of the death camp's liberation on April 21, 2005, the leaders of the Jasenovac camp victims association, a multi-national group who for many years compiled the names of victims, reported that the Jasenovac museum had a list of 59,188 dead, and that although the real number may never be known precisely, the association estimates that between eighty and one hundred thousand died there (about half Serbs, the others Roma, Jews, Croats and others).<sup>4</sup>

Charges of sexual assault and rape made by Albanians in Kosovo against Serbs were highlighted in Serb mass media, and were part of Milosevic's justification for "taking back Kosovo" in 1989-90. Vojislav Stojanovic, president of the Association of University Teachers and Scholars, stated that "...the savage Albanian terrorists are now running amok in Kosovo and Metohiya, attacking and destroying everything that is Serbian...Kosovo and Metohiya are gripped by fear of terrorists armed to the teeth..." A team of Belgrade social scientists analyzed Kosovo crime statistics in the 1980's from Kosovo court records and found that the rate of sexual assault and attempted assault from 1979 to 1989 in Kosovo (0.96% per 10,000 adult males) was lower than in central Serbia (2.43) and in all Yugoslavia (1.63); that the conviction rate for those accused was higher in Kosovo (52%) than in Serbia (31%) and all Yugoslavia (42%), and that rapes in Kosovo tended to occur within national group, and not across. Serb victim/Serb aggressor and Albanian victim/Albanian aggressor crimes accounted for 81% of reported sexual assaults (Popovic et al. 1990). This research and these figures were ignored. Mira Markovic, a professor of sociology and wife of Milosevic, called the victimization of Serbs in Kosovo "feudal terror."

In these instances, data compiled through the practice of sound social science are more accurate than the numbers and opinions promoted by ideologists. More accurate figures were ignored for political reasons, but can and should be used when a truthful history of these Balkan conflicts is written. Facts can be distinguished from opinions and wishful thinking. Not all estimates are equivalent; some are closer to the truth than others, and there are methods based on scientific inquiry and the adversarial method for getting closer to the truth. Interpretive frames that are appropriate and reasonable can be distinguished from others that are not.

<sup>4</sup> Hina News Service "60<sup>th</sup> anniversary..." April 21, 2005.

## DENIAL AND COLLECTIVE MYTHS

Elena Bonner wrote that a collective myth is the “collective memory of a people about their past which sustains ...their views of the world they live in”<sup>5</sup>. A self-image for ethnic groups and nations is positive. Its members obtain dignity and other social and psychological rewards from it, and seek public approval for it. This phenomenon is called ‘ethnocentrism’ and is as universal as language and the existence of families in human communities. The visible markers of positive self-image are monuments, flags, street names, national holidays, festivals, museums, songs, literature and poetry, and history in schools. These public signals affirm on a daily basis the collective myths of the nation. The theory of “cognitive dissonance” explains how information contrary to conventional wisdom and collective myths is modified or changed to fit into existing beliefs and frames. Atrocities and war crimes reflect poorly on positive self-image and do not fit with public conceptions of national myths. They are experienced as an attack on the moral worth of the entire group, and the psychological response is to downplay them, justify them and even deny them altogether. Denial is made easier when trusted authorities deny and the mass media adopt a denial frame. The denial syndrome is widespread and not just in use in the Balkans.

What if the evidence for crimes is overwhelming and not just transmitted through the media but accessed from personal experience and interpersonal sources? The events of Prijedor in Bosnia during the May to August 1992 ethnic cleansing, massacres, and concentration camp atrocities are a case in point. In the 1991 census, Prijedor district was 44% Muslim and 42.5% Serb; ethnic cleansing and killings reduced the Muslim population from forty-nine thousand to six thousand and Croats from six thousand to three thousand. The organizers of the Serb coup d’état, ethnic cleansing and camps were members of a Serb Crisis Committee headed by well-known Prijedor Serbs such as the police chief, former and current mayor and deputy mayor, head of the local Red Cross, director of the hospital, all well known local figures. Those who rounded up the victims, guarded them in the camps and tortured, raped and killed them were for the most part local Serb police and volunteers, some of whom knew their victims well, augmented by non-local paramilitaries. By accident, the international media stumbled on the camps and the camp survivors were evacuated by the Red Cross, which meant that many victims and eyewitnesses told their stories then, and later also in the ICTY trials.

<sup>5</sup> New York Review of Books, March 8, 2001.

The evidence of crimes is overwhelming. It was covered thoroughly in the international media and books written by journalists, special reports by Human Rights Watch, a major UN Report (the Bassiouni Report), and the ICTY trials of several of the Crisis Committee members as well as camp officials, shift leaders, and guards. Hanna Sophie Greve, a historian, investigator and expert witness on Prijedor at the Tadic trial (It-94-1), provided comprehensive background and an analysis of what happened. The leaders themselves gave some incriminating interviews when they were firmly in power: e.g. the head of police described the entire ethnic cleansing operation to a local newspaper one year after it happened, and told the journalist Tim Judah “the assets of fifty thousand Muslims and Croats expelled from the region amounted to several million DM...the greater part of these resources have either been transferred to Serbia (by the paramilitaries) or have been expropriated by private individuals (Serbs in Prijedor)” (Judah 1997: 254). The perpetrators remained in power throughout the war and after the Dayton peace settlement for several more years before they were indicted by the ICTY. During this period they perpetrated more crimes such as dynamiting the houses of Muslim and Croat internally displaced persons (IDP) who tried to return. By means of their control of local organizations, such as banks, the Red Cross, the distribution of humanitarian aid, transportation and the police, they operated a criminal mafia of corruption and war profiteering.

The ICTY trials were thorough. The trial of Milomir Stakic, physician and director of the community health center, member of the Crisis Committee and mayor in 1997, lasted one year from 4/02 to 5/03. The prosecution presented 37 witnesses and 19 witness statements in 80 sitting days, and the defense 38 witnesses and 7 witness statements over 67 sitting days. 1448 exhibits were admitted in evidence. Stakic was charged with specific counts of crimes against humanity, murder, extermination, deportation, inhumane acts, persecutions, and two counts of genocide. His defense claimed that the camps were only transit centers for the protection and assistance of people who wanted to leave. Attempts to intimidate witnesses were numerous. Thirty-four witnesses were granted protective measures, e.g. facial and voice distortion, pseudonyms, testifying in closed session and redaction of testimony. Stakic was sentenced to 20 years to life in July 2003. In other prosecutions as well, there were attempts to intimidate witnesses, and defense witnesses gave alibis for the accused, placing them far from the alleged scene of particular crimes, but the evidence was overwhelming against the perpetrators.

Relations between Serbs and others in Prijedor were characterized as good before the conflict erupted in the open. Biljana Plavsic, the Prime Minister of Republika Srpska, testified at her ICTY on December 12, 2002, that “the

reason (for the ethnic cleansing and other crimes) lies in the word fear, fear that renders people blind. Driven by the obsession never to be reduced to the status of victim again, we allowed ourselves to become the makers of victims". We know that in March 1992 the TV relay transmitter on Mt. Kozara was seized by nationalists, and Zagreb and Sarajevo TV stations were cut off. The remaining Serb media flooded the airwaves with footage of World War II Ustasha and Muslim atrocities against Serbs, and accused Muslims of plotting to create an Islamic state in Bosnia. These accusations and falsehoods sowed the seeds of mistrust and fear between Serbs and others who were their neighbors, pupils, and work mates. No one was prepared, however, for the later brutality. For example, Dusko Tadic, a low-level camp guard, tortured his friend – the Muslim policeman Emir Karabasic – who had been a patron in his café, whom he had taught karate, and with whom he had frequently jogged (IT-94-1, transcript).

After the Serb Prijedor leadership was arrested and indicted by the ICTY, the return of Muslim and Croat refugees and IDPs became safe and several thousand did so (Wesselingh – Vaulerin 2005). Because a critical mass returned, they managed to elect several of their leaders to the municipal council and establish some Muslim friendly schools and access to municipal services. They discovered that the Serbs had constructed their own version of what had happened, the opposite of the findings by the ICTY and outsiders. According to the local Serbs, the first victims had been Serbs, every one was guilty, many of the alleged victims were still alive, the Muslims and Croats came of their own accord to the camps and the Serbs helped them to be evacuated, and so on. There had been no mention in any of the media about the ICTY trials and the convictions. A monument to the Serb victims of war was built. A Serbianization of culture and history had been accomplished with changes in street names, dates of holidays, Orthodox crosses, saints commemorated, and so on, all of which obliterated past events and responsibilities. Serbs argued that if so many non-Serbs came back, it proved that what had happened was not so bad after all.

These findings highlight the power of the denial syndrome and collective myth making. The underlying mechanisms are ethnocentrism, conformity, cognitive dissonance, selective attention, selective perception, and ethnification, which are typical dimensions of social testing for knowledge and truth. Despite the success of war crimes trials in establishing truths that satisfy outsiders of the conflict, many participants commit to denial, collective myth-making and contradictory truths. A laissez-faire policy on shared truth gets defeated by the social dynamics within the adversary group. To overcome denial, what else besides tribunals has been done in the name of truth, justice and historical memory?

## TRUTH COMMISSIONS

Truth and Reconciliation Commissions (TRC) (as used in South Africa and Guatemala), are also means for uncovering the truth and achieving partial justice after civil strife when there are thousands of perpetrators and victims. The TRC achieved partial rather than full justice, because the political settlement by the adversaries included conditional amnesty for perpetrators of crimes – including for senior security personnel and politicians. In South Africa, amnesty was conditionally dependent on telling the truth and publicly apologizing to victims for politically motivated crimes at a public hearing. A great deal of knowledge about covered-up criminal events surfaced. These truths are difficult for public opinion to deny since they were voluntarily provided by perpetrators, accepted by the victims, testimonials were cross-checked with documentary evidence, and witnesses were subject to cross-examination.

The Amnesty Committee of the South African TRC was empowered to determine whether the applicant's actions met the criteria for amnesty in exchange for full disclosure. Failing that test, the case was to be referred to the justice system for prosecution. Both individuals and organization leaders appeared before it, including ex-Prime Minister De Klerk and ANC leaders Tembo and Mbeki. A total of 16,700 victims were identified by the Reparations and Rehabilitation Committee and received average compensation of about \$500 – a sum which observers labeled “symbolic” because the legislature had limited the total reparation fund.

By 2000, of 7,112 applications for amnesty, 849 were granted and 5,392 refused, with many referred to further prosecution. As can be seen from these figures, amnesty was not easy to obtain. Another committee, the Human Rights Violation Committee, investigated human rights abuses from 1960 to 1994. It established the identity of victims, the harm they suffered, the identity of offenders, and the complicity of both state and insurgency organizations. The committees held open hearings all over South Africa, in eleven languages, many broadcast on radio and television, which were a public forum for the victims to tell their story. Because of the work of these committees and large-scale participation of victims and offenders, the public learned about killings, torture, the human rights violations of the apartheid system and of inter-African political and criminal violence that could not be ignored. An “historical memory” was put on record by these authoritative commissions that will make fabrication and misinformation about the past difficult. The South African public has by and large accepted the historical truth about its past (Oberschall 2007).

An actual case will illustrate how the TRC worked. Rayner Moringer, a foreign businessman in the aircraft industry had been living in South

Africa for thirty years before he became involved in the kidnapping (by the security police) of an African business acquaintance, Mr. Mbotoli, who was implicated in a coup attempt in the Transkei. At his trial for treason, Mbotoli had received a twenty year prison sentence. Moringer admitted helping in the abduction and that his actions were unlawful. He proved to the commissioners' satisfaction that he had not profited financially through helping Military Intelligence. Called as a witness, Mbotoli stated that "in the spirit of Mandela and reconciliation, he advises the TRC to grant amnesty" to Moringer, and Moringer declared publicly "I am sorry and regret the harm to you". The commission attorney pointed out that full disclosure was made, that the applicant was totally honest in his answers, and that his motive was political. In 1999 Moringer was granted amnesty.

Thousands of micro-level events and crimes were documented by the Amnesty Committee. The macro-conflict story was documented by the Human Rights Violation Committee and the operations of the state security agencies and their ties to the state apparatus and political leaders were revealed in great detail, as were the violent actions of insurgents and their ties to the ANC and other political bodies. Historians can and will piece these two types of sources together. No doubt differences in emphasis and interpretation will remain, as is true in professional history writing, but the TRC documentation process has set limits on historical truth. Beyond these limits are speculation, propaganda and fabrication, but no truth.

The truth commission process is strong on getting at truth. It has elements of the adversarial process, but it also enlists the cooperation of the perpetrator, victim and security agencies as in a scientific inquiry that mobilizes all resources for getting at truth. Amnesty is a powerful incentive for cooperation by those responsible for crimes. Unlike the International Tribunal process, the TRC has received favorable acceptance by both adversaries and bystander publics. Not every TRC type experience has been as successful as the South African one. In El Salvador, the UN-mediated peace agreement on the twelve year civil war called for a UN truth commission to investigate and publicize human rights abuses, including killings by death squads. It proved politically impossible to punish top army generals and officers. There were no penalties for an estimated 75,000 deaths, two-thirds of which were civilian. Some truth emerged, a little justice, but the peace held (Neier 1998). In Guatemala, a thirty year insurgency during which two hundred thousand people were killed ended with a UN mediated peace settlement in 1996. Both sides agreed to a general amnesty for war crimes, but not for crimes against humanity (i.e. against civilians). A Commission for Historical Clarification (CEH)

was set up to establish the truth about the war years. It submitted a 15 volume report to the United Nations in 1999. Both the armed forces and the insurgents cooperated with the CEH to only a limited extent. It worked behind closed doors and its recommendations were non-binding. Because of these limitations, the Catholic Church created another truth commission called the Recovery of Historical Memory (REMHI). Church volunteers collected thousands of victim testimonies in open hearings using local Indian languages. Its investigators reconstructed 70 massacres, named 55,000 killed civilians, and named war crimes perpetrators. When its four volume report was published, the head of the REMHI was murdered. A lot of historical and criminal truths were established, some justice was meted out, and the peace held (Kinzer 2001). South African delegations advocated truth and justice institutions for the Balkan states after the Dayton peace agreement, but were turned down. In some ways, the TRC model does not fit the Balkans well. The magnitude of the crimes in South Africa did not extend to the mass executions and large scale ethnic cleansing of the Balkans. Victims were abused and a few were tortured, but not killed. In the Balkans, the dead victims could not confront the perpetrators. South Africa is a unitary state with clear lines of authority for governance and justice, whereas a TRC in the Balkans would have to operate in a non-cooperative multi-state environment. In South Africa, a mass movement of citizens, including both Africans and non-Africans, demanded truth, justice and an end to violence when government leaders and the African National Congress agreed to the National Peace Accord of 1991. In the Balkans, there was no popular mobilization by the adversaries for truth and justice.

## COMMISSIONS OF INQUIRY BY OUTSIDERS

In most conflicts and wars, non-governmental advocates conduct inquiries and publish reports that have a factual component and recommendations to adversaries about stopping unlawful actions and taking remedial steps. The best known are Human Rights Watch, Amnesty International, International Crisis Group, and others more specific to a particular conflict, like Iraqi Body Count and several on Darfur (United Nations Commission of Inquiry, United States Atrocities Documentation Team). Though these groups advocate for a cause, their reputation for objectivity and accuracy is their only asset for gaining visibility and funding and at least limited access to sources controlled by the adversaries. Though they tend to report more on knowledge and truth

than the propaganda put out by governments and partisan groups, they labor under greater handicaps than tribunals and TRCs. Still, they are a useful and at times the most reliable (or least unreliable) source of information about controversial conflict events. Other commissions of inquiry are conducted by international bodies like UN agencies. Because I do not have a good example from the Balkans, I will probe the strengths and weaknesses of outsider commissions with reference to the UN Fact Finding Mission on the Gaza Conflict (the Goldstone Report) to the Human Rights Council of the UN, released September 2, 2009.

The UN Mission's mandate was to investigate violations of international human rights and international humanitarian law in the period June 2008 to July 2009. The report does "not purport to be exhaustive in documenting the very high number of incidents" (para. 16) and selected 36 of them for scrutiny. It did not "pretend to reach standard of proof applicable in a criminal trial" (para. 25). Because the report is over five hundred pages long, I examine only a few important incidents about which I did some research before the report was released. A major problem for the Mission was that neither the Israeli government nor Hamas and the armed Palestinian fighter groups cooperated with it. In the Gaza population "those interviewed proved reluctant to speak about the presence and conduct of hostilities by Palestinian armed groups" (para. 439). The Gaza authorities, who the Mission believes are different from Hamas, were equally silent: "we had nothing to do, directly or indirectly with the al-Qassim Brigades or other armed groups and had no knowledge of their tactics." When the Mission requested meetings with armed groups, it was turned down (para. 441). Consequently the Mission had to rely on "indirect sources" such as NGOs, the media, the Israeli government reports, and private individuals.

Few facts were uncovered that were not already known. The most publicized and controversial incident of the Gaza war was the shelling of al-Fakhura street by the Israeli army of an alleged Palestinian rocket launching team in which many were killed and wounded outside a UN school used as a civilian shelter. The Israelis claimed that the Palestinians purposely shielded the launch site through siting it near to civilians and that several fighters were also killed in the attack. The Mission found no new facts that were not discussed and debated at length in the international news media. The Canadian Globe and Mail published<sup>6</sup> a comprehensive account of what really happened together with maps and photographs, which is more concise and clearer than the many pages devoted to the incident by the Mission report pp.146-156. The finding on the presence of Palestinian fighters and use of civilians as a shield was

<sup>6</sup> Patrick Martin, Canadian Globe and Mail, 29/1/2009.

inconclusive, as it was before the inquiry: "Mission notes that the attack may have been in response to a mortar attack from an armed Palestinian group..." (para. 690). In another incident, the air attack and destruction of the el Badr flour mill which took place after several Israeli warnings (para. 920-921), the Mission accepted the Palestinian owner's statement that the mill had not been used for any purpose by Palestinian armed groups. Yet it also reported that hundreds of shells were found on the roof, specifically spent 40 mm. grenade machine-gun cartridges. The Mission undertook no follow up investigation: was this ammunition used by the IDF, by the Palestinians? Crucial information for the determination of war crimes and crimes against humanity was not collected on topics such as whether or not the IDF was shot at from the roof of the mill, and whether the mill was thus a legitimate military target. The mill incident was one of several which the Mission did not probe sufficiently to discover whether the IDF attack target attack was "dual use," but yet concluded it was not and the IDF was at fault.

A contentious issue regarding violations of the laws of war was whether the Gaza police were a legitimate military target (the Israelis claimed that Hamas had integrated armed fighters and security forces into the police) or whether it was a distinct civilian police force, as the Palestinians claimed and as the Mission concluded. One sixth of all Palestinian deaths were police killed (248 out of an estimated 1400 deaths), and thus counted as "civilians" killed in the war by the Palestinians, whereas the Israeli counted them as "combatants." The Gaza authorities admitted that after Hamas seized power in June 2007, religious and resistance fighters were integrated into the police, but in a later reorganization the civil police were differentiated from the security police (which played a military role). According to the Gaza authorities, the police were responsible for crime fighting and combating drug trafficking. They were equipped with Kalashnikov firearms (a military weapon) because the police "have not been able to obtain other equipment such as small guns" (para. 410). Estimates of Hamas members in police units by police commanders ranged from 70-95%. At the start of the war, the police received orders to continue law enforcement, supervise humanitarian aid distribution, "protect the internal front" (round up Fatah supporters, see 'internal violence' chapter), and "face the enemy if Gaza is invaded." The Gaza authorities claimed that not a single policeman had been killed in combat. None of these claims were investigated by the Mission (para. 393-428). It investigated the circumstances of death for 99 policemen killed in police stations and training grounds in the first Israeli airstrikes. But for other police deaths, there was no mention of any investigation. Did the police oversee humanitarian aid distribution? Did they safe-keep abandoned buildings? Did they go into hiding? Did they fight the

IDF? Did they arrest Palestinian fighters who were launching rockets in the vicinity of civilians? The Mission made no attempt to find out. It might also have checked the death certificates and circumstances of the 149 policemen “not killed in combat”. An Israeli research group identified the names of 78 dead policemen on the websites of al-Qassam brigades and other armed groups. The Mission acknowledged (para. 423) that “these cases require in-depth investigation”, but it did not do it: “the Mission could not verify the allegations of membership of armed groups of policemen” (para. 428). Its finding on the police was that “there is insufficient information to conclude that Gaza police as a whole has been incorporated into the armed forces of the Gaza authorities” (para. 427). Because they were not proven combatants, the Mission concluded that the IDF was at fault for not providing the same protection to Gaza police as civilians are afforded in war.

The Mission also investigated the blockade and its effects on the people and economy of Gaza. It noted that (para. 317) “The number of trucks is considered a fair measure of the amount of imports and exports from the Gaza Strip. This number *increased slightly* (my emphasis) during the period of calm between June and November 2008, but declined sharply again in November due to a resumption of hostilities following the Israeli incursion”. The UN Office for the Coordination of Humanitarian Affairs (OCHA) publishes the Incoming Gaza Truckload by Commodity category on a monthly basis.<sup>7</sup> For food, animal feed, and medical supplies, roughly the same number of truckloads entered Gaza during the entire period of the blockade, in keeping with Israeli policy on humanitarian aid. The blocked commodities were in other categories. On June 2008, an agreement was worked out between the Israelis and Hamas: Hamas would stop firing rockets and mortars at Israel, and Israel would lift the blockade. Hamas had launched 357 projectiles in May and 245 in June, which decreased to 9 in July, 11 in August, 4 in September and 2 in October.<sup>8</sup> How did Israel respond?

According to OCHA, truckloads of construction material went up in number from 17 and 2 in May/June to 2256 and 903 in July/August; industrial goods from 15 and 16 to 16 and 117; non-edible consumables from 14 and 16.5 to 106.5 and 156.5; livestock from 21 and 19 to 62 and 152; agricultural raw materials from 16.5 and 25.5 to 66 and 57. These changes the Mission report described as “slightly increased.” What brought an end to the truce? Hamas resumed firing rockets and mortars in November and December: after firing 2

<sup>7</sup> OCHA, Occupied Palestinian Territories, Gaza Crossing.

<sup>8</sup> Summary of Rocket Fire and Mortar Shelling in 2008, Intelligence and Terrorism Information Centre.

in October, they fired 193 in November and 602 in December. In retaliation, Israel decreased the amount of truckloads of food, animal fodder and medical supplies allowed to cross for two months, then increased them again, but shut down the sending of other commodities. In this instance the UN Fact Finding Mission was remiss in not providing facts, which could have been found from data and tables publicly available through UN sources.

In conclusion, based on the incidents analyzed in the Goldstone report which I also researched, and notwithstanding parts of the inquiry which were professionally conducted, the Mission did not meet the standards expected of an adversarial or scientific inquiry into historical truth. It did not meet the standards set by ICTY and the TRC. In a highly politicized international climate flaws and biases associated with social testing impinged on its methodology and interpretations. Because the adversaries refused to cooperate, the Mission was deprived of the most salient sources of information to get at historic truth. Despite these limitations, it could have performed better, as I have tried to point out for a few instances.

Accusations were made about pro-Palestinian bias, but the problem with such an inquiry has deeper roots. It ignores the last twenty-five years' of research and knowledge about new wars, asymmetric warfare, insurgency, urban guerrilla warfare and counter-terrorism (Alt – Richardson 2007). The frame it employs for its methodology and interpretations is a state against state model, where peace and war are distinct; combatant and civilian are sharply distinguished; the fog of war is limited; collateral damage, dual use, proportionality of response and other warfare norms in the Geneva Conventions are clear-cut; officials who are interviewed tell the truth; no one fabricates false evidence by tampering with videos; witnesses don't lie and there is a paper or electronic trail for verifying and cross-checking, and so on. That is not the real world of the Gaza war and other contemporary conflicts (Oberschall 2008). One fighter in Gaza city was interviewed by a news reporter: he took up the accusation that Hamas fighters hid behind civilians. Fighters in a way are both, he argued, and are accepted by many residents as defenders. People bring them food, he said. Sometimes they oppose rockets being launched nearby, but often they do not. "I am a civilian, and I am a fighter" he said.<sup>9</sup> That is the real Gaza war.

In the Gaza war, the news media produced a huge amount of data on the war. Some of it was on the central issue of Hamas using civilians as a cover for launching rockets. One eyewitness in Gaza said... "they (Hamas) fired rockets in between houses and covered the alleys with sheets so they could set

<sup>9</sup> New York Times, 14/1/2009.

the rockets up in five minutes without the planes seeing them. The moment they fired them, they escaped...".<sup>10</sup> Another twenty-one year old member of Islamic Jihad who had received a shrapnel wound said "we are fighting the Israelis. When we fire we run, but they hit back so fast we run into houses to get away".<sup>11</sup> A surgeon reported that " Hamas militants next to his apartment building fired mortar and rocket rounds. Israel fired back with force and his apartment was hit. His wife and his five-year old son were killed".<sup>12</sup> There was no reluctance on the part of the Gaza residents and the fighters to speak to the news media during the war. But the Goldstone Commission discounted such information and relied instead of statements to the Mission by officials who had every reason to tell untruths and reluctant witnesses who knew the danger of telling the truth about Hamas fighters. The report concluded (para. 35) that it found evidence that Palestinian armed groups had launched rockets from urban areas. That is hardly an issue, since most of Gaza is an urban area. The issue is whether the rockets were launched in the vicinity of and close to inhabited places so that these actions recklessly endangered civilians and were in violation of the laws of war.

Justice Goldstone stated that "I accepted with hesitation my United Nations mandate to investigate alleged violations of the laws of war and international human rights during Israel's three week war in Gaza...I accepted because the mission was to look at all parties...both Israel and Hamas have dismal records of investigating their own forces. Absent credible local investigations, the international community has a role to play..." (NYT 27/9/2009). I do not doubt Justice Goldstone's good intentions and integrity, but the Mission performance for getting at historical truth was unsatisfactory.

### **UNDOING COLLECTIVE MYTHS: GERMANY AND FRANCE**

Germany and France have fought several wars against one another since the wars of the French Revolution, resulting in millions of dead, many war crimes and atrocities, massive propaganda dehumanizing the enemy, a punitive and humiliating peace settlement at Versailles, territorial losses and gains, and much else that fueled revenge and Nazi nationalism. After the war,

<sup>10</sup> New York Times, 19/1/2009.

<sup>11</sup> New York Times, 10/1/2010.

<sup>12</sup> New York Times, 1/1/2009.

the Nurnberg war crimes trials meted out justice for the top Nazi leadership. Mountains of evidence were made public and the Nazi and German war crimes could no longer be denied. President De Gaulle and Chancellor Adenauer did not stop there. They sponsored a broad range of Franco-German collaborations by professional associations and civic bodies designed to change their historical adversarial relationship. Universities established relations under the auspices of a conference of rectors; twin-city partnerships were established starting in 1949; a Franco-German commission of secondary school teachers made changes in the history and geography curricula and textbooks; secondary school partnerships were started for pupil exchanges; Franco-German intellectual associations were created under the leadership of highly regarded public intellectuals like Alfred Gosser and Theodor Heuss and the entire reconciliation enterprise was capped by the state visit of De Gaulle to West Germany in 1962 and the Franco-German treaty a year later (Oberschall 2007: 216-217). Franco-German cooperation started the building of the road to the formation of the European Union.

An important part of conciliation was teaching future generations a truthful version of Franco-German history instead of the blatantly nationalist histories and popular culture that the previous generations had been exposed to. It was not an easy task. Every town and city in both countries had its monument to the war dead in the central square. Military cemeteries were located at the battlefield. Street names, national holidays, literature, movies, cultural stereotypes and personal memories kept a nationalist history current. Nevertheless, with a great deal of work, these deadly and destructive events were framed as a tragic consequence of nation state rivalries and total war which must come to an end once and for all if Europe is to be peaceful

Truth, justice, reconciliation and memory (TJCM) are on a tortuous path in the Northern Ireland peace process. The Northern Ireland Peace Agreement of 1998 created a power sharing government but left many contentious issues for commissions to consider at a later date, including the decommissioning of IRA weapons, police reform, and truth and justice for the 3500 insurgency related deaths from 1969 to 1998 (about one thousand deaths to the army and police, and the remaining to paramilitaries and civilians). The Republicans (Sinn Fein) refused to sign the agreement unless there was a prisoner release of those charged with terrorism related offenses. During the troubles, one of the principal arenas of confrontation between the Republicans and the British government was over the demand, through mass hunger strikes, of prisoner of war status for paramilitary detainees. They had been convicted in special courts for the most part on weapons charges and membership in a banned (terrorist) organization. Most were released within two years of the

Agreement. There was no amnesty, and there were three thousand deaths to account for. The government created a blue ribbon Consultative Group on the Past (CGP) to come up with a TJCM plan.

In January 2009, the CGP reported its recommendations to the government and the public (NYT 29/1/2009). The executive summary stated “Northern Ireland has made tremendous progress ...toward peace and stable government ...the divisions of the past that led to the conflict in the first place are all too present and only by honestly addressing the past can we truly deal with it and then leave it to the past” The heart of it was a Legacy Commission and a Reconciliation Forum that would coordinate with the Commission for Victims and Survivors. The plan resembled the South African Truth and Reconciliation process, but was promptly denounced for suggesting a recognition payment of twelve thousand pounds to victims’ families, regardless of circumstances and guilt (which the media labeled a ‘compensation’ payment, implying that human life was considered worth twelve thousand pounds by the CGP). The Unionists were outraged about the implied moral equivalence of a policeman killed in the line of duty and a terrorist killed in an attack. Sinn Fein leader Gerry Adams did not think that a British Legacy Commission would uncover the truth due to “state secrecy and concealment” and called for an international commission. The heads of the CGP stated that if the proposal was ignored, there could be thirty years of public inquiries, disrupting reconciliation.

Despite these controversies, the vast majority of the people of Northern Ireland are committed to the peace process; the exception is a small group of violent spoilers calling themselves the REAL IRA. Steps have been taken in Northern Ireland to remake historical memory and popular culture. Although over 90% of Protestant children attend de facto Protestant schools and 90% of Catholic pupils attend Catholic schools, curriculum, textbook and teacher training changes have been made to reduce sectarian bias in history and social studies and to promote toleration. In the past and during the Troubles, the most bloody sectarian riots took place at Orange marches (or parades) that commemorate the seventeenth century English military victories over the Irish and the history of domination of Protestants over Catholics.

The marching season peaks at the July 12 parades commemorating the 1690 Battle of the Boyne and the victorious William of Orange. It is a national holiday. Scots cross the Irish Sea by the thousands to support their Northern Ireland “kith and kin”. The night before, Protestant youth light bonfires in all-night celebrations. On the twelfth, members of the Orange Order, dressed in dark suits and wearing bowler hats and orange sashes, march in the main street of towns and cities, and alternate with fife and drum bands (known as “kick the pope” bands) whose performers sing provocative songs and chant

insulting slogans, amid a sea of flags hung from balconies and lamp posts. The riots occur when the marchers proceed through Nationalist neighborhoods where the residents pelt them and the police with bricks, fire bombs and gun shots. During the troubles, some marches were rerouted and banned altogether because they occasioned civil strife, the last time on June 24, 2005 in North Belfast. Since the Good Friday peace agreement, attempts have been made to tone down the political dimension of the marches and the violent history they commemorate and reframe the twelfth as a family-friendly cultural event, an “Orangefest” at which tourists are welcome. A leading businessman in Derry explained to me how such sectarian marches were bad for business and tourism, and how a Derry businessman’s association was working with the local Orange lodges, the police, and Nationalist leaders to “tame” these events. It had been successful in Derry.

The Orange marches story bears some similarity to the early Christians making Christian holidays out of pagan festivals and transforming pagan temples into churches. No one denies the bloody Anglo-Irish history, and the full story of the Troubles’ victims will become public. Reframing the Orange marches updates that divisive history with the emerging reality of sharing governance, a reformed and integrated police force, and non-discriminatory employment in government and increasingly also the private sector. Symbols and collective celebrations convey the new reality as well as the old, and what better way of doing that than invest new meaning into a centuries old popular tradition.

When truth and justice are avoided in the aftermath of bloody conflicts, for the sake of nation building, political leaders can exploit doubts and passions about the past in order to turn peoples against one another. In the much quoted essay “What is a Nation?” the French historian Renan wrote that “... the essence of a nation is that all individuals have many things in common, and also that they have forgotten many things...Forgetting, I would go so far as to say historical error, is a crucial factor in the creation of a nation” (Eley – Suny 1996). Tito’s Yugoslavia instituted a culture of “brotherhood and unity” between peoples through all the organs of the League of Communists, enforced a policy of forgetting about atrocities perpetrated in World War II and prosecuted those who lifted the veil of silence. Neither the communists nor the nationalists were interested in historical truth. Each group harbored its own agenda and version of the truth. After Tito’s death, nationalists started a politics of fear and historical falsehoods that mobilized the peoples of Yugoslavia against one another.

## CONCLUSION

I have examined four institutions designed to get at the knowledge and truth about contested historical events and their interpretation: the international criminal tribunal, the truth and reconciliation commission, the outsider commission, and political agreement between adversaries. I have shown that the tribunal process converges on truth and can and has discovered truth successfully for contested current events and recent history, but acceptance by adversaries is problematic. In the tribunal, the same rules apply to adversaries; all evidence is accessed by both parties, witnesses are cross examined under oath, documents are verified for authenticity and completeness, experts provide technical and scientific evaluations, an impartial jury or judges determine truth beyond reasonable doubt (but not all doubt), and there is an opportunity for appeal. Truth commissions perform well under favorable political conditions when all adversaries consent, and acceptance by all sides is broader than for tribunals. Commissions by outsiders are sometimes the only available alternative to self-serving propaganda by adversaries. Unfortunately, they can become politicized and fail to achieve an accepted standard for historical truth.

Professional historians' "skepticism" frame enables them to reach historical truth better than politicized commissions, though it is true that some historians choose to remain or become partisans. Professional historians can distinguish historical fiction (*The Three Musketeers*); fictionalized history (the author invents speeches and thoughts by Napoleon, Cesar, Ronald Reagan to make the case for his interpretation); fabrication of history (the Protocols of the elders of Zion); history as glorious myth and propaganda (e.g. the nation is chosen by God, history, destiny etc. for a grand mission); and history writing that conforms to the norms of the justice and tribunal process and converges on truth. Much of the public also makes such distinctions. Similarly, for contested current events, an ICTY tribunal process, commissions of inquiry, a TRC process, civic and professional groups committed to truthfulness, and professional journalism challenge propaganda, misinformation, myth making and self serving spin in the "court of public opinion," but there is no final arbiter for truth and falsehood, no judges or jury whose decision is binding, and no convergence on truth. True and false facts, accounts and explanations are available for the picking. Ordinary people select what they want to hear and what they already agree with, what is accepted in their social milieu, and what presents their group in a favorable light. Unless political leaders and authorities who were former adversaries join in a massive effort to get at the truth, be it though the political process – as in Germany and France after World

War II – or with a TRC process – as in South Africa –, divergent collective memories and myths will persist, available for mobilization by adversaries. I do not believe that benign neglect of the truth is the answer, or that time will heal old wounds once and for all, for some subsequent generations.

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