

"Truth and Justice: The Challenge for Victims at the International Criminal Tribunal for the Former Yugoslavia."

Roundtable: "What Kind of Truth and Reconciliation Model is Appropriate for the Former Yugoslavia?"

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The United Nations' mandate to the International Criminal Tribunal for the Former Yugoslavia (ICTY) includes "to render justice to victims." Can it do that? Can any legal proceeding against alleged perpetrators of war crimes do that? My conclusion after observing the trial of Slobodan Milosevic for eight months is that a criminal trial alone cannot, but that a criminal trial is a necessary component of justice for victims, as it is of healing and any possibility of reconciliation.

People who have suffered at the hands of their fellow humans have been violated not just physically, but psychologically and socially. There is an added element of betrayal and harm when the aggressor is someone known, a neighbor, a friend one used to drink coffee with. It rends the bonds of community. It destroys an individual's trust in her environment, other people and herself.

I recall the testimony of Sofije, a 19 year old woman. When Serbian police and military forces surrounded her village, she and her family prepared to leave. At 6:30 in the morning, three soldiers came to her house. One broke the front window and shot through it at her brother. Her mother managed to protect him. When Sofije expressed her fear and distress, her father, looking

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outside, told her, “Don’t worry. It is our neighbor.” Then he called out, “Predrag, what are you doing? We are your neighbors.” The response he received was, “There are no more neighbors.” Sofije’s father, brother and uncle were ordered outside at gun point and shot at point blank range on the threshold of their house, as mother and daughter watched.

What, if any, kind of justice does that young woman need? Does testifying at the ICTY in the Milosevic trial provide it? Is it sufficient? Would an additional trial against the man who pulled the trigger provide justice?

While the ultimate verdict in the Milosevic trial will be important to victims, as well as the initiation and outcome of trials against the “foot soldiers” of Milosevic’s murderous policies, they will not be the sole determinants of whether they feel justice has been achieved. Telling one’s story publicly, in court is a powerful way for one who has been violated to once again feel a part of the larger community. Being listened to with respect and having one’s suffering taken seriously can be cathartic.

In the Milosevic trial, there are significant obstacles between those who testify and any cathartic effect. The first is the psychological and physical difficulty of traveling thousands of miles from home to a strange country to testify before one of the highest courts in the world. For the most part, witnesses leave their communities and support systems behind. Many are from rural areas. Some are illiterate. Most have never been in any court before. Some have major physical ailments. Most continue to suffer psychological trauma.

Having overcome all these obstacles, the witness is faced with further obstacles in court. Because of time constraints, the prosecution’s case has been strictly limited. This was necessitated by the Herculean task of trying a former head of state for 61 counts of war crimes, crimes against humanity and genocide in three wars over a ten year period. The prosecution must put forward sufficient evidence to establish that widespread crimes occurred, but time requires it to be selective. A mechanism under ICTY rules that addresses this predicament allows the prosecutor to produce one or two live

witnesses per crime site and submit corroborating evidence from additional witnesses in writing. In the Milosevic case, the Court has further ruled that witnesses providing written statements must also appear in court for cross examination by the accused. While this is required to be fair to the accused, it is not necessarily fair to the victims.

A number of witnesses have expressed their frustration with court procedures which do not allow them to tell their stories in their own words. When he was dismissed by the court, one witness asked, “But don’t you want to hear what happened to me?” The Court’s rather lame answer was, “We have your [written] statement.”

Perhaps the most daunting obstacle witnesses faced in the Kosovo phase of the trial was undergoing cross examination by Milosevic, the former head of their country and the man they hold most responsible for their tragedies. Moreover, because Milosevic is self-represented, the Court gives him more leeway in questioning – and he abuses his privilege regularly by subjecting witnesses to what can only be called brutal interrogation, not cross examination.

In one case, for example, where the witness testified that his pregnant wife had been shot, Milosevic blamed him for her death because continuous shooting in the neighborhood prevented him from getting her to hospital in time to save her life and the life of their child. With the young woman Sofije, Milosevic hammered her with repetitive questions, designed to break her and expose her as a liar. Milosevic is scornful and dismissive of illiterate or uneducated witnesses. A favored tactic with any witness is his attempt to confuse them by rapidly switching back and forth between incidents, then concluding the witness has given different accounts of the same incident. He confronts them with misdeeds committed 20 years ago or by distant relations, intimidating by the reach of his power – even from his cell in Scheveningen.

The ability of witnesses to stand up to Milosevic’s assaults varies. While Sofije was not shaken, another witness who was on kidney dialysis from

being beaten and kicked by one of Milosevic's soldiers could not continue with his testimony under Milosevic's relentless assault. He was not only twice victimized by this, but suffered again when he returned to his community which judged him harshly for his perceived failure in court.

For all the obstacles, a public trial may offer a witness the opportunity to confront the person he holds most responsible for his suffering. I recall the testimony of Mrs. Imeraj who witnessed the murder of six of her children and also lost her husband and mother-in-law. It takes an incredible amount of courage just to continue living when your life has been so totally and irrevocably destroyed. To speak of that pain must rip open her wounds every time. When she confronted Milosevic, he expressed sympathy for her loss to which she replied, "It was on your orders that all my family were massacred, so you shouldn't feel sorry for me."

Another example was provided by an elderly former teacher who testified about the killing of his daughter-in-law and three small grandchildren. The frailty of his body belied the strength of his voice as he turned to Milosevic at the conclusion of his testimony and asked him directly, "How can you sanction the killing of women and children? Do you have **ANY** feelings?"

Testifying in court may also provide some relief and satisfaction to those who commit crimes "under orders." That was the case with a twenty-year-old conscript who was one of several soldiers ordered to shoot 15 unarmed women, children and elderly men at close range. One of the children was an infant who, when shot three times, "screamed unbelievably loudly," according to the young man. The soldier approached the prosecution and asked to testify against Milosevic. When asked why, he answered, "I came forward to give my evidence because I wanted in this way to express everything that is troubling me, that has been troubling me for the past three years since I completed my service. Never a night goes by without my dreaming of that child hit by the bullets and crying. I thought if I came forward and told the truth that I will feel easier in my soul. It is the only reason I am here."

The trial also offered the soldier a way to confront the man he held responsible for distorting his life and making him into a killer. During cross examination, Milosevic asked him if it wasn't correct that not a single officer ordered him to kill civilians. The soldier replied, "That is not correct. I heard this [the order to not leave anyone alive] and also ten soldiers from my company can confirm it and in no way can you deny that. I was there, I heard it and . . . You, as Supreme Commander, could have come down there and seen what it was like for us. You were issuing shameful orders to be carried out." At the end of cross examination, Milosevic pressed the witness: "Since you committed this grave crime, were you given any promises for this testimony of yours?" The soldier looked him in the eyes and answered, "Mr. Milosevic, I am here of my own free will. Mr. Milosevic, when I tell this truth to the person who, in my opinion, is the most responsible for all the crimes, it already makes me feel better. I don't need more."

These examples provide insight into what a public trial can and cannot do to bring justice to victims and some perpetrators. If Milosevic is convicted fairly on sufficient evidence, it will be an important element of justice, but not its whole. Others must be called to account as well, for a victim can never perceive justice when the man who has assaulted her walks around freely, unpunished. This requires more trials of the worst perpetrators of crimes. Those trials will necessarily be domestic, as the ICTY focuses on the leaders who designed and implemented the plan. But domestic criminal trials will not be enough either. For one, too many people have been implicated. Yet there must be a public forum to bring them to account and, as we see with the young soldier, to provide them a way to expiate the horrible guilt they carry for what their government ordered them to do.

Victims, too, require an additional forum. In all but a few instances, the ICTY is not able to meet victims' needs to tell their stories in a way that offers the possibility for healing, for themselves and their communities. They need a forum where they can speak from their hearts and their pain unfettered by legal rules. They need to speak to and be heard by their home communities.

The examples also provide a hint of what might be necessary for reconciliation and community healing. There is no easy road, no shortcut to reconciliation. It requires accountability – wherever possible, in a fair and public criminal trial. Perhaps more difficult, it also requires listening, deeply listening with the utmost respect, to victims who are willing to share their grief and tragedies. Listening without judgment, without blame or guilt or the little voice that cries, “but I have suffered, too.” It requires the ability to listen with an open heart. Even when another’s pain becomes so great you think it will drown you, it requires that you not stop it by disbelief, minimizing or trivializing. And it requires that those in whose names these crimes were perpetrated express remorse for such suffering. While it may not bring healing and reconciliation, neither can be attained without it.

I know that many of you here opposed what your leaders perpetrated in your name. Leaders always seem to leave ordinary citizens with their mess. It is for us to clean up, for us to make justice, for us to try to heal and reconcile and for us to be moral and responsible when leadership is not. We are such injured souls.

If we begin to see the connections among people, then the pain of others is our own. To the extent we can help alleviate it, to that extent our own hearts ease. What you are trying to do here by addressing these questions requires great courage. Few believe you will have any success. Yet this is the only way forward that offers hope for creating the kind of world we all want to live in. All we can do is what we think is right and necessary. The outcome is not in our hands.

