

## Coping with Peace: Truth Commissions, Courts of Law and the Pursuit of Justice

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### **Sažetak**

Danas se većina nasilnih sukoba, i samim tim kršenja ljudskih prava, događa u okviru jedne zemlje, npr. kada se vođe država okrenu protiv svojih građana ili kroz djelovanja raznih pobunjeničkih grupa kojima je postizanje vlastitih političkih ciljeva važnije od prava na život običnih ljudi. Zbog toga, društva koja se suoče sa nasiljem – bilo da se radi o društvu koje je u tranziciji od autokrativnog prema demokratskom uređenju ili demokratskom društvu u krizi zbog internog nasilja – u svakom slučaju se mora odlučiti šta da se radi po pitanju kršenja ljudskih prava. Poduzete mjere mogu imati ozbiljne posljedice na održavanje dugoročnog mira. Stabilan mir ovisi o pomirenju između bivših strana u konfliktu i njihovoj spremnosti da prevaziđu neprijateljstvo izazvano ratom i da „podnose mir“, a to zahtjeva oštar balans između istine, priznanja i pravde. Alternative, komisije za istinu i krivična suđenja, se predlažu kao rješenja. U članku koji slijedi ja se pitam koja institucija će više doprinijeti dugoročnom miru nakon nasilnih sukoba, te kako komisije za istinu i pravosuđe utječu na perspektive za mir.

### **Abstract**

The vast majority of all violent conflicts, and thus of human rights abuses, take place within a country. They are carried out, for instance, by state leaders turning against their own citizens, or insurgent groups totally disregarding the population's right to life in favour of their own agenda. Hence, in the face of such conflict-torn societies – be it a society in the process of transition from an authoritative to a democratic regime, or a democracy facing regime breakdown due to internal violence – decisions need to be made about how to address such human rights abuses. The measures taken may have serious repercussions with respect to the long-term viability of peace. Lasting peace depends on reconciliation between the formerly contending parties, on overcoming the festering resentment produced by war. It is these concerns and challenges that I have in mind when I employ the term 'coping with peace' – a task which requires striking a balance

between truth, acknowledgement, and justice. The alternatives of truth commissions and criminal trials have been put forward as a remedy and in the following I will ask which institution is more likely to contribute to lasting peace in the aftermath of a violent conflict. How do truth commissions and courts of law, respectively, affect the prospects of peace?

Nowadays, the majority of all violent conflicts—and thus of human rights abuses—are committed within a country<sup>1</sup>, for example by state leaders turning against their own citizens. On the other hand, apart from being an end in themselves, the measures a given state takes with respect to protecting human rights and punishing perpetrators of grave human rights abuses—genocide, war crimes, crimes against humanity—are liable to have an effect on the social order within that state, which in turn affects the prospects for peace. However, what that particular expression denominates is constantly disputed due to its elusiveness that, ‘like heaven, can only be negatively described’.<sup>2</sup>

A positive definition of peace is hard to produce, as can be seen by its discussion in Scruton’s *A Dictionary of Political Thought*: ‘(T)here are infinite shades of peace and conflict, from the absolute peace of reciprocated love in domestic security, to the internecine hatreds of civil war’.<sup>3</sup>

The conduct of ‘war’ represents organized violence.<sup>4</sup> War denotes forcible contention between states or between factions inside states with the purpose of overpowering each other by armed forces in order to secure certain demands or aims. ‘Peace’, in the narrow sense of the word, amounts to the absence of war. However, in international law it is established that the lack of belligerency is but a necessary condition for peace.

A sufficient condition needs to include peace in the broader sense, peace in the connotation of ‘a state of harmony between people or groups’, ‘law and order within a state’, which, in Walzer’s words, means ‘not the mere absence of fighting, but peace-with-rights, a condition of liberty and security that can exist only in the absence of aggression itself’.<sup>5</sup> Ultimately, peace alludes to the absence of anxiety, the ideal of which being pure personal tranquillity, the feeling that everything is in its proper place. ‘(P)ease, in its final sense, is the calm that comes of order’.<sup>6</sup> Where people are in a state of misery, grown out of personally experienced suffering, they will not feel such a thing as an ‘ordered equilibrium’.<sup>7</sup> They will aspire for whatever they perceive as just, they will claim their rights, and those ambitions will always get in the way of reconciliation. True peace thus requires a peace of mind that unsettled, unsaturated scores cannot provide.

The way violations of human rights are dealt with (or not dealt with) especially affects peace in this broader sense. This is a *conditio sine qua non*, or necessary condition, for ‘peace-keeping’ in the sense of what I will call ‘coping with peace’. The rationale behind this slightly provocative term is that lasting peace depends on peace in the broader sense as the absence of (mental) anguish, the enjoyment of peace of mind and reconciliation between the formerly contending parties. Where the end of war leaves festering resentment, the sense of unsettled scores

and a deeply felt need for individual or collective revenge, the danger of reprisal will always lurk in the dark and render any truce into a frail state of peace.

In cases of long-lasting, violent conflicts, the task of coming to terms with the new situation may be especially difficult. Groups of people who have been fighting for a long time need to be (re-)socialized, to become accustomed (again) to spending their days in a state of peace – and living with their previous enemies. It is an amalgamation of these concerns and challenges that I have in mind when I employ the term ‘coping with peace’.

Finding an arrangement that best translates into action the need to face human rights abuses, while at the same time reducing the danger of excessive reactions by previous victims to a minimum – an approach that realizes the necessity of taking both senses of peace into account – is of paramount importance. It is also extraordinarily difficult in the very case of domestic conflict, civil war, *mutatis mutandis*. Yet, that is exactly the context in which some of the *most serious* violations of human rights occur. Hence, one of the most urgent questions is: what should be done about such violations? Basically, there are two different approaches to facing that challenge: employing truth commissions or leaving the task to tribunals and courts of law.

Whereas the main form of accountability provided by courts of law is the imposition of sentences, truth commissions are chiefly concerned with rendering a moral judgment about what, in general, was wrong and unjustifiable, and thus help to ‘frame the events in a new national narrative of acknowledgment, accountability, and civic values’.<sup>8</sup> Both approaches share the recognition that reconciliation is a necessity for coming to terms with a dreadful past and being able to move on with the future.

However, whether the exigency of reconciliation is best accomplished by pursuing truth or justice – the former generally attributed to truth commissions, the latter to war tribunals and courts of law – and how far the national or international level is the right arena for that purpose, will be at the centre of the ensuing discussion.

### **Which is the Appropriate Institution for Coping with Peace?**

Generally, it has to be assumed that a state in which serious human rights violations occurred lacks in some fundamental way appropriate, viable institutions that may deal with or even prevent the recurrence of such abuses. Usually, such states need to go through a process of transition in the wake of which those yet inferior or altogether lacking institutions may be enhanced or (re-)built.

In the narrow sense of the word, ‘institutions’ refers to ‘entities for dealing with (past) crimes in a formally regulated manner’, such as courts of law and truth commissions. In the broader sense, it aims at ‘efforts of peace-building’<sup>9</sup>, which covers establishing or strengthening democratic governmental as well as non-governmental organizations and ‘promoting formal and informal processes of political participation’.<sup>10</sup> In that sense it alludes to the institutionalization of democracy, a process of socialization and immersion in human rights norms.

All war-torn states and states that are in the process of transition from a military rule to democracy have to face, at some point, the question of how to deal with human rights crimes committed under the previous regime. Concerns for impunity have to be adequately channelled into extensive demands for institutional reform – of the security forces and, above all, of the judiciary – should they be more than paying lip-service, and should they last.<sup>11</sup> Likewise, democracy in itself provides no automatic protection against future crimes; some human rights abuses derive, even after more than a decade of democracy, from the weakness of existing democratic institutions.<sup>12</sup>

The judiciary, for example, is politicized, lacks real independence and frequently violates the principle of equality before the law, thus turning the law into an instrument of domination rather than one of a guarantee of justice. Civil society is usually still too weak, unaccustomed to effectively exercising a controlling function in alliance with international and transnational organizations and, in sum, far from being imbued with democracy. In these circumstances, refuge often needs to be (temporarily) taken to internationally administered or at least supervised institutions. It is to such institutions in the narrow sense of the word that I will now turn to.

Ultimately, all those institutions have one goal in common: the attainment of lasting peace. Likewise, both approaches claim that their path to peace includes reconciliation as the necessary precondition for coping with peace and thus for obtaining lasting peace. However, when it comes to pursuing peace, the ways of looking at the issue under investigation diverge significantly. Truth commissions put great stress on the ‘right to truth’, whereas tribunals as well as (international) courts of law emphasize the importance of individual criminal responsibility by putting perpetrators of international crimes to trial and bringing them to justice.

Thus, if peace is what we aim for, which path shall we pursue, which way to go? How do truth commissions and courts of law, respectively, affect the prospects for coping with peace and shall we thus choose the former or the latter?

### **Truth Commissions Versus Courts of Law**

In the following discussion, I will weigh the pros and cons of truth commissions against the alternative of trials, illustrating the diverging arguments with examples taken from the more or less recent past. Furthermore, since the inherent arguments are highlighted rather than changed by the issue<sup>13</sup>, I will neither distinguish between international(ly appointed) and national truth commissions, nor shall I make a distinction between ad hoc tribunals and courts of law; both forms of trials shall, on an equal footing, represent the ‘alternative’ of courts of law.

Moreover, as truth commissions are usually set up precisely where viable democratic institutions are lacking (otherwise recourse could have been taken to existing national criminal courts), domestic courts of law disqualify themselves as an alternative for dealing with the crimes discussed above. Hence, the choice will be between (for the most part) national truth commissions and international courts of law.

So, given the above amalgamations, which is the appropriate institution for obtaining the aim of peace? As a matter of convenience I will take arguments in favour of truth commissions as a point of departure for each subsection, discussing and evaluating them as I proceed.

### **Political Realism**

It may be stated, in line with the classical realist tradition, that state practice (always) accords with political realities, an argument that in particular points to the 'praetorian problem'<sup>14</sup> that a not-yet-fully fledged new regime is faced with: 'Where the new regime has cause to fear a military uprising if its members are prosecuted, it would be wise to avoid such a course and to seek some alternative method of acknowledging the crimes of the past'.<sup>15</sup>

Furthermore, it has been asserted that:

(A)ll that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise *incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law*.<sup>16</sup>

Hence, a truth commission, even where it entails the granting of immunity from criminal prosecution to offenders, is to be preferred over the alternative of keeping intact 'the *abstract right to such a prosecution* for particular persons without the evidence to sustain the prosecution successfully'.<sup>17</sup> If you lack the evidence required by a court of law in order to (at least have a chance of successfully) proving the guilt of perpetrators, you should go far towards siding with a truth commission, because then this is the only (feasible) option left to you.

The incentives that truth commissions, in the absence of criminal sanctions, thus provide for truth-telling and truth-finding are stressed, but is this a justified line of reasoning? Paying tribute to alleged political realities is quite different from endorsing a path as the right decision. Taking political realities into account constitutes a necessity, but we should not deceive ourselves into overemphasizing the 'amount' of truth that truth commissions may actually yield, or even into thinking that they always will result in 'more' truth. Further consideration may yield quite opposing results.

As for the prospect of establishing truth, 'it is necessary to bear in mind that the very circumstances that prevent prosecution will place restrictions on the power of the truth commission'.<sup>18</sup> For example, the truth commission for Argentina, set up by president Raúl Alfonsín in 1983 after the fall of the military junta, was able to carry out relatively thorough investigations – including holding public hearings and naming individual perpetrators – whereas the Chilean truth commission, established by president Aylwin while the military under Pinochet was still in power, was far more restricted in that respect.

José Zalaquett, leader of the Rettig-commission in Chile, once claimed that it is bound to be that way. Whenever there is a clear and distinct winner, there will be no truth commission. The winner will always put the losing part on trial.<sup>19</sup>

Keeping that in mind, how much chance is there for establishing truth in the opposite scenario: a (relatively weak) truth commission investigating a (still) powerful (ex-)regime?

Even where there are prosecutions, state criminals often appear arrogant, bullying and self-righteous. They refuse to co-operate with the court, denying its jurisdiction, and instead abuse the judges and appear not at all interested in establishing the truth. As General Videla in the Argentine junta trial exclaimed: 'Your Honours of this Court: you are not my natural judges. And for that reason you lack jurisdiction and legal authority to judge me'.<sup>20</sup> Former Yugoslavian president Milošević's contempt of court in The Hague, and Saddam Hussein's outbursts at the beginning of his trial before the Iraqi Special Tribunal on October 19 2005, are further examples of that kind of attitude. And if criminals refuse to contribute to establishing the truth even under the threat of punishment (for not co-operating<sup>21</sup>), why should they behave differently in the face of a truth commission with no jurisdiction and enforcement power backing it up? What incentives do they really have for 'norm-conforming behaviour'; for telling the truth?

I do not intend to disregard the importance of taking the political necessities into account. But the point is that we should be realistic about the abilities of truth commissions and not expect them to yield more results than they can promise. Establishing truth is not their distinguishing feature (as opposed to trials): the argument from political realism cuts both ways.

### **Truth as Acknowledgement**

Sometimes, however, establishing truth is not really at issue, because 'everyone already knows the truth – everyone knows who the torturers were and what they did, the torturers know that everyone knows, and everyone knows that they know'.<sup>22</sup> Why, then, one might ask, the need for a truth commission? Weschler answers this by pointing to the distinction between knowledge and acknowledgement, generally attributed to Thomas Nagel. Acknowledgement is what happens to knowledge when it becomes officially sanctioned and thus converted into official truth. People do not necessarily want their former torturers to go to prison, but they want the truth recognized. In those cases, a truth commission may be all that is needed; may be sufficient.

### **The Naivety of Truth Commissions**

In 1995, the South African parliament enacted the Promotion of National Unity and Reconciliation Act<sup>23</sup>, which in its preamble deems it:

[N]ecessary to *establish the truth* in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known *in order to prevent a repetition of such acts in future*.<sup>24</sup>

Such considerations are founded on the 'eternal hope that exposure of the past will be enough to prevent its repetition in the future'.<sup>25</sup> But is it enough? Is it at

all an effective measure in the fight against future (and past) miscreants? Is it reasonable to expect the cycle of political violence to be broken under a regime of impunity?

In some cases, public hearings have resulted in 'the emotional healing necessary to "turn the page without closing the book"'<sup>26</sup>, as may be exemplified by the parents of murdered human rights worker Amy Biehl, who publicly forgave the the Azanian Peoples Liberation Army (APLA) killers of their young daughter.<sup>27</sup> Knowledge of the past may have contributed to healing the wounds of the past, '(B)ut it would be naive to contend that truth has brought reconciliation with it. Many victims demand retribution'<sup>28</sup>, and the fact that Amy Biehl's parents were seemingly able to forgive the killers is not necessarily connected with the revelation of the truth but rather due to some inherent qualities of the parents' character.

Another shortcoming of truth commissions is the potential for them to be used by those responsible for previous perpetration so as to meet public demands with respect to investigations while avoiding their own formal prosecution. 'Truth' may thus become a bad alternative to 'justice', as a culture of impunity may be fostered where members of the previous authoritative regime are able to stay in power. This may lead to a kind of false reconciliation with the past, the prevention of which was the very goal of establishing a truth commission in the first place.<sup>29</sup>

Furthermore, does peace in the sense of no repetition of past crimes actually result? In Guatemala, after the government and the guerrillas had negotiated an end to the civil war in 1997, two truth commissions – one sponsored by the United Nations and one by the Roman Catholic Church – were preparing their reports. The church published its findings in 1998 under the title *Guatemala: Nunca Más*.<sup>30</sup> It documented the extent, mechanisms, and impact of state terror. Shortly after publication, Bishop Juan Gerardi, director of the project that was in charge of writing and publishing the *Nunca Más* report, was murdered in his home.<sup>31</sup>

The peace terms were negotiated independently of the outcome of the truth commission and thus – at least in the Guatemalan case – the truth commissions did not result in peace by themselves. They are seldom sufficient to dismantle the structures of power and impunity behind the human rights violations. Neither can it be asserted that their reports contribute decisively to preventing the repetition or continuation of (political) murder and other serious violence. Truth commissions do not always bring peace.

### **The Healing of Society**

Archbishop Desmond Tutu continually referred to the cleansing power of truth and warned that if truth does not emerge it will come back to 'haunt' the society.<sup>32</sup> Taking for granted that truth and knowledge actually do contribute to the healing of a society that has suffered, it has been contended that truth commissions represent a better alternative for obtaining that knowledge. This aspect is closely related to the aforementioned (and questioned) extent of a

perpetrator's willingness to tell the truth – and their incentives – but has a slightly different angle. An individual's truth-telling, confession or co-operation is not here the centre of concern. Instead, what is crucial is the total amount of information gathered through such a process, 'explaining not only who did what and when, but also why'<sup>33</sup>.

The trial of selected individuals from the previous regime will *not necessarily* achieve this goal, as inevitably such trials will focus on individual guilt and not attempt to provide a comprehensive picture of the atrocities of the past or to expose the social and the political context of the crimes.<sup>34</sup>

This exposure is assumed to be a precondition for reconciliation and the 'healing of society'.

Presented in such cautious terms, it is hard to argue with Dugard; however, the least one may extract from his statement is that it may be used for both sides of the argument. The possibility that courts of law are just as capable of obtaining a comprehensive picture of the past should not be dismissed right from the start.

Now, putting aside the issue of which institution is more appropriate to obtaining truth, and accepting, for the sake of the following argument, that the answer might indeed point to truth commissions, the following question begs consideration: will truth really yield reconciliation and thus, in the long run, lasting peace?

Cohen seems to think so. He is convinced that '(W)hen the rhetoric of reconciliation is genuine, it looks for tolerance, forgiveness, social reconstruction and solution of social conflicts in ways other than punishment'.<sup>35</sup> Yet at the same time, he stipulates that victims and survivors cannot be expected to forgive without *full* knowledge – more than just factual knowledge:

It is impossible to expect 'reconciliation' if part of the population refuses to accept that anything was ever wrong, and the other part has never received an acknowledgement of the suffering it has undergone or of the ultimate responsibility for that suffering.<sup>36</sup>

Some people may be able to forgive, but it places great demands on the person supposed to be conciliatory – demands that many victims, survivors or their relatives cannot meet:

Reconciliation, however, does not follow automatically or even easily from knowledge. On the contrary, knowledge may produce bitterness and a desire for revenge on the part of the victims, or, on the part of unknowing supporters of the previous regime, resentment that blame is attached to silent acquiescence. *Understanding and forgiveness, the hallmarks of reconciliation, are rare qualities.* Some individuals may achieve this, but a collective display of understanding and forgiveness – reconciliation – on the part of a nation is more difficult to attain.<sup>37</sup>

## Conclusion

Weighing truth commissions against courts of law does not yield any straightforward answer as to which institution offers the greatest prospects for coping

with peace, which is their common goal. On the one hand, where the truth is already known by virtually all – where knowledge of the truth is not at stake, but rather acknowledgement – a truth commission may be sufficient. Yet, as the argument from political realism points out, truth commissions – even when combined with prospects of amnesty for previous crimes – may not provide the incentives for truth-telling on the side of the perpetrators: an important aspect of attaining peace. Establishing truth is seen as a precondition for reconciliation and thus lasting peace.

On the other hand, while truth commissions try to reconcile at the expense of bringing perpetrators to justice – thus granting impunity – peace does not always result. And where it doesn't, this is often precisely due to a neglect of justice. Rendering justice may also be a precondition for reconciliation, hence lasting peace. Furthermore, as for an overall ability to obtain truth, or knowledge about what actually happened, it is at least dubious whether truth commissions really are superior to courts of law.

However, due to the circumstances necessary in order for courts of law to have their say – requirements that are seldom met (especially by regimes in transition) at the time when taking a stance on the issue at stake is initially relevant – truth commissions are more likely to be established. Hence, there is a greater possibility of witnesses telling their story and of truth thus being obtained. Put like that, we are back to political realism, favouring the feasible, the achievable, instead of the desirable. And, contemplating truth from that vantage point – the chances of its being obtained – one would have to side with truth commissions, not as the best alternative for the attainment of lasting peace, but as the most feasible one.

However, this is hardly an answer to the general question. There will always be circumstances where the alternative of courts of law is somehow feasible<sup>38</sup> and, even if it were not equally feasible, we would still have to ask ourselves whether this were what we wanted: to give priority to 'truth' at the expense of 'justice' (and with the burdening luggage of impunity).

Hence, weighing truth commissions against courts of law with the help of using concrete examples does not yield unanimous results. It cannot be generally decided which institution is more conducive to the attainment of lasting peace, of coping with peace. Ultimately, our answer seems to depend on what we consider more important – truth or justice – and in handling that abstract and quite elusive juxtaposition we probably need to step back in a Nagelian fashion, contemplate the subject under investigation from a detached point of view<sup>39</sup> and turn to philosophy for enlightenment.<sup>40</sup>

## Endnotes

<sup>1</sup> According to the *Conflict Barometer* published by the Heidelberg Institute on International Conflict Research (HIIC), of all the thirty-six violent conflicts in 2004 (three classified as 'wars', thirty-three as 'severe crises') none were international ones. In this classification, however, it is important to take into account that the US-Iraq war has been considered a domestic one with the

handing over of power to an interim government in Iraq on 28 June 2004, well aware of the fact that the US-led coalition forces still exert a paramount influence in the country, as opposed to being mere supporters of the new Iraqi authorities. If low intensity and non-violent conflicts are included, 2004 was the stage for a total of 230 conflicts, 164 of which classified as internal, only sixty-six as interstate ones. Cf. *Conflict Barometer*, available at: <[http://www.hiik.de/en/index\\_e.htm](http://www.hiik.de/en/index_e.htm)>.

<sup>2</sup> R. Scruton, *A Dictionary of Political Thought*, Macmillan, London, 1996, p. 410.

<sup>3</sup> Ibid.

<sup>4</sup> R. Malnes, *Kant om Krig og Fred: Ffortolkning og Kritikk*, University of Oslo, Oslo, 2002, p. 1.

<sup>5</sup> M. Walzer, *Just and Unjust Wars*, Basic Books, New York, 1977, p. 51.

<sup>6</sup> Augustine, in V.J. Bourke, ed., *The City of God/Saint Augustine*, Doubleday, New York, 1958, p. 456.

<sup>7</sup> Ibid.

<sup>8</sup> M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998, p. 78.

<sup>9</sup> A term coined by former Secretary-General Boutros Boutros-Ghali, *An Agenda for Peace*, United Nations, New York, 1995.

<sup>10</sup> Ibid., p. 32.

<sup>11</sup> Cf. Elster's admonition that 'the perceived justice of social institutions and policies is a precondition for their long-term viability!', J. Elster, 'Arguments for Constitutional Choice: Reflections on the Transition to Socialism', in J. Elster, and R. Slagstad, eds, *Constitutionalism and Democracy*, Cambridge University Press, Cambridge, 1988, p. 316.

<sup>12</sup> F. Panizza, 'Human Rights in the Process of Transition and Consolidation of Democracy in Latin America', in D. Beetham, ed., *Politics and Human Rights*, Blackwell Publishers, Oxford and Cambridge, 1995, p. 178.

<sup>13</sup> The arguments pointing in favour of truth commissions or courts of law, respectively, are merely strengthened by adding the international level.

<sup>14</sup> S. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman and London, University of Oklahoma Press, 1991, p. 231.

<sup>15</sup> J. Dugard, 'Reconciliation and Justice: The South African Experience', in B.H. Weston, and S.P. Marks, eds, *The Future of International Human Rights*, Transnational Publishers, New York, 1999, p. 407. Arguably, a regime that fears uprisings should it prosecute some of its own is not really a new regime properly so called. And if we take 'its members' as referring to 'members of the military', then the 'new regime' is indeed at least seriously weakened.

<sup>16</sup> Stated by Mahomed, Deputy President of the South African Constitutional Court, in *AZAPO and Others v. President of the Republic of South Africa*, 1996,

para. 17, my emphasis, available at <<http://www.icrc.org/ihl-nat.nsf/0/067632d55386102cc1256b09003f0eac?OpenDocument>>.

<sup>17</sup> Ibid., para. 18, my emphasis.

<sup>18</sup> J. Dugard, 'Reconciliation and Justice: The South African Experience', fn. 14, p. 409.

<sup>19</sup> H. Steiner, et al, *Truth Commissions: A Comparative Assessment. An Interdisciplinary Discussion held at Harvard Law School in May 1996*, Harvard Law School, Human Rights Program, Cambridge, Massachusetts, 1997, p. 70.

<sup>20</sup> S. Cohen, *States of Denial, Knowing about Atrocities and Suffering*, Polity Press, Cambridge, 2001, pp. 241–42.

<sup>21</sup> Fear of self-incrimination is often not really at issue.

<sup>22</sup> L. Weschler, *A Miracle, A Universe: Settling Accounts With Torturers*, Penguin Books, London, 1991, p. 4.

<sup>23</sup> Available at: <[http://www.fas.org/irp/world/rsa/act95\\_034.htm](http://www.fas.org/irp/world/rsa/act95_034.htm)>.

<sup>24</sup> My emphasis.

<sup>25</sup> S. Cohen, *States of Denial, Knowing about Atrocities and Suffering*, fn. 19, p. 226.

<sup>26</sup> F. Panizza, 'Human Rights in the Process of Transition and Consolidation of Democracy in Latin America', fn. 12, p. 176.

<sup>27</sup> Cf. R. Tawa, 'Life after Death: For Amy Biehl's Parents; Path to Forgiveness Leads to South Africa', *Los Angeles Times*, 1 August 1998, p. A1.

<sup>28</sup> Cf. J. Dugard, 'Reconciliation and Justice: The South African Experience', fn. 14, pp. 430–31.

<sup>29</sup> D. Gairdner, 'Sannhet og Regimeendring: Sannhetskommissjoners Rolle I Overgang fra Autoritært til Demokratisk Styre', in B.A. Andreassen and E. Skaar, eds, *Forsoning Eller Rettferdighet? Om Beskyttelse av Menneskerettighetene Gjennom Sannhetskommissjoner og Rettstribunaler*, Cappelen Akademisk Forlag, Oslo, 1998, p. 171.

<sup>30</sup> Archbishopric of Guatemala, Office of Human Rights, 1998.

<sup>31</sup> S.C. Ropp and K. Sikkink, 'International Norms and Domestic Politics in Chile and Guatemala', in T. Risse et al. eds, *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, 1999, p. 173.

<sup>32</sup> Cf. S. Cohen, *States of Denial, Knowing about Atrocities and Suffering*, fn. 19, p. 236.

<sup>33</sup> Cf. J. Dugard, 'Reconciliation and Justice: The South African Experience', fn. 14, p. 429.

<sup>34</sup> Ibid., my emphasis.

<sup>35</sup> Cf. Ibid., p. 238.

<sup>36</sup> Letter from Human Rights Watch to President de Klerk, 'South Africa: Accounting for the Past', *Human Rights Watch Africa*, Vol. 4:2, 1992.

<sup>37</sup> Cf. J. Dugard, 'Reconciliation and Justice: The South African Experience', fn. 14, p. 429, my emphasis. In reference to 'the desire for revenge', as Hamlet exclaims, after having learned that his father's death was caused by his uncle: 'O God, I could be bounded in a nutshell and count myself a king of infinite space, were it not that I have bad dreams', 'The Tragedy of Hamlet, Prince of Denmark', in William Shakespeare, *Four Great Tragedies: Hamlet, Othello, King Lear, Macbeth.*, Penguin Books, London, 1601/1998, p. 48 (2.2.258–260).

<sup>38</sup> And, with a functioning International Criminal Court, this may more often be the case.

<sup>39</sup> T. Nagel, *The View from Nowhere*, Oxford University Press, New York, 1986.

<sup>40</sup> Due to limited space a more comprehensive, philosophical discussion of this issue will be available in a subsequent paper.