Truth and reconciliation commissions have played a critical role in a number of countries that had to come to terms with a past marked by protracted conflict, civil strife, violence, and massive human rights abuse. The most widely known example is the Truth and Reconciliation Commission established in 1995 in South Africa to examine Apartheid-Era crimes. In the past, truth commissions were used to investigate human rights violations in a variety of countries. In particular the commissions were used after countries had undergone major political changes, namely transition from an authoritarian regime to democratic rule, be it in the wake of violent internal conflicts, or a gradual peaceful revolution when civilian leadership took over from a military regime.

The International Human Rights Law Institute at DePaul University in Chicago undertook an empirical study on international and non-international conflicts since World War II. This study shows that
from 229 international and internal conflicts, excluding the classic interna-
tional armed conflicts, nine were the subject of a truth commission, and
twenty-four were the subject of a national inquiry commission, while
twenty-two were the subject of domestic prosecution and two of
international prosecution. For many of these conflicts, of course, there
were no redress mechanisms in place. A large number of new democratic
governments, namely in Latin America, vested in truth commissions to
examine human rights violations after they came to power. In some cases,
the establishment of a commission seemed to give proof of the
government's political will to bring human rights offenders to justice, but
the decision-makers changed their policy shortly after and granted
amnesties for the perpetrators. In other countries, the legislature had
already enacted blanket amnesties for human rights abuse. Later, a new
government set up a commission to investigate those crimes and to provide
reparation for victims. In connection with the collapse of the Soviet
Union, many Eastern European countries adopted democratic political
systems and found themselves confronted with the human rights abuses of
their former communist regimes. Truth commissions are not as popular in
Eastern Europe as they have been in Latin-America. Only a few states set
up investigative commissions, for instance, Lithuania, in 1991, to
investigate collaboration with the KGB, or Germany, in 1992, to examine
the impact of communist dictatorship on society and to foster the process
of German unification. These examples show the wide range of different

3. Jennifer Balint, An Empirical Study on Conflicts (of an international and non-
international character, civil conflicts and tyrannical regime victimization) and their outcomes
since WWI, REPORTS ON THE UNITED STATES MEETING OF EXPERTS ON REIGNING IN IMPUNITY
FOR INTERNATIONAL CRIMES AND SERIOUS VIOLATIONS OF HUMAN RIGHTS, (Apr. 13, 1997)
held in Washington D.C., International Human Rights Law Institute DePaul University College
of Law, Chicago.

4. To investigative commissions in Latin-America, see Margaret Popkin Sampers &
Naomi Roht-Arriaza, Truth as Justice: Investigatory Commissions in Latin America, 20 L. &

5. For example, Argentina - National Commission on Disappeared Persons established in
prosecution and the Due Obedience Law (Law No. 23.521, June 4, 1987, B.O., June 9, 1987)
refers to acting under superior orders as a defense.

6. For example, Chile National Commission of Truth and Reconciliation established in
1990, the Decree-Law No. 2191, Apr. 18, 1978, granted amnesty for all criminal acts from Aug.

7. The parliamentary commission was set up on December 17, 1991 to the purge of KGB
agents. See Jozef Darski, Police Agents In The Transition Period, in UNCAPTIVE MINDS, IV,

8. Enquete-Kommission zur Aufarbeitung von Geschichte und Folgen der SED-Diktatur
in Deutschland.
political and cultural backgrounds of states that use the instrument of a truth commission to cope with their abusive past.

I. WHAT DO WE TALK ABOUT WHEN WE TALK ABOUT TRUTH AND RECONCILIATION COMMISSIONS?

Truth commission is a catchy name, mostly used generically, for a wide variety of bodies set up to investigate a past history of human rights violations in a given country. There is no such thing as a standard truth commission; the set-up, design, responsibilities, and mandate vary significantly from case to case. Although the word truth commission may convey an imprecise, even misleading image, investigating commission might be a more adequate title, because it refers more accurately to what a commission does. I will use the term truth commission because it is still the most frequently used one.

Priscilla Hayner, who is an expert on truth commissions in the United States, has come up with four primary constituting elements to define a truth commission which I find very helpful:

A truth commission focuses on the past.

A truth commission does not concentrate on a specific event in the past but attempts to paint an overall picture of certain human rights violations over a period of time.

A truth commission exists for a pre-determined period of time and ceases to exist when its mandate ends, usually with the submission of a report of its findings; and finally

A truth commission is vested with certain authority.9

This is a description of the common features. Other features vary. Truth commissions can be established as national commissions by a national legislator or by an act of the executive.10 They can be set up as the outcome of a negotiated peace accord and conducted by an international panel like the Commission on the Truth for El Salvador in 1992.11 An


10. For instance, in Bolivia, the National Commission of Inquiry into Disappearances was created by presidential decree, so was the Argentinian National Commission on the Disappeared in 1983: Uruguay established the Investigative Commission on the Situation of Disappeared People and its Causes through act of parliament in 1985.

11. Created through the Peace Accord between FMLN and the Salvadoran government under the mediation of the United Nations, signed at Chapultepec Castle in Mexico City on Jan.
alternative to the case-by-case negotiated or established commission was a Permanent International Truth Commission which would provide for a ready-made framework that could be brought to life if so requested by a state.12

National funds or international organizations could sponsor these organizations. Exceptional is the case of the 1993 commission of inquiry in Rwanda. A coalition of four non-governmental organizations, Africa Watch (United States), Centre International des Droits des la Personne et du Developpement Democratique (Canada), Federation Internationale des Droits de l'Homme (France), and Union Interafricaine des Droits de l'Homme et des Peuples (Burkina Faso) set up the International Commission of Investigation on Human Rights Violations.13

They range from elaborate multi-body commissions such as the 1995 Truth and Reconciliation Commission in South Africa to one-man-commissions with very limited resources as in Honduras.15

II. WHAT IS THE PURPOSE OF A TRUTH COMMISSION?

A truth commission usually serves many different purposes. Its main function is to investigate past human rights abuses, not with an aim to prosecute individuals, but to find out the truth about certain events, for example, when and where did what happen? Who was involved, as a perpetrator, or as a victim? A truth commission is first of all an instrument to examine the facts about the crimes and atrocities that have occurred in a country. The second important purpose is to give a report of these findings, publish it, and confront the public with the truth. This exposure to the facts is supposed to have a cathartic and educational effect on the society in transition. The impact of such a record would be the basis for the third important purpose of a truth commission: which is the acknowledgment of the past. Acknowledgment in this context means that

13. Hayner, supra note 2, at 243, n.78.
14. Supra note 1. According to chapter 2, section 3, paragraph 3 of the Act, the South African Truth and Reconciliation Commission consists of three separate commissions with different functions: the Commission of Human Rights (ch. 2, sec. 3, para. 3, sub-para. (a)), the Commission for Amnesty, (ch. 2, sec. 3, para. 3, sub-para. (b)), and the Commission for Reparation and Compensation (ch. 2, sec. 3, para. 3, sub-para. (c)).
the government admits the misdeeds of the past, and that the society accepts its involvement and recognizes the consequences of its involvement.\textsuperscript{16} Acknowledgment is finally the first step to reconciliation. It is the key to the healing process in a conflict stricken society. Additionally, truth commissions would have the mandate to offer recommendations for rebuilding society, for instance recommendations on how to improve the judicial system of a country or to protect human rights in the future more effectively.

III. WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF TRUTH COMMISSIONS?

The success of a truth commission depends upon the political will, financial resources, and support of the society. If the political leadership in a country is determined to examine human rights violations and has the tenure to promote such an undertaking within society and against the resistance of opposing stakeholders, a truth commission will be a valuable tool to start the recovery process. The beauty of a commission is that it can be established almost instantly at a relatively low cost. It is a temporary institution with a limited mandate that can be designed according to the specific needs of a society.

The proceedings before a commission do not have to follow the rigid rules of the law of criminal procedure. A commission is therefore more flexible in hearing and accommodating witnesses, and in evaluating evidence.\textsuperscript{17}

Although human rights literature mostly favors criminal prosecution as the best guarantee against human rights violations in the future,\textsuperscript{18} atrocities of the past cannot comprehensively be captured by the means of criminal proceedings. The reason for a criminal trial is to judge the guilt of an individual upon the evidence presented with the result of either acquitting or convicting that individual. However, we are talking about crimes of a much larger scale than a murder case before a district court. Genocide, crimes against humanity, and serious human rights violations usually occur in a certain social climate of political oppression and racial prejudice toward minorities. A court is not supposed to give an

\textsuperscript{16} To the issue of acknowledgment see Luc Huyse, Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past, 20 L. & SOC. INQUIRY 51-78 (1995).

\textsuperscript{17} An illustrative report on the hearings before the Truth and Reconciliation Commission in South Africa see Michael Ignatieff, Digging up the Dead, THE NEW YORKER, Nov. 10, 1997, at 84-93.

account about the circumstances of the historic, economic, and political reasons for a crime, nor about the involvement of different groups in the society or political influence from the outside which may have encouraged the perpetrators and fostered hatred and violence that made crimes such as disappearances, torture, and mass killings possible. Giving an account, providing explanations, and offering recommendations for a better future are exactly the purposes of a truth commission. Thus, a truth commission can serve purposes which a criminal trial usually cannot.

However, as much as flexibility is the strength of a truth commission, it is its salient weakness. Contrary to a court, a truth commission has to be vested with authority by the political decision-makers that may not have an interest in establishing an independent and resourceful investigating commission. Authorities may deny access to information and confidential material. Potential witnesses before the commission may be reluctant to testify if they are not guaranteed protection against alleged perpetrators or members of a violent and abusive former regime who regain political power.19

Even if commissions come up with comprehensive reports, their findings can only have an impact if the public takes notice and if the policymakers allow for significant changes. Those changes include institutional reforms, protection of human rights in the future, and exclusion of wrongdoers of the past from positions of power, if not criminal prosecution. Many truth commissions, namely in Latin-America, that have done remarkable work investigating human rights abuses were often ridiculed by national parliaments that enacted amnesty laws for former government officials or military personnel.20 Divergent interests, scarcity of resources, and impunity laws are certainly not only a challenge to the work of a truth commission, but they also affect judicial proceedings as well.21 However, truth commissions are inherently vulnerable to changes in political willingness. Therefore, national truth commissions are hardly an effective policy option in weak civilian societies or countries ravaged by civil strife. An international truth commission provided by the international community and conducted by experts from the outside, operating in a safe environment, may be an alternative in those cases.

19. In Argentina, victims find themselves confronted with police-officers who tortured them and still are on duty, see Calvin Sims, Argentina's Bereft Mothers: And Now, a New Wave, N. Y. TIMES, Nov. 18, 1997, at A4.

20. Argentina, supra note 5.

However, without a geographical link to the conflicting society, it may not serve its cathartic purpose as well as its national commission.\textsuperscript{22}

Besides its dependence on the good-will of the political decision-makers, a truth commission carries the risk of too high expectations. Victims who testify before the commission may have to go through the agony of their traumatizing experiences without obtaining relief or even tangible benefits.\textsuperscript{23}

\textbf{IV. COMBINATION OF SEVERAL ACCOUNTABILITY MECHANISMS}

Reconciliation of conflicting groups is a long-term process which requires complex and multifold strategies. There is no simple strategy to healing the wounds of the past. Accordingly, decision-makers should make use of a variety of policy options rather than focus on either criminal prosecution or truth commission. Accountability mechanisms such as tribunals, investigative commissions, and illustration procedures are not mutually exclusive. All of these strategies should be combined as parts of a comprehensive conflict management scenario.

From the perspective of a decision-maker who thinks hard about the several policy-options and strategies for conflict management, truth commissions are tempting because they can be tailor-made. However, they do not fit into every situation, and an emerging democracy will have to deal with many more urgent issues and problems than just coming to terms with its violent past. However, they are a flexible instrument that can be adjusted according to the specific needs of a country. There are at least five reasons that make truth commissions particularly valuable for the reconciliation process. First, when implemented with the necessary legal powers and responsibilities, they are an effective tool to give an accurate record of human rights abuses in the past, and to inform the public about what happened. Second, besides the truth-telling function, a commission can be an adequate forum to decide issues such as reparation, rehabilitation, and compensation for victims.\textsuperscript{24} Third, a commission may serve as a basis for further in-depth investigation for criminal prosecution.\textsuperscript{25}

\textsuperscript{22} Alfred P. Rubin, \textit{Dayton, Bosnia, and the Limits of Law, THE NATIONAL INTEREST} (Winter 1996/97), at 41-46, 44.


\textsuperscript{24} An example is the Commission for Reparation and Compensation in South Africa (see National Unity and Reconciliation Act, July 26, 1995, ch. 2, § 3, para. 3, sub-para. (c), ch. 5) (National Unity and Reconciliation Act, \textit{supra} note 1).

\textsuperscript{25} The Commission of Experts Established Pursuant to Security Council Res. No. 780 (1992), examined human rights abuse in Former Yugoslavia. Its report provided the prosecutors of the International Criminal Tribunal for the Former Yugoslavia with valuable information about
The fourth argument is that it can be a very valuable instrument to fight impunity, provided that the political leadership will not compromise justice. Even if a country is not capable of immediately prosecuting alleged perpetrators of violent crimes committed under the auspices of the former regime, the findings of the commission would lay the ground for criminal prosecution. Finally, the documentation about the crimes will educate future generations. This is especially important if those who have lived through the nightmares of the atrocities, whether as a victim or as a perpetrator, refuse, for whatever reason, to deal with the conflict.