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Heroic memory and contemporary war
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Cultural memory and identity in the context of war: Experiential, place-based and political concerns
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Cultural heritage and memory after ethnic cleansing in post-conflict Bosnia-Herzegovina
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Wired warfare 3.0: Protecting the civilian population during cyber operations
Michael N. Schmidt

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At a time when the humanitarian debate seems firmly focused on the future – digital transformation, autonomous weapons, climate change, the race to innovate, and so on – devoting an entire issue of the Review to the concept of memory may seem out of place. But memory is an essential part of this debate for more than one reason.

First, if conflict victims are to gain any relief from their trauma, the psychological impact of their experience can no longer be overlooked. Traumatic memories cause severe suffering among survivors of violence, those who have been uprooted, and the families of people who remain missing long after a conflict has ended. Humanitarian organizations are increasingly aware that they have an obligation – if not necessarily the means – to treat a form of suffering that has remained invisible or beyond their normal scope of work for far too long.

Understanding memory, not only individual memory but also collective memory, may be key to preventing future cycles of violence. Historical humiliations and representations of the past give rise to murderous identities, feed most conflicts and lay the groundwork for incompatible visions of the future.

The collective memory of societies is stored in their cultures and can be embodied in their landmarks and monuments. The emotion felt around the world in reaction to the accidental fire that engulfed Notre Dame Cathedral in Paris demonstrates that memory – whether tangible or not – is worth safeguarding. Memory, in the form of history, is an oft-discussed topic in times of conflict: the desire to rewrite history; the desire to wipe groups of people, and even memories of those people, from the face of the earth; and the desire to destroy literary, artistic and architectural treasures. The memory worth protecting can also be digital, and it can be stolen, manipulated or damaged. There is also the memory stored in our neurons, which we may one day be able to modify or even erase thanks to advances in neuroscience.

Memory has strong implications for societal dynamics, in particular when it comes to preventing or ending conflicts. A number of States have adopted memorialization laws that govern commemorations and monuments and that may go so far as to prohibit revisionist history or apologizing for past atrocities. But when the guns of war fall silent, must we choose between deterrent sanctions and a general amnesty, justice and reconciliation, establishing the truth and forgetting? It is no surprise that transitional justice has developed into a separate area of study in the field of social sciences.
The founding idea of modern humanitarianism was set out by Henry Dunant in a memory, that of the Battle of Solferino. In this account, Dunant shares his undoubtedly traumatic memories of the horrible suffering of wounded soldiers as he expounds on the need to create relief societies and lay the foundation for international humanitarian law (IHL). But while memory has been the topic of countless historical, psychological and philosophical works, it has rarely been considered from a humanitarian perspective. This issue of the Review comprises a rich selection of articles that look at various dimensions of memory, a new frontier for humanitarian debate and action.

**Treating invisible wounds: An overwhelming need**

“The horror… The horror…” Do these hallucinatory words from *Apocalypse Now*, uttered by Colonel Kurtz (played by Marlon Brando) with his dying breath, refer to the trauma experienced by this character, the war crimes he committed, or both?

Armed conflicts destroy mechanisms that individuals use to protect their mental well-being at three levels – family, community and society. Traumatic memories cause severe suffering among those who experience war, including survivors directly affected by violence, those who have been uprooted, and the families of people who remain missing long after a conflict has ended. People exposed to armed conflict and other situations of violence, in addition to losing their normal support structure, are left burdened by traumatic experiences that can cause psychological disorders, permanently damage their health, prevent them from participating in society, and even trigger violent or suicidal behaviour. In the recent issue of the Review devoted to the conflict in Syria, Dr Mazen Hedar, president of the Syrian Association of Psychiatry, noted that around one million Syrians (or around 4% of the population) suffer from a severe psychological disorder and some five million from a moderate psychological disorder. Yet, in 2018, there were only eighty psychiatrists recorded as working in that country. For Hedar, one of the few positive consequences of the conflict was the beginning of a change in the perception of psychological disorders, which he says continue to be “heavily stigmatized”.

In many places, mental disorders, unlike physical wounds, continue to be attributed to a shameful character flaw. In recent years, however, progress has been made in terms of both acknowledging the problem and treating it as a health issue. In the past, when members of armed forces experienced extreme trauma, they were said to have “shell shock” – meaning they had nearly lost their lives – but their mental disorders were not recognized by the army or society. Nowadays, we have a better understanding of post-traumatic stress disorder.

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2. This 1979 film is loosely based on Joseph Conrad’s 1899 novella *Heart of Darkness*.
(PTSD), which affects approximately 30% of returning combatants and is now recognized as a war injury by many militaries. Humanitarian organizations are increasingly aware that they have an obligation – if not necessarily the means – to treat a form of suffering that has remained invisible or beyond their normal scope of work for far too long. Humanitarian action has long been primarily focused on treating “visible” wounds – that is, vital needs – urgently. Yet, owing in part to the prolonged nature of armed conflicts in which they intervene today, aid organizations have discovered that they must deliver psychosocial support as well. Much of the work that humanitarian organizations, and in particular the International Committee of the Red Cross (ICRC), are already doing can have a direct or indirect impact on the sort of suffering engendered by traumatic memories. This includes work to clarify the fate and whereabouts of missing persons, sometimes by identifying mortal remains in the wake of a conflict, an essential task aimed at providing answers to families that live in perpetual suffering caused by the absence of a loved one. The ICRC’s work on reuniting family members who have been separated by conflict is another example.

The ICRC has gradually built up its psychosocial support services. The organization’s mental health and psychosocial support (MHPSS) projects target various groups, including families of the missing, victims of violence, those who have been wounded or acquired disabilities as a result of armed conflict, people deprived of their liberty and former detainees, as well as those who provide assistance within their own communities. MHPSS programmes are designed to build local capacities by training community actors, local psychologists or other mental health practitioners and making sure that support programmes can operate after the intervention of the ICRC. In order to share its expertise, in 2018 the ICRC published guidelines on mental health and psychosocial support.

The Review has decided to open this issue with an interview with French neuropsychiatrist Boris Cyrulnik. A Holocaust survivor and orphan, Cyrulnik takes his cues from his own childhood trauma as he analyzes the factors that foster resilience from a very young age. He refers to both individual and societal resources that help human beings cope with a trauma that they cannot forget. In the subsequent article, Hélène Dumas, the author of Le genocide au village, taps

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5 To read more, see the recent issue of the Review on “The Missing”, Vol. 99, No. 905, 2017.
7 Ibid., pp. 9, 18.
8 Ibid.
into the memories – presented as previously unpublished first-person narratives – of children who survived the Rwanda genocide.

**Ethical challenges: Whether to remember**

Questions of remembrance and competing narratives of the past raise serious ethical challenges that may have strong implications on the lives of future generations. Competing versions of the past sometimes collide in full view – in speeches and movies, around statues and symbols, and so on. This suffering – a struggle with trauma or mourning, or with the anguish of absence where the hope of ever seeing a missing loved one again fades slightly with each passing day – is lonely, personal and constant. The memory of past conflicts is itself a battlefield, and like all battlefields, it is first and foremost a place of suffering.

Interest in history has been growing in the past few years, and the frequency of memorialization activities and commemorations may well be on the rise too. Some say that individuals and society cannot move forward or escape the prison of the past if they cannot let go of their memories. Philosopher Paul Ricoeur contends that memory and forgetting each have their place:

I continue to be troubled by the unsettling spectacle offered by an excess of memory here, and an excess of forgetting elsewhere, to say nothing of the influence of commemorations and abuses of memory – and of forgetting. The idea of a policy of the just allotment of memory is in this respect one of my avowed civic themes.10

For David Rieff, the author of *In Praise of Forgetting*, the “duty to remember” seems to have become a sort of moral imperative that nobody challenges any more.11 But would it not be better for societies to forget, rather than to open up old wounds and fan the flames of past conflicts? The debate continues in David Rieff’s article in this issue.

Personal and collective identities are built around shared experience, which often consists of struggle and suffering. These identities are the glue that holds societies and nations together. Over time, moments of shared history take on the stature of myth – but they may also be simplified, amplified and used for other purposes. A dominant group may use its historical memory as a weapon of political domination, while the collective memory of subjugated groups can be forgotten, brushed aside or even erased. Conversely, a subjugated group can wield its memory as an instrument of rebellion or as part of a strategy of asserting collective victimhood, a sort of “victimization as protest” (*victimisation revendicative*).12

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From a medical perspective, the memory of individuals is stored in neurons, and we may one day be able to modify memories or even erase them thanks to advances in neuroscience. In their article, Marijn Kroes and Rain Liivoja explain how current research in the neurosciences could be harnessed to modify fighters’ memories in order to help them overcome trauma. Such memory modification techniques raise ethical, legal and societal questions, of course, that will have to be balanced with their therapeutic value.

Reconciliation and (re)writing history: What to remember?

Memory is a tug of war, and the past never ceases to be rewritten, as statues are destroyed and new ones put up in their place. Countries that set up transitional justice mechanisms choose an official version of the past that subsequently guides them. Yet which version should be selected – that of the civilians, victims or combatants, that of the winners or the losers? What happens when an official narrative chosen by the State does not take into account the experiences and memories of a specific group in the society? Jill Stockwell looks back on Argentina after the era of political violence in 1976–83 and draws parallels with transitional justice dynamics in Sri Lanka. She favours encouraging everyone who was affected – even those who were on the “wrong side of history” – to express their memory. Here, the link between collective memory and individual memories is manifest.

Maintaining collective memory can have opposing effects: it can help heal the wounds of the past and encourage reconciliation, but it can also stoke hatred and set the stage for renewed violence. Is it possible to reconcile memory, justice and the need to foster reconciliation after an armed conflict? The Review devoted an issue to this question several years ago, and the topic is taken up anew here. In this issue, Phuong N. Pham, Mychelle Balthazard, Niamh Gibbons and Patrick Vinck look at transitional justice processes in Cambodia. They draw on their research to describe the complex interplay between the imperatives of truth, forgiveness and vengeance.

How do societies remember those who fought on the battlefield? The figure of the hero looms large in the way the memory of conflicts is constructed and values are handed down from one generation to the next. In his article, Gilbert Holleufer describes how the glorification of the “warrior ethos” that is associated with a certain definition of masculinity has historically led young men to embrace a culture of violence while at the same time giving meaning to their lives. According to Holleufer, the new breed of conflicts in “post-heroic” societies empties the traditional warrior ethos of its meaning. Modern figures like the drone pilot

14 Phuong N. Pham et al., “Perspectives on Memory, Forgiveness and Reconciliation in Cambodia’s Post-Khmer Rouge Society”, in this issue of the Review.
thousands of miles from his target and the terrorist who blows himself up in the middle of a crowd of civilians have little in common with the (mythical) figure of the knight. Holleufer explores the post-heroic masculine condition and the complex dynamics between feelings of humiliation and dignity among fighters.

The hero is not always a fierce warrior. The figure of the war hero can also take the form of the rescuer or the righteous. Australia and New Zealand, for example, guard the memory of two stretcher bearers who risked their own lives to save their comrades in arms during the Gallipoli campaign in 1915. As Tim McCormack writes: “The truly iconic Australian military heroes are all humanitarians.” Algeria remembers the Emir Abdelkader – a forerunner of Henry Dunant – who set out strict rules on treating prisoners humanely. A recent historical film, Hacksaw Ridge, tells the story of a conscientious objector working as an army medic in the Pacific War, ultimately winning the Medal of Honor, the highest personal military decoration in the United States. The way that society constructs its heroes may serve as a gauge of the values its members wish to emulate.

Commemoration has a strong link with freedom of expression – a freedom without which the national reconciliation process will stall. In his article, Germán Parra Gallego writes of this fundamental right by analyzing case law of the Inter-American Court of Human Rights and practice of Colombian domestic courts. Also in this issue, Aaron Weah considers the memory of the Liberia conflict through discourse, perceptions and examination of memorials, and discusses the recommendations issued by the Liberia Truth and Reconciliation Commission aimed at preserving the memory of the conflict. His article further delves into constructive and destructive patterns of memory transmission in the Liberian context.

Historical narratives have a major impact on the perceptions that shape the environment in which aid workers operate and in which IHL will be complied with (or not). In many cases, humanitarian negotiations can only succeed if participants fully appreciate all the memory issues at stake, whether they are dealing with States or non-State armed groups. This may seem obvious when it comes to religious wars or when the parties to conflicts invoke centuries-old – or millennium-old – arguments, as in the Israeli–Palestinian and Balkan conflicts. Yet aid workers are rarely given training in history or anthropology. Pierre Ryter, tapping into his experience as an ICRC head of delegation in such places as Iran, Turkey and China, argues that the ICRC – an organization rooted in European culture – must understand the memory of these regional and global powers if it is to find its way in a multipolar world.

17 Germán Parra Gallego, “The Role of Freedom of Expression in the Construction of Historical Memory”, in this issue of the Review.
Another social science that humanitarian organizations should be careful in using is history. In his article for this issue, Cédric Cotter explores the way in which ICRC presidents have combined their personal experience with the history of the ICRC in their writings, capturing the essence of the institution (if sometimes framing its history in their own terms). Through Dr Cotter’s article, we see that the ICRC itself may sometimes use a particular vision of its past to shape its future.

Memorials, museums and cultural property: How to remember?

In Nothing Ever Dies: Vietnam and the Memory of War, Viet Than Nguyen writes: “All wars are fought twice, the first time on the battlefield, the second time in memory.”18 Recent incidents involving the statue of General Robert E. Lee and other Confederate military figures in Charlottesville, Virginia, and elsewhere in the Southern United States, bear this out, revealing a fracture in American society that has not healed more than 150 years after the US Civil War.19

Cultural memory can be viewed as something that needs to be protected both in times of war and once it has come to an end. Of course, IHL already protects religious and cultural property. In 2016, the International Criminal Court sentenced a man for demolishing mausoleums in Timbuktu, Mali – the first ever conviction by an international tribunal for the war crime of destroying cultural heritage.20 The Review has addressed the theme of protecting cultural property, most recently in the context of the Syrian conflict.21 In this issue, Helen Walasek revisits the topic, writing about the destruction and reconstruction of cultural heritage after the war in Bosnia.

Nations physically manifest their war memory in the form of memorials, which necessarily reflect a certain perspective on history. Among the most famous may be the memorial wall that forms part of the Vietnam Veterans Memorial in Washington, DC, a long black wall engraved with the names of Americans who died in that war. Other major monuments also come to mind, such as the Holocaust Memorial in Berlin and the Tomb of the Unknown Soldier under the Arc de Triomphe in Paris. Yet there are also countless commemorative plaques, monuments to the dead, military cemeteries, statues, street names and so on which many of us walk by every day without even noticing. Danielle

Drozdewski, Emma Waterton and Shanti Sumartojo explore official narratives of memory of past wars that weave through our everyday cultural experience.

For those who do take notice of these monuments and sometimes intentionally visit them, is it a matter of voyeurism or contemplation? Massacre and mourning sites are attracting an ever-growing number of visitors – for instance, the memorial and museum located on the site of the Auschwitz-Birkenau concentration camp, which is now on the UNESCO World Heritage List, had a record 2.1 million visitors in 2017. Historian Annette Becker guides us on a visit to sites of memory and massacre in Rwanda, decoding the multifaceted role of memory and sharing her thoughts on the practice of “dark tourism”. Elsewhere in this issue, Annaïg Lefeuvre explains the history behind the Drancy Memorial – a key site in the memory of the Holocaust in France – and the choices that had to be made when it was being built. These two articles point to the ways in which historians and exhibition designers, in a break from official history, are putting victims, whether civilian or military, back at the centre of memorialization processes. This approach is taken by various museums, such as the International Red Cross and Red Crescent Museum in Geneva, the Shokeikan Museum for Wounded Soldiers in Tokyo and the War Childhood Museum in Sarajevo. In recent years, the Review has put together exhibitions at the Humanitarium in Geneva on the topics that we address in these pages. Through these channels, memory becomes a way of healing, reconciling, humanizing and rewriting what Boris Cyrulnik calls the “collective narrative” – the story that will help determine how society views our suffering.

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The ICRC has found that IHL violations can often stem from perceptions of history: the desire to avenge past crimes or injustices, or a feeling of victimization that justifies abuses. IHL violations in turn leave a permanent trace in people’s collective memory and perpetuate the cycle of violence. But just as memory is often used to stir up hatred, it can also be employed by humanitarian organizations to advance IHL, driven by a growing awareness of past atrocities. By remembering what came before, the international community can translate the too-often-repeated slogan “Never again!” into concrete action. This is not

26 For example, the exhibition “War in Cities”; see: www.icrc.org/en/event/war-in-cities-exhibition-on-urban-warfare.
27 “The person who commits a reprehensible act often sees himself not as a torturer but as a victim. He feels himself to be a victim, believes himself to be a victim and is told that he is a victim, all of which somehow gives him the right to kill or to commit atrocities.” Daniel Muñoz-Rojas and Jean-Jacques Frésard, The Roots of Behaviour in War: Understanding and Preventing IHL Violations, ICRC, Geneva, 2004, p. 9. For an updated study, see ICRC, The Roots of Restraint in War, Geneva, 2018.
without precedent. A direct line can be drawn, for example, from the trauma of the Second World War to the adoption of the Geneva Conventions in 1949. More recently, the international campaign that led to the creation of the Treaty on the Prohibition of Nuclear Weapons was propelled by the memories of the victims of the 1945 bombings of Hiroshima and Nagasaki.

For those who have experienced war and violence in their flesh or in their heart, forgetting is impossible – that much is apparent in a number of articles that the Review has already published. Hibakusha, who survived the atomic bomb, told the Review their stories seventy years after the bombings of Hiroshima and Nagasaki. Estela Barnes de Carlotto, the president of the Grandmothers of the Plaza de Mayo association, told us about her forty-year fight to locate her grandson, who had been abducted soon after he was born during the dictatorship in Argentina. Citizens of Aleppo told their stories. Christoph Hensch, who was wounded and left for dead during the 1996 attack in Novi Atagi in Chechnya in which six ICRC employees were killed, shared with us his twenty-year struggle to overcome his physical and psychological trauma. Never were their words tinged with hatred or a desire for vengeance. Instead, they chose to speak out for the common good. They told us their stories so that we could spread them widely as warnings and lessons for the future.

Sharing the stories of those who have experienced armed conflict is not enough. History has shown that the lessons it delivers are rarely learned, as aid workers know all too well. Humanitarian organizations face the daunting task of strengthening the mechanisms that underpin people’s resilience and treating the trauma suffered by victims of armed conflicts and other catastrophes. Individuals and societies alike must learn to stand firm when confronted with discourses of hatred and revenge. Humanitarian aid workers, by sharing their own experiences and by giving affected populations a chance to speak, also have a role to play in constructing a new memory of war – not a memory of victors or of vengeance and violence glorified, but a memory of the human cost of war and, above all, a memory of the courage of those whose humanity shines forth amid the chaos.

30 Testimony of Mr Sadao Yamamoto, in ibid., p. 514.
33 Christoph Hensch, “Twenty Years after Novye Atagi: A Call to Care for the Carers”, International Review of the Red Cross, Vol. 98, No. 901, 2016.
Boris Cyrulnik is a neuropsychiatrist who is known in France for having developed and popularized the concept of resilience. Born to a Jewish family in Bordeaux in 1937, he lost both his parents during the Second World War and, at the age of 6, escaped deportation himself by hiding during a round-up of Jews organized by the Nazis. His recollections of that event, forty years after the end of the war, provided the foundations for a reflection on post-war traumatic memory. In this interview for the Review, he talks about the relationship between memory, trauma and resilience, both at an individual and a collective level.

Keywords: memory, trauma, emotional response, denial, narrative, resilience.

You are a child of the Second World War. For readers not familiar with your profile, could you tell us your story?

I was born in Bordeaux in 1937, which was hardly the most auspicious time to be born a Jew given that war broke out in 1939. My father joined the Regiment of Foreign Volunteers and vanished. In fact, nearly all of my family disappeared. I myself was arrested in Bordeaux in January 1944 during a round-up of Jews, but...
managed to escape in quite an incredible manner. The word “incredible” has a double meaning because the story of my escape was so very unlikely that when I told people about it after the war, nobody believed me, condemning me to forty years of silence. When I tried to tell people my story, they laughed and didn’t believe a word, as it surpassed the realms of ordinary human experience.

When I appeared on France 3 Aquitaine when my first book came out, a lady called to ask: “Aren’t you little Boris, the boy whom I helped to escape?” She had left her phone number, so I called a taxi and went to see her. That incident marked the start of my search to find witnesses to my escape. For example, I remember that I had crawled under the body of a lady who was dying because of internal bleeding after being hit in the stomach with a rifle butt. The Germans had come to put her in a truck and take her away to avoid witnesses. Given their pact with the Vichy Government, they wanted to project a positive image. The truck drove off carrying the dying woman and me hidden under her body. Many years later, the lady’s granddaughter got in touch, and I remain on friendly terms with her son to this day.

Once I had found all the witnesses to my escape, I felt that I had both the right and the opportunity to speak out, something which I had found impossible during the previous forty years. I decided to delve into my memories to investigate whether my own recollections matched the information in archive records and the memories of other witnesses who had been present in the same place and at the same time. That research threw up a lot of surprises – it turned out that some of the things that were clear in my own memory did not correspond at all to the tangible evidence on the ground or in the archives or, in certain cases, were physically impossible. For example, one of my friends had been a doctor at the internment camp in Mérignac, where Jews from Bordeaux had been held. He showed me a record from the archives that read, “Boris Cyrulnik, 5 years of age, escaped”. The record was there, and yet I had never been interned in Mérignac. That archive record was as wrong as I had been. Similarly, when I met people who had been in the same place at the same time as me, it turned out that each person had a surprisingly different memory of the same incident and the same place. This got me thinking and eventually led to the publication of my first book, Sauve-toi, la vie t’appelle [Save Yourself, Life Is Calling], which is a reflection on the traumatic memory of the post-war period.

Traumatic memory has a curious structure. When you experience something intense, no memories are created if there is no emotional response, if no connection is made. Therefore, what we refer to as objective memory is a wholly subjective phenomenon. I can only put into my memory what you contribute to it – your emotions, your anger, your smiles. In short, our connection. My autobiographical memory only consists of what you’ve put into it; it is a relational memory.

If I feel no emotions, no memories can be constructed. When very intense emotions are aroused, as they were on the night of my arrest, that trauma leaves an imprint on a person’s memory. The circumstances of my arrest – in the middle of the night, by armed men in civilian clothes; heavy wool coats with turned-up collars,
felt hats and sunglasses even though it was dark, like characters from some pulp movie, and carrying a flashlight in one hand and a revolver in the other – were definitely enough to traumatize a 6-year-old child. When I went out into the corridor, I saw armed German soldiers standing guard and noted that the street had been blocked off as if to catch some dangerous criminal.

By combining verbal memory with neuroimaging memory studies, we have learned that such traumatic events leave an imprint in a person’s memory, a trace that is hard to erase. And those trace images are extremely detailed, more so than archive records. I recall very precisely the armed men wearing sunglasses at night; it took me a long time to figure out that they had worn sunglasses and hats and had turned their collars up because they were our neighbours and did not want to be recognized. These extremely precise memories have a fascinating, hypnotic quality, but the recollection of everything else surrounding the incident is blurred. This lack of detail is surprising. Thus, traumatic memory is made up of a hyper-detailed core that is etched into a person’s biological memory, within a blurry setting into which very genuine memories can be interpreted, imagined, dreamt and created. In my book, I tried to avoid telling lies. If anything made me uncomfortable, I didn’t mention it; I only included things that I was prepared to share with others, but that were also honest and true. Then, when I went into the field to verify my memories, well, I was in for a surprise! In fact, there were more than a few surprises…

In traumatic memory, there seems to be a contrast between these very precise, very powerful images, and the absence of speech, of words, of a narrative. Constructing a narrative is a process that may take many years and can be extremely complicated. This is when remembered memories are confronted with other people’s stories, archive material or other potential sources. It is this inquiry process that would ultimately enable you to construct a narrative and allow little Boris, now all grown up, to say: “I am the one who escaped from”… was it the synagogue in Bordeaux?

The synagogue of Bordeaux had been turned into a prison. There was barbed wire and there were soldiers, buses and machine guns on the site. Shots were fired. I was later shown the bullet marks in the walls of the synagogue, but I can’t recall hearing any gunfire. There are things that are meaningful to an adult but not to a 6-year-old child.

Conversely, there are details which were extremely significant to a 6-year-old, things of great importance, which I remember in great detail but which have no value to an adult. For example, Maurice Papon, who organized the raid, went on record to say, “I made a humanitarian gesture because I asked for sweetened condensed milk and blankets for the children.” He produced the order form as proof. Indeed, I saw the cans of milk and blankets with my own eyes. However, they made me uneasy because I immediately noticed that they could be used to keep the children grouped together. All the children who had been arrested
remained near the cans of milk and blankets. Then they were all put in a wagon that was sealed shut, and they were taken to Auschwitz to be murdered. Thus, while the archive record may be accurate, what it doesn’t tell us is that the milk and blankets were, in fact, used to kill these children. That aspect is not mentioned. Thus, the record lies by omission because it can’t tell us the whole story.

The images I remember are surprisingly detailed. I remember the torches, the revolver; I remember the soldiers looking up at the ceiling. Why were armed men looking up at the ceiling? I remember thinking, “That’s strange. Why would an armed adult be looking up at the ceiling?” I’m not sure of the real reason, but I like to think he was looking up at the ceiling because he was ashamed to be arresting a 6-year-old boy. I’m not sure that was the reason, but I would like it to be true.

Then there were images that were all real but had somehow merged into one. In my memory, when they moved us out to load us onto the trains that were to take us to Auschwitz, I managed to sneak into the toilets, clamber right up to the ceiling and stay there, with my feet resting on the cistern and my back against the wall, like a mountain climber. Although the soldiers opened the doors, they never thought to look up. If they had, they would have seen a 6-year-old boy squeezed between the cistern and the wall. I was surprised because I managed to stay in that position for a long time without any effort. Then, once the noise outside had stopped, I dropped back onto the floor and went outside. The synagogue was empty. I went outside. I remember certain details: a ray of light, the members of the Gestapo talking among themselves. They saw me leave, but no one stopped me. When I emerged, I saw the nurse, Madame Descoubes. She beckoned to me and that’s when I crawled under the body of the dying lady, Madame Blanchet.

In my memory, I had scrambled down the steps of the synagogue, like in the scene in the film Battleship Potemkin where you see a pram bouncing down the steps and realize that it is moving faster and faster and that there is a baby inside who is about to get hurt. When I went back to the synagogue forty years later, I realized that there were only three steps. In my memory, I had scrambled down those steps – and I promise you that in my memory, the image is quite clear. No doubt about it, that’s how it was; it really happened like that. Only, I had conflated two sources of memory: my actual experience, which had created an intense emotional response, and my memory of the film Battleship Potemkin, which had also triggered an intense emotional reaction. The emotional response to the film corresponded to what I had experienced when I ran out of the synagogue and I merged the two memories into a single image of me scrambling down the steps of the synagogue, even though it would have been impossible.

There are many other similar examples. When I saw Madame Descoubes again following my appearance on France 3 Aquitaine, she had grey hair. Forty-five years after our first meeting, we met up and started chatting. She would sigh, “Ah, Boris, do you remember?” Although I had not seen this lady for many years, it was important. I said, “You know, I thought you were very beautiful, with your blonde hair.” Without saying a word, she got up and brought me a
photograph of herself from when she had worked as a Red Cross nurse – in the photograph she had raven-black hair. But in my mind, she had been blonde, I swear. So, what happened? Once again, I had conflated memories from two different sources. That lady had saved me. Alone on the streets, I would not have made it very far without her help. It was she who had entrusted me to a network of righteous gentiles who had protected me. In my memory, I had merged her beauty – and she was beautiful – with images of actresses that I also found beautiful; during the post-war years, beautiful women – the women in American films – were blonde.

Once again, I had combined memories from two different sources. I had created a composite image, and I think that the term that best describes my reflections on the memory of war is “chimera”. All the parts that make up a chimera are real in themselves: the wings of an eagle, the legs of a lion, an eagle’s beak… Although everything is real, the chimera is nevertheless a mythical beast. I believe that when you write your autobiography – at least that was the case with my book, Save Yourself, Life is Calling – you are not writing an autobiographical work but a revisited childhood memory, where everything is as real as chimeras are.

**Why did you wait for so many years to tell these stories? In what way were these memories difficult to share?**

I remember the moment when I understood that we were going to be killed – it wasn’t a difficult thing to comprehend, as the members of the Gestapo who had arrested me said so. Madame Farge, who had been hiding me, had said to the Gestapo officer: “We won’t tell him that he is a Jew, let him live.” I had never heard the word “Jew” before, as my parents were not religious. In that one sentence, I learned that I was Jewish – a fact that I had not known before but which was a death sentence – and that if you kept your mouth shut you might just be allowed to live. I picked up a lot of information from that single sentence. To my childish mind, it seemed quite simple: if I just kept quiet, I would be allowed to live. I kept quiet for forty years, most probably because people did not believe my story. After the war, when I spoke of what had happened to me, no one believed me. If I had not found all the witnesses to my escape, I might have kept my mouth shut until the end of my life.

During the war, it had been in my interest not to tell anyone who I was or where my parents came from because I would have been denounced. At first, I used to be sent out to the shops like the other children, although I did not go to school as I would have been arrested. I used to go to the shops until, one day, Madame Farge said to me: “Don’t go shopping any more – you run the risk of being denounced.” Denounced? Was I to be condemned to death for being Jewish – even though I had no idea what it meant to be a Jew? Denounced for a crime that I might have committed, although I had no idea what that crime might be? Thus, during the war, I learned to keep quiet. People would tell me, “Keep quiet and don’t tell anyone your name, because if you tell people your name, you will die and your
loved ones will die because of you.” That was enough to silence anyone. It had a profound impact, because it caused you to question whether you were descended from criminals. Where did I come from? During the war, I learned to keep quiet. I had a false name that protected and hid me, but it was not my real name: it was not me.

And after the war, my mother’s sister found me and took me in. She also found it hard to talk about the war because, out of a family of around thirty people, only three had survived. She used denial as a mechanism to avoid suffering. Nevertheless, from time to time, comments she let slip would reveal her pain. For example, I remember that she often used to say, “Jeannette…” – this was her 15-year-old sister – “…disappeared; she wasn’t arrested, she didn’t die, she vanished and no one knows where she is.” When, from time to time, my aunt came out with comments like that, I would think: “It’s a serious matter, being Jewish, a very serious matter”, even though I still had no idea what it meant. Indeed, to this day I am not sure what it really means to be Jewish, but at the age of six I had even less of a clue. So, in this wounded family made up of three seriously damaged survivors, no one talked about the war, save for the occasional cryptic comment from my aunt. Uncle Jacques, who had joined the Resistance at the age of 18 and had a chest full of medals, didn’t talk about the war either. This was in spite of the fact that, at the age of 20, he had liberated Villeurbanne near Lyon, had risen to the rank of an officer and had umpteen programmes made about him because he had served in the Main-d’Œuvre Etrangère [MOE]1 – the MOE was a very active group of resistance fighters that had made life hell for the Nazis by carrying out two or three attacks a week. He did not talk about the war because all everyone wanted was to learn to live again and, above all, to avoid becoming a prisoner of the past or sharing their personal, horrific experiences. Nobody knew what had happened to my aunt, little Jeannette, who was only 15 years old. We did not know where my parents were, where they had died or where they had been arrested. All we knew was that they had once been with us and now they were dead. We did not know the details. You cannot live in the horror of the past. So, in order to escape from that prison, you have to avoid talking about your experiences, as a protective mechanism. However, that approach did not build resilience. It was a protective factor because it prevented suffering, but it did not foster resilience because instead of facing up to the trauma, you avoided it. It is true that by avoiding traumatic memories, we avoid suffering. But how can we deal with a problem when we ignore it, or sweep it under the carpet? That is precisely what we have done for decades.

When I told my story – just like that – to a friend at school, he didn’t believe me. He told his parents; his father was a jeweller who lived next door. Later, he came back to fetch me. “Do you want to tell your story?”, he asked. I

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1 Editor’s note: The MOE, also known as the Main-d’Œuvre Immigrée, was an association of immigrant workers set up by communist organizations in the 1920s in France, which was actively involved in the French Resistance during the Second World War. Further information is available at: www.cheminsdememoire.gouv.fr/fr/les-etrangers-dans-la-resistance.
couldn’t believe that I had been invited to tell my tale. When I went over to his house, I saw a gentleman sitting in a chair, with other people standing around him. I concluded that the seated man must be a very important person, so I told him my story. When I had finished speaking, he took a coin out of his pocket and said, “You’re a good storyteller – go and buy yourself some sweets.” At that point, I thought to myself, “Well, it seems that adults can’t be taken seriously. It’s not worth speaking to them about my past.” Eighty years later, I don’t think that I’ve changed my mind: I still think that adults can’t be taken seriously! So that’s how it is: for personal or emotional reasons, denial functions as a defence mechanism in the psychoanalytic sense of the word; it protects the psyche but impedes resilience.

Collective mechanisms of denial also existed, because France needed to rebuild itself. The country had hardly covered itself in glory during the war. In 1940, the French army had turned on its heels and fled. The only regiment that had managed to slow down the German advance even a little was the one that my father had joined, the Régiment de Marche des Volontaires Étrangers [Foreign Volunteer Regiment], which consisted mainly of Spanish Republicans and Jews from Central Europe. Out of the 11,000 soldiers in that regiment, 7,500 were killed. It was the only regiment that had slowed the German army down a little. Nicknamed the régiment ficelle [“string regiment”], it earned the plaudits of the German military because its soldiers had stood their ground and fought.² It was the only French regiment that had fought “to the death”, as they say in B-movies.

French collaboration with the Nazis was another source of shame. Fortunately, there had also been the Resistance. Most people, whether German or French, would have preferred to be left in peace and to avoid the war. However, Europe and indeed the world had embraced the language of totalitarianism, which then allowed a minority of its followers to unleash a socio-political process that dragged the entire globe into the tragedy that was the Second World War. Today, the language of totalitarianism is starting to come back into use. It is not the language of the Nazis or the imaginary biology of Nazism, but it is nevertheless a totalitarian language, and many people are being sucked in by it. These people are not monsters. It is easy to think: “The Nazis were monsters or barbarians.” That is simply not true. Germany had given birth to a wonderful Germanic culture: it had produced great thinkers, musicians and scientists. And yet it was in Germany that the twentieth century’s most shameful phenomena – genocide and the death camps – took root. Those horrors came into being in a country of cultured people, probably the most cultured in the West. Thus, when people say that Germans were barbarians, it’s simply not true.

² Editor’s note: In June 1940, the three Régiments de Marche des Volontaires Étrangers held off the German advance for a number of days in certain parts of France. They were nicknamed the “string regiments” because their lack of proper equipment forced them to use string instead of a strap for their guns.
When you said earlier, “I had a name that protected me, that hid me, but it was not my name; it was not me”, it reminded me of the first book you wrote about resilience, in which – as we found out later - you told your own story. However, in your book you did not write about Boris, but about “little Bernard”, who was a proxy for Boris. When we attempt to tell a story, we test our audience to see how they will react, whether they will respond, in order to choose the right time to tell our tale; is that what happened to you?

Yes, that’s exactly it. I would have liked to talk about my experiences, but how can you speak casually about something like that? You can chat about your holidays, your studies, your school leaving certificate or your exams, or about life in general. But how can you chat about genocide? How can you chat about something that is outside of the realm of ordinary human experience? One and a half million European children were killed and their bodies destroyed in crematoria. How can you speak casually about something like that? You can’t. Basically, because you and those around you are struggling to talk about it, denial becomes an appropriate coping mechanism. Everyone is in denial, whether they have suffered or not. However, as I observed earlier, even though denial may constitute an appropriate reaction, it does not foster resilience because it prevents us from confronting trauma. I would have liked to speak about what had happened to me, but was unable to do so. Thus, I decided to tell my story in the more private sphere of a book because even if a book sells 200,000 copies, the relationship between an author and his or her readers remains a personal one; it’s like having a friendly chat with 200,000 people tucked up at home somewhere, reading my book.

I used to want to try to tell my story because I wanted to be normal, but it’s impossible to be normal with something like that in your past. I therefore invented a character who was my proxy and I named him Bernard, because that’s the equivalent of Boris in French. I created Bernard and gave him an excerpt from my own story to see whether people would believe me, whether the story would interest them. The narrative form allows us to speak through a third party: although I can’t speak about what happened to me because it is too difficult for me to tell and too difficult for you to hear, I can use someone else’s voice to tell you a story. It is not my own story, of course, but that of little Bernard. See here – my listeners are nodding, so they must be interested in my story. Look, they’re starting to believe the story, so maybe, just maybe, I can become normal again and rejoin the human race, because my listeners have agreed to hear the incredible story of what happened to me.

Perhaps, when expressed through an intermediary medium – a work of art, literature or psychological, social or political studies – things that we cannot bear to say and others cannot bear to hear may become acceptable. In fact, by giving the floor to little Bernard or a voice to friends or patients with experiences that were similar to mine, I let others speak on my behalf; I was able to tell my own story in the third person. That is to say, by using these people as my proxies, I was
able to get an idea of the public’s reaction to my story and I thought, “Well, in the end, it seems that I’m not as abnormal as all that; I can speak about it.”

There comes a time, some forty, fifty, or even sixty years later, when people are ready to listen and we can finally say, “That was me. That happened to me.” It is an interesting issue: the distance necessary for a narrative – that is not only a narrative of trauma – to take shape, whether it be in terms of time, space, generations or people; this distance that allows a narrative to form in a way wouldn’t otherwise be possible.

First of all, trauma is a recent concept. For a very long time, if a man returned from war, much changed; if he behaved bizarrely, said strange things, showed signs of self-harm or aggression towards others or at times seemed confused or delusional, nobody would have put that down to trauma. People would have said that the man was “possessed by an evil spirit” or, in a Christian culture focused on guilt, they would have said: “Well, if he is ranting and raving, if his behaviour has changed, then God must be punishing him for some mortal sin he has committed; God is punishing that man by possessing his spirit.” Such explanations made it difficult to deal with the trauma rationally.

When we find an answer too quickly, as described above, we create pigeonholes; we are lazy and take intellectual shortcuts. Such easy labels prevent us from allowing ourselves the time to marshal our thoughts. We must be wary of easy answers. Indeed, in the post-war period, we all tended to latch on to explanations that impeded the thought process. One example of such an explanation involves singling out a “bad guy”. This “bad guy” is, by necessity, someone else.

What we observe and what has now become widely accepted is that although someone may have been – as you referred to it – a “victim”, they don’t want to remain a victim for the rest of their life. Someone who has been a victim in the past has only one goal in mind: to start the process of building resilience in order to avoid spending the rest of their life as a victim. Nevertheless, we cannot deny that we have been victims. We have been dealt a very real blow. My family disappeared and nothing can ever bring them back: I have had to carry on living without them. Although, in reality, I was a victim, as far as my view of reality was concerned, I did not wish to spend my entire life being a victim. Very early on, I asked myself: how can a person overcome this kind of trauma – although I did not use that term – this situation?

We must work on the collective narrative so that individual wounds can finally be expressed because if there is a discrepancy between what I have experienced and what you are able to believe, you effectively prevent me from speaking out. If my story, which is hard for me to tell, is too difficult for you to hear, the discrepancy between our narratives – yours and mine – creates a split in my psyche. I am only able to tell you that what you can bear to hear; the rest remains hidden within and festers – a secret suffering. I have been torn asunder. My psyche is split. One moment I am cheerful and busy and then, all of a
sudden, I become gloomy, lonely and unhappy because I have never been able to express what happened to me and that affects me in the form of a festering, psychosomatic syndrome. I may seem fine and get on with my work or studies. However, I might suddenly be plagued by nightmares or experience anxiety; I might want to tell everyone to go to hell or pick fights with my loved ones. I will have failed to solve my problems because the discrepancy between my narrative and the narratives around me has split my psyche in two.

Between 1980 and 1985, the collective discourse and narrative in France changed. A film entitled *Shoah* brought home the fact that 6 million of the 9 million Jews living in Europe had perished during the war. In a political speech, Jacques Chirac acknowledged that the French Government had been guilty of collaboration. We mustn’t forget that earlier films that showed French Jews being arrested had either been censored or any images showing French police officers’ caps had been edited out, leaving only German uniforms visible. So, if a French police officer’s cap was visible anywhere, that image was cut because it was not acceptable to non-Jews; it was unacceptable to think that French collaboration had facilitated these crimes. Everyone was suffering, absolutely everyone. Although they did not suffer in the same way, everybody suffered. These collective narratives—films such as *Shoah* and novels such as André Schwarz-Bart’s *Le dernier des Justes* [*The Last of the Just*]—gradually spread the idea that these crimes could only be discussed through the medium of art.

“Yes, but it’s a movie or a novel—it’s not real.” Fiction does nothing but tell the truth. As I mentioned earlier, my autobiographical fiction consisted of real elements that combined to create a chimeric, imaginary whole. Nevertheless, I made every effort to tell only the truth. I did not include anything that wasn’t true. I was honest in what I wrote. So, even the truth, a testimony, is a chimera. How could I possibly have mentioned only facts? Literary fiction and films, also, only speak the truth, *The Last of the Just* and *Shoah* show interviews with people who had committed crimes, but who were only just beginning to talk about them. You realize that these people had been possessed—you could almost say that they had lost their minds—because they had been sucked in by a collective narrative, by the language of totalitarianism, which prevented them from learning to make their own judgements. They lost their sense of judgment, they became caught up in a psychic epidemic, and they allowed themselves to get carried away because the emotional contagion was so strong that they lost their personal autonomy. That’s why I prefer to describe them as insane. These were normal, healthy, educated people who lost their minds because they embraced a totalitarian narrative in which they believed. A belief epidemic of the type we are again seeing today.

When the discrepancy between my personal narrative and the collective narrative is resolved, I can finally tell my own story, as honestly as possible, even

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3 Editor’s note: *Shoah* is a French documentary film released in 1985. It was directed by Claude Lanzmann and contains nine hours of interviews with witnesses of the Holocaust.

4 Editor’s note: In 1995, Jacques Chirac became the first French president to acknowledge the role played by the French State in the deportation and extermination of Jews during the Second World War.

if it seems shocking. I now know that there are people who will seek to comprehend; I can rejoin the human race, I am normal, I have a voice and my divided self becomes whole once more. I no longer have to be split in two; I can say what I think. You might agree with me or not – it is up to me to convince you, to find convincing arguments – but at least I am able to speak. I have become whole again; my torn ego has been sutured.

Let’s come back to the concept of resilience. How do you define this very important concept that has been widely discussed for the last twenty years?

Initially, from my point of view, resilience did not start out as a concept or idea, but rather as the anger that I felt. I did not label it “resilience” at the time, but it was absolutely clear to me that I had to find a way to overcome my experiences and not forever be a slave to my past. As a result, I felt a kind of rage. Later, while I was studying medicine, psychology and psychiatry, when my tutors told me that a child who had experienced trauma was beyond help, I thought, “That is something I cannot accept; either I must commit suicide or I quit my studies.” When I heard my tutors say, “Look at these children; look at their backgrounds. How else would you expect them to behave?”, or “Look, these children have been abused and so they are destined – nay, doomed – to repeat that abuse”, I couldn’t accept that either. My theory had no set label. In fact, back then, I did not even think of it as a theory. I simply thought: “This is something that I cannot accept; it affects me too much. I cannot accept the thought of being cursed for life.” I talked to my tutors about it; I discussed it with people I admired very much and who were flexible and open-minded enough to say, “Yes, you are right. We need to think a little more about that issue.”

Then I came across Emmy Werner’s6 methodologically flawless study of a population of 700 children in Hawaii who did not attend school, who had no family and who were likely to never recover from the sexual and physical abuse that they had suffered. While 72% of these children never overcame their experiences, 28% managed to do so. These children learned to read and write without ever going to school, they learned a trade, had a family life and friends, and when Emmy Werner conducted social and psychological assessments of these children, they did not perform any differently to others. That doesn’t mean that they were just like other children – and here we come to the definition of resilience – but they had managed to pick up the threads of their life, albeit a different life to the one they would have led had their childhoods not been shattered.

6 Editor’s note: Emmy Werner is an American developmental psychologist, born in 1929, who specializes in the field of resilience and carried out the first studies of resilience in children. The study referred to here is the Kaua’i Longitudinal Study, which continues to this day. The study has resulted in many publications: see, for example, Emmy Werner, Jessie Bierman and Fern French, The Children of Kauai: A Longitudinal Study from the Prenatal Period to Age Ten, University of Hawaii Press, Honolulu, HI, 1971; Emmy Werner, “Findings from the Kauai Longitudinal Study”, Research, Policy, and Practice in Children’s Mental Health, Vol. 19, No. 1, 2003.
At that stage, I thought, “Well, here we have a scientific and clinical approach that seeks to understand how we can overcome our experiences, how can we help children, adults and even elderly people. There is scope here for further research.” In Toulon, I set up the first international research group on resilience, a concept attributed to Emmy Werner but which existed long before her and which has been used by writers, psychologists, engineers and geographers. In any case, the origins of the idea are irrelevant, as Emmy Werner’s work is so brilliant that it is only fitting that she should be thought of as the creator of the concept of resilience. So thank you, Emmy Werner!

So, we started to work on the subject of resilience. The definition put forward at our first meeting in Toulon was as follows: resilience is the resumption of a healthy developmental path, a renewed developmental path, after experiencing psychic agony or trauma. There can be no simpler definition than that.

It seems too simple a definition, but when you’ve been left shattered by the trauma of war, domestic trauma or a twist of fate, there are only two ways in which you can respond: you can either remain in a state of shock or you can struggle to pick up the threads of your life. Neuroimaging supports the idea of trauma victims as stuck in a state of shock, as we can see that when someone experiences extreme psychic suffering, their brain shuts down and stops processing information; it remains grey. The layer of neurotransmitters stops working. Out for the count. The brain becomes “disconnected”, and neuroimaging confirms this.

If, instead of remaining in a state of shock, I fight to pick up the threads of my life, that is what we call resilience. However, the new developmental path that I have begun to tread does not obviate my past experience. Traces of trauma remain in my brain, in my mental habits, in my memory. I think a lot about the terrible things that I suffered; my trauma becomes a dark guiding star – a star that leads me along my new-found path. Nevertheless, I try to live as well as I can. There is not a more stupidly simple or more logical definition of resilience. By contrast, efforts to identify the factors that foster resilience require the involvement of multidisciplinary teams and affiliated research scientists. We now know that there are neurological, biological, emotional, psychological, social and cultural factors that relate to resilience. And we need multidisciplinary teams of researchers, including scientists, to all focus their efforts on that subject because we cannot know everything or be everywhere at once. However, we can and do meet regularly to try to identify the factors that foster resilience.

How does this process of resilience work? And, of course, the question that also springs to mind is, how can professionals contribute to this process? Or, indeed, how might they hamper the process, possibly by making mistakes?

We can simplify things by looking at the following stages: the situation prior to the trauma; during the trauma itself; and after the trauma. It’s a little didactic, but it does simplify the thinking process.
Before the trauma, we have the very early acquisition of protective factors, which are not necessarily related to resilience. One of these factors is the preverbal acquisition of a secure attachment. We use the English term “secure”, as it is not the same as sécurisé in the French. Sécurisé has the sense that I, as a preverbal infant, need my attachment figure to be there with me, physically, and I feel insecure when they aren’t. As a secure preverbal infant, I feel safe and secure when my attachment figure is present, but I still feel safe and secure when they aren’t there, because they are present in my memory and in the emotional and relational style that I’ve acquired through contact with them. I am safe and secure and not sécurisé. The second factor is mentalization. Is a child capable of mentalization? Yes, the majority of children are. They mentalize surprisingly early, even before they learn to speak – something that has been proven, from a biological and behavioural point of view, through statistically validated questionnaires on attachment. These two key aspects – secure attachment and mentalization – have been scientifically assessed.

Our group of experts on resilience recently invited André Galinowski, a psychiatrist at the French National Institute of Health and Medical Research in Paris who works with a team on imprinting, facilitation and the neurological circuits that form early traumas. Resilience is not a case of returning to a previous state, because returning to a previous state is healing, whereas resilience is a matter of getting back on the right track, although you can’t refer to it as “normal” development, because you never forget the trauma. When you’ve been a child caught up in war, when you’ve been sexually assaulted, when you’ve been hunted, you don’t ever forget. However, you are no longer a slave to your memories because you’ve managed to make something out of those experiences, and that’s the next chapter.

If you acquire a secure attachment before you learn to speak, you have a valuable defence mechanism. All our children – whatever their culture and regardless of whether their language is easy or hard – learn to speak between the ages of twenty and thirty months. This is true of all children in all cultures. It is a form of biological determinism – and probably a critical or hypersensitive period in the child’s development – that is determined by neurotransmitters, essentially the secretion of acetylcholine, which at that moment creates a unique period of hyper-memory that we will never again experience in our lives. A baby is able to learn a language in ten months, without the help of any school, any books or any teachers. I’ve been struggling with my English for sixty-five years! If I’d been born in England, I could have picked it up in ten months!

On top of that, secure attachment – which is strongly preverbal – is relational. As an infant, I acquired a secure attachment because I had a stable sensory niche, which was safe and provided stimuli: my mother of course, my father, my elder sister, my dog, my aunt and so forth. Six to eight people, but not too many. If there are too many people involved, it’s the same as having nobody around. If there’s nobody, then there’s nobody. And if there’s just one person, that’s almost the same as there being nobody around. You need between six and eight people to create a cluster that protects a child: the mother of course, the
father and perhaps an effective maternal proxy, a grandmother or nanny, or someone who works in the field of early childhood care. I’ve included professions relating to early childhood in this list because the experience in northern European countries has been very interesting. These countries made a political decision to train professionals working in early childhood care and education in line with attachment theories. They then assessed the results, namely the return on their investment, after the political and educational reforms had been implemented. A decade after these reforms were rolled out, illiteracy stood at 1% – the equivalent figure in France was 15% – while the teenage suicide rate had halved and there had been a significant reduction in cases of psychopathy, relationship issues and socialization problems. Investing in professions relating to early childhood care represents a good deal for your money. The alternative, which is also a possible policy option, is to place the entire burden on women’s shoulders and tell them, as happened in Germany, that “If your child fails to develop properly, it’s because you went out to work.” It’s a political decision. If you think about it, the choice is straightforward.

Investing in occupations that relate to early childhood means that everyone benefits. Children benefit because they have a sensory niche within a framework of multiple attachments: they will learn to love their mother in one way, their father in another, their grandmother in yet another way and their nanny in a big way. When things go wrong, their sensory niche may change, but these children have acquired self-confidence and know that they can call for help, stretch out a hand, tug on someone’s arm, or make an offering of food. They may suffer, but they won’t lose hope: they will either look around for help or look within themselves for support. We foster resilience by allowing them to acquire a protective factor during the first few months of their lives.

The second preverbal factor is mentalization, namely a person’s ability to create a private world to which they will respond, because we as human beings respond to how we perceive our environment. We are all biological creatures, we need oxygen and water; we may fight against gravity but we are still nothing more than products of biology. And the human condition essentially consists of representations. These can be verbal or visual; adults have the capacity to verbalize and discuss these representations, whereas children tend to use drawings. My mother has gone away, so I’m going to cope with her absence by picking up a piece of cloth that represents her or a teddy bear that will make me feel safe as she made me feel safe, or by drawing a picture that represents her. When I trust her, I trust myself. When she’s not there, I might be a little upset and a bit stressed, but I’m going to quickly do a drawing that represents her, and when she comes back – because I know that she’ll come back because I trust myself and I trust her – I’ll give her the picture and tell her, “You see, mummy, I’ve drawn your hair, I’ve drawn your high heels, I’ve drawn your dress.” I’m going to tell a story, to verbalize my feelings and to give meaning to an image and to words, to create a narrative to maintain our relationship: regardless of whether my mother is physically there or not, she is there for me. I’ve brought her to life.
The second chapter is the trauma. That is where the conflict begins. Natural traumas that claim many lives, such as floods, fires and earthquakes, give rise to fewer psychosomatic syndromes than intercultural traumas, such as war or physical or sexual assault. This is because we can forgive nature, as it never meant to destroy us. However, those people over there who have destroyed my people fully intended to do so. That is to say: the closer an aggressor is to us, the more damaging the trauma. Perpetrators are nearly always people close to us, people in our immediate surroundings, family members or others. In the case of a sexual assault, my attacker might be my uncle, my father or my father-in-law. Thus, the closer the trauma is to us, the greater the damage it inflicts. This is because, in addition to the physical assault, psychological assault or rape I might have experienced, or death I might have witnessed, I’ve also been betrayed. I’ve been attacked by someone who I expected to protect me. This isn’t a trauma like an earthquake, but rather it’s a sequence of traumas that destroy all the defence mechanisms that I had previously acquired. I trusted my attacker because I had acquired a secure attachment. By assaulting me, that person has destroyed the defence mechanism that my mother, or that perhaps the attacker himself, had instilled in my biological memory. I no longer have a defence mechanism; I’ve acquired a factor that prevents resilience.

The final chapter is the situation after the trauma. The conflict has ended, and we’ve reached the post-conflict phase. I was invited into the Occupied Palestinian Territory to talk about resilience. After the trauma they had experienced, I was surprised to see that Palestinians found it difficult to think about resilience because they were still in the “resistance” stage. I accept the term “Palestinian resistance”, as long as it doesn’t involve launching terrorist attacks. When they are involved in a conflict, they fight to resist those who seek to crush them and to limit their territory. However, when they attack civilians and children, that’s not resistance – it’s an act of terrorism. During the Second World War, the French Resistance didn’t want to appear on television as they would have been arrested. They only attacked their attackers. They targeted convoys of arms or supplies, or attacked high-ranking officers. They did not plant bombs in German schools – not a single one. I’m drawing certain distinctions here. I can forgive, I can understand and I can let myself believe in an act of resistance, but certainly not in an act of terrorism.

After a person experiences trauma, the first thing they need is support. If I am given no support, I remain alone. If I remain alone, as I was after the war, I can do nothing but dwell on what happened to me. I cannot process my trauma in order to explain it to someone else, I cannot create a representation of it, I cannot construct a narrative, or a drawing or a film or a novel out of my experience. I cannot reflect on it from a psychological, philosophical or political point of view. I cannot process my experience because I am alone and I stay silent – I am made to keep quiet. I cannot process my experience; I can only dwell on what happened to me. Silence has forced me onto the treadmill of depression. I cannot develop resilience.
If support is provided, I can start to feel secure again. Once I feel secure, I can take a step back, as we mentioned just now, and then I can try to process the trauma – to identify words and images in my past and to create a narrative out of them that I can tell to someone who wants to understand me. And I’ll make the effort to make myself understood. I will try to process the trauma – I will work on it, I will toil and suffer. I will make the effort to process my experiences. Today, neuroimaging reveals that when someone tries to talk about their trauma, it changes the way that their brain functions, and if that process continues for some time, the cerebral structure itself will change. From the moment that I start, over several months, to process my terrible experience, I cease to see the world in the same way as before. I gain a degree of freedom, provided that I can process and work on my trauma, and I am no longer a slave to the past; that is when the factors that foster resilience come into play. It’s wonderful, isn’t it?

The sequence that you’re proposing is very interesting: before, during and after the trauma. Before, there’s protection; during, there’s resistance; and afterwards there’s resilience. Humanitarians often use the term “resilience” to mean the opposite. For example, when a child is freed after several years in slavery, you might read that this child “showed resilience throughout their years in captivity”. The child has indeed survived and resisted, but it’s certainly a little early to say that he or she is resilient.

There is a distortion in meaning here, but that happens with all concepts. Any concept that becomes part of our cultural vocabulary always gets distorted; it’s inevitable. I think that you have to be specific, to be precise, to specify in order to limit these distortions. Having said that, the definition of resilience itself is rather stupidly simple: resilience is the resumption of a healthy developmental path after experiencing psychic agony or trauma. You have to start from there.

What can professionals do when they have to deal with people or communities who have suffered trauma?

I spent some time in the field when I was still practising psychiatry and I’ve also worked with UNICEF. When facing such a situation, I would suggest adopting the same line of reasoning. You have to identify the protective factors. Imagine you find yourself in the middle of some serious upheaval – most probably caused by politics, although these days we also have a lot of climate-related migration – or relating to faith, such as ideological or religious conflict. We need to determine what you were like before. Did you have a stable family? Did you go to school? Were you able to mentalize? Had you acquired any protective factors? If, before the upheaval, you had acquired factors that hampered resilience – if you had a dysfunctional family, had been sexually assaulted, undergone psychiatric treatment or been involved in crime – then you have acquired factors that make
you vulnerable, meaning that you will find it difficult to develop resilience because the trauma you will suffer will further undermine your already weakened development.

If you are assaulted by a stranger – which, of course, is appalling – I think that sort of experience brings people together. I’ve seen people who had fought side by side in the French Resistance who have remained friends for life: they are godparents to each other’s children, they’ve helped each other out, they keep in touch. The assault that Nazism inflicted on France, and on French Jews in particular, created a sense of solidarity between the Jews who survived. Ultimately, the Nazis had achieved the opposite of what they wanted. The shared experience of surviving Nazism brought the Jews who hadn’t perished – and a great many of them had – together. They contributed to resurrecting Judaism. Jews were becoming increasingly secular – but now their grandchildren are rediscovering the Jewish faith that their parents had ignored. It is these grandchildren who will go to see the rabbi to learn Jewish rituals and who will teach to their parents the Judaism that they had forgotten. Nazism killed a lot of Jews, but it didn’t kill Judaism; quite the reverse, in fact.

What I heard on the ground following the Bataclan7 attacks was that psychologists were saying to people, “You have to talk, you have to talk!” These were people who felt overwhelmed by horror, and they were being told, “You must talk about this immediately, otherwise your children will become psychotic!” What an utterly ridiculous notion! When people are in a state of shock like this, you first have to make sure that they don’t have any physical injuries. The SAMU Social8, founded by Xavier Emmanuelli9, did an amazing job. Technologically speaking, they provided a masterclass. If they hadn’t been there, if they hadn’t practiced their emergency response in advance with the fire, police and ambulance crews and used displays that enabled them to know where resources were located, many more people would have died. For example, when a paramedic carried out an electrocardiogram, the guy looking at the screen could see it and, as he had a map and a satellite navigation system to hand, he was able to say, “There’s a cardiology unit just ten minutes from your location – I’ll call them and book a bed.” Lots of lives were saved because the SAMU Social provided an emergency response masterclass, from a medical and technical point of view.

Psychologically speaking, that was a good start. Many people were saved. However, there is still room for improvement – and here I’m quoting people who were working on the ground that day: the main criticism that psychologists working on the site of the attacks have raised about their own work is that they asked the victims to speak too soon. What a criminally stupid thing to do. You need to first offer the victim a cup of coffee and then simply stay beside them,

7 Editor’s note: On 13 November 2015, three men armed with assault rifles shot into the crowd at Bataclan, a theatre in Paris, killing ninety and injuring several hundred. Other attacks were carried out on the same day at cafes and restaurants in the city, as well as around the Stade de France.
8 Editor’s note: The SAMU Social is the French emergency humanitarian service.
9 Xavier Emmanuelli is a French doctor and politician who founded the SAMU Social in Paris and is the co-founder of Médecins Sans Frontières.
providing human support by talking about mundane, everyday things, which are fundamentally important in such cases. And then you say, “For now, let’s just drink this coffee together. We’ll get you a blanket. Is that okay?” You need to start by establishing a human connection.

We must remember that, on the promenade in Nice, a number of people said that they saw heaps of bodies. That’s an unimaginably horrific image. The witnesses would have had this image – as we have mentioned before – etched into their memories, given the extent of the horror they felt. That memory has been biologically etched into their brains. They see only that image. It is the only thing they can think about. They spend all their time thinking about that image. And then, when they fall asleep, they are woken up by nightmares.

At a later stage, you can say to the victim, “When you feel calmer, you will need to try to understand what has happened. You will have to figure out how to pick up the threads of your life and start living again after this tragedy.” That’s what resilience is about: being able to reflect on, make sense of and understand what has happened, and working out how, and with whom, to get your life back and start living again.

You cannot live your life alone, or you will end up on the treadmill of depression. Neuroimaging shows us the changes that occur in the brain if a person is left alone. This means that it is imperative not to leave people alone. Once they have calmed down, the work of rebuilding their lives can begin. But this is a matter of reconstruction, not of rehabilitation. People undergoing this process cannot return to their previous state: the trauma will remain in their memory or, what is worse, will now form part of their identity. If I say, “I lost my parents during the war” or “I lost my wife and young son in the Bataclan attack”, that loss becomes a part of my identity. However, I refuse to be chained to the past. I know that nothing can bring back my wife or my little boy, but I refuse to be a slave to the past; I will try to figure out how, after such a horrific experience, I can pick up the pieces of my life as painlessly as possible. And this is where resilience comes into play.

And there’s an important message here for humanitarians: that trauma, such as torture, affects a person’s identity, their history and their culture in a very fundamental way.

Exactly. And there’s also something else that we haven’t yet mentioned, namely that once people have been tortured, that experience becomes so deeply imprinted into their brains that it becomes part of their biological makeup. Françoise Sironi has studied this subject. She spoke about a year in Iraq: a soldier was ordered to torture an Iraqi woman. The woman was subsequently freed but the man continued to torture her. But he would generally torture her with just a single
phrase. He would phone her, and when she answered he would say, “It’s me” and then hang up. And then – no surprises for guessing - her anxiety and fear would immediately resurface and she would be driven insane by anxiety for a day or two. She would say, “He’s not dead; he’s going to come back.” Then the man would call again, saying, “It’s me”, and all the trauma that the woman had buried and had tried to fight with the support of her friends and by getting on with her daily life would resurface.

Let’s turn to the duty of remembrance, the notions of collective memory and historical memory. Do we have a duty to remember? Where do you place it in relation to this process of resilience, at the personal and group levels, and perhaps also at the national level?

I’m quite ambivalent about the idea of a “duty to remember” because all wars are triggered by exploiting what has been placed in the vault of memory. The war in Kosovo was started because the “bad Muslims” scored a victory over the “good Christians” in the fifteenth century. Arabs have their reasons for waging war against Christians, who pillaged their lands. Catholics have a bone to pick with Catholics, who haven’t always treated them as they should. Women have their reasons for waging war against men, who might possibly have held them back somewhat. If you are going to search the archives of our memory for past traumas, you’ll find that we all have reasons to wage war against each other. In doing so, you make yourself a prisoner of the past. So yes, memory is useful for making sense of things, but there is no “duty to remember”. The First Crusade was started on the grounds of this so-called duty. As you may remember, in 1095, Pope Urban II gathered the people together in Clermont-Ferrand and galvanized them by whipping up an emotional frenzy; he said to the masses, “Do you realize that those evil Arabs stole the tomb of Christ and now we can’t even go to visit it? Oh, those evil, evil Arabs!” And there you have it: the First Crusade. Memory can be used to wage war again and again, until the end of time. We can all find a reason to wage war. Every single last one of us.

On the other hand, without memory we cannot make sense of what is happening to us. You can only make sense of the things you experience, including social or everyday events, if you are able to remember the past. We give meaning to our experiences by integrating our memories, which allow us to assign a significance to what we perceive, and the direction in which we want to go. We might need memory to make sense of things, but we are not prisoners of our memory.

Let us look at some examples of the abusive use of memory: the Crusades, the conflict in Kosovo and virtually all other wars were started by unearthing a past trauma that legitimized war. We mustn’t forget that before the First World War broke out, French and German schoolteachers had already been preparing children for war. French teachers had been teaching them hatred of the Boche, who had stolen Alsace and Lorraine from France, while the Germans had been teaching children hatred of the French.
You can always rifle through the past to find a reason to wage war. However, you can’t get away from the fact that memory also serves an important purpose. For example: imagine you’ve been outside, gardening, and you go into the sitting room and you see your teenage children lounging on the sofa – as usual – watching a film. You look at the screen and you see someone stirring a cup of tea. And you wonder why the teenagers are so horrified by the image, when all you can see on the screen is a cup of tea being stirred. The reason is that your teenagers remember that someone has put cyanide into the tea, whereas you don’t have that memory because you were outside gardening. What makes no sense to you is upsetting and terrifying to your teenage children: “He’ll die if he drinks that tea!” We need memory to make sense of our lives. For that, we need historians, novelists, philosophers, psychologists and writers – people to create a narrative. What we don’t need are people who want to turn us into prisoners of memory; otherwise you end up using memories of real dramas to legitimize hatred and justify starting a war.

_How can you reconcile these different collective narratives, these collective memories, without falling into such “memory traps”?_

To answer this question, you need to work as a team. You need sociologists, novelists and historians. As sociologists tell us, among the migrants currently arriving there are groups who integrate quickly and well, and there are those who struggle to integrate. It’s important to know why these differences exist.

Americans are a nation of migrants who hunted the Native Americans, confined them to reservations and claimed all the remaining land. However, today, they are making an effort and demonstrating that there are several ways of receiving migrants: some are harmful, while one is positive.

Harmful approaches include camps, which constitute the most harmful way of receiving migrants. In France, we had that kind of camp in Calais. At that camp, in the space of just a few days, a crude and primitive social hierarchy was established. I never visited the camp in Calais, but I’ve seen the same sort of thing in Mexico and Colombia. Within just a few days, gangs of teenagers – aged between 16 and 20 – began a reign of terror over a camp of several thousand people because they had weapons and because there was nothing to stop their violence. They terrorized people. They were rich because they trafficked drugs or engaged in racketeering. The gang leaders had three or four wives, all pregnant and aged between 13 and 15, and they ended up dead by the age of 20 or 22, killed by a rival gang. At the same camp in Calais, however, there were also people who made a real difference, who worked miracles: they set up schools, started to take care of the children, started to establish cooperative systems. However, they fell prey to this antediluvian socialization process which makes it difficult for people seeking to do good to get on with their work because they themselves were exploited by the violent thugs in charge. Violence is a radical
way of seizing power – indeed, it’s the most effective and efficient way of doing so. You don’t need to persuade anyone and it can be done quickly.

This was something I saw in the Palestinian camps. It’s worth noting that Palestinian migrant camps only exist in Arab countries; there aren’t any in Sweden. My Palestinian PhD students are currently living in Sweden, where they’ve received a warm welcome. One year after their arrival, they had learned Swedish, found work and were in the process of becoming Swedish. In Chile, there are 400,000 Palestinians who have now become naturalized Chilean. Like I said, Palestinian camps only exist in Arab countries, and especially in the Occupied Palestinian Territory. I’ve seen them. But how do we explain that fact? Why has this political decision never been questioned? There are no such camps in Chile, the United States or Sweden. In those countries, Palestinians integrate from the first generation to arrive. I’ve seen Palestinian camps in Lebanon that are guarded by armed members of the Lebanese army. What reasons could there be for that? This is a problem that has not been explained by our politicians. How do you expect these people to integrate? How are they supposed to learn a trade? They can’t get out of the camps. In France, the same sort of thing was done with the Harkis.11 It is the result of poor or non-existent policies.

Another inappropriate solution is coexistence. In Béziers or Perpignan, for example, there are traveller or Maghreb neighbourhoods. Each community avoids and ignores the other, so there’s no problem, right? Do you know of a single culture that has no problems? At one time or another, problems will arise and these conflicts will have been started by something that might seem innocuous: a football match or two guys interested in the same girl. These things can spark violence between two communities because there is no mechanism in place to diffuse the situation.

The third problem is assimilation. Australia and Israel have introduced an assimilation policy, while other countries have rejected assimilation. The lone exception to this trend has been French politician Marine Le Pen, who has proposed that France should accept migrants only on the condition that they keep their origins quiet – namely, that they entirely reject a part of their personality and feel ashamed of their religion, their parents and their home country.

In her surveys of migrants, Rachid Bennegadi asked people how they would like to be welcomed in their host country. As far as I can remember, around 84% of the migrants surveyed said, “We understand the process of integration very well. You have to learn the language of your host country, and you have to learn its laws and its customs. However, you also need to be proud of your origins; you need to retain a sense of pleasure in your religion and a sense of pride in your roots. This means that we can contribute our cuisine and our music to your society – the things that are an important part of life – and we will all be able to live together.” Although, after two or three generations, people will have assimilated, they will have done so as, to a certain extent, they’ve had no

11 Editor’s note: Harkis are Muslim Algerians who served in the French army during the Algerian war of independence.
alternative. Assimilation has been achieved because, after two or three generations, people are no longer able to feel that they are anything other than French, Spanish, Lebanese or whatever, but that process has taken place without violence. And yet, three generations on, you still see Americans who are fiercely proud of their Irish roots. When did the potato famine take place? It was in the nineteenth century, wasn’t it? Well, why shouldn’t they be proud of being Irish? If it makes them happy, it certainly doesn’t bother me.

Thus, there is a process which is based on respect, without the need for violence. Integrate and, if you so wish, assimilate. If you want to celebrate your pride in your Irish, Polish or Maghreb roots, then go ahead and celebrate it. You have also contributed something to the human condition. Those Arabs who are not always welcomed with open arms have nonetheless brought architecture, medicine, mathematics and philosophy into our culture, not to mention couscous! They’ve made an important contribution, so why not?

In the past, you’ve worked with this idea of narrative-based identity, namely the narrative that enables a person to develop resilience by rebuilding their identity around a narrative. The idea was first put forward by Paul Ricœur, but it’s still relevant to the process of resilience. It’s true at individual level but we see in these collective memories that it’s also true at societal, group or cultural level. It is important to be able to reconstruct a collective narrative that enables you to survive and imagine your future as a group.

As far as the collective narrative is concerned, that’s exactly what I meant when I spoke about narrative identity a moment ago – the trauma becomes a part of my identity and I will never forget it. In fact, I think that the trauma will remain a reference point for my entire life. For example, in his book Les orphelins mènent-ils le monde? [Do Orphans Lead the World?], André Haynal explains that orphans either become prisoners of the past or are forced, like the child who draws a picture while waiting for their mother to return, to imagine the life they would have had with their parents had their parents not died – and that makes them creative.

At the time, it was thought that orphans were a lost cause, so institutions didn’t take care of them. Near where we are at the moment, at Porquerolles and Port-Cros, there were penal colonies for children, with ditches twenty metres deep so that these “filthy urchins” could not get away. Of course, there were no beds: there was only a communal room where the children slept on the floor and there were these ditches, so they couldn’t escape. Everyone said, “These children are wild animals.” What else could they have been? Their heads had been shaved. When an adult arrived, they pounced on them. That sort of thing would happen.

And people would say, “You see, they’re animals.” Of course they behaved like animals – how else were they supposed to behave?

Attitudes in these institutions changed because philosophers, psychologists and people like Victor Hugo and Charles Dickens played a big role in how these orphans were represented in the popular imagination. Everyone cried along with Cosette. Do you realize that this little girl had to fetch buckets of water at night? She was scared. Everyone was moved by Cosette and by Gavroche, the filthy urchin who climbed onto the barricades. Everyone admired Gavroche. Victor Hugo and Charles Dickens managed to transform, through their fictional – fictional, my foot! – narratives, the way in which orphans were represented in the collective imagination. Today, many institutions are making great progress with orphans. Together with Annick Dumaret and Richard Josefsberg, we assessed the work of Œuvre de Secours aux Enfants, SOS Villages and Les Apprentis d’Auteuil, regularly monitoring over 800 children until they reached adulthood.

The future has become much brighter for orphans since social attitudes, namely the collective narratives, have changed; people realize that these kids have faced hardship. If they are given the opportunity, many – although not all – will get back onto the right track. They will never get their previous lives back, but they will get back on track: that’s what resilience means. They can never resume their former lives because their parents are dead and because some of them have been abused. However, a good few of them will now follow a path of healthy development which, although different from that of the general population, is nevertheless a good one. For example, Richard Josefsberg at Œuvre de Secours aux Enfants did some excellent work in this field and demonstrated that out of a group of more than 800 children, the majority managed to live a relatively normal life. There was very little crime, very few suicides, very few pathological problems and very little anti-social behaviour in this group. However, a large proportion of these children didn’t want to go to university. Instead, they wanted to learn a trade, saying, “I don’t have a family. If I want to be independent and have my own family, I have to learn a trade quickly.” They learnt a trade while they were young and a high proportion of them went on to become entrepreneurs. Some of them have been very successful from a social point of view. They have families, which is a sign of stability.

When, under similar circumstances, I had said to myself, “I have to become a psychiatrist”, it was a sign that I was too much of a daydreamer! Dreaming about that kind of thing wasn’t normal in my situation. One of my friends reminded me about this not long ago. We had been at secondary school together. I had admired him greatly because he had run the hundred metres in eleven seconds – that made him the object of my ardent admiration. He was also good at maths, but I really couldn’t have cared less about that. To me, it was the fact that he could run the hundred metres in eleven seconds that was important! He said to me, “Do you remember that you wanted to become a psychiatrist, to write novels, live near the Mediterranean and see the sea through the trees?” I’d completely forgotten. You had to be insane to have those kinds of dreams in my situation. I didn’t have access to a grant – my parents were not officially dead, they had disappeared –
because my files were always incomplete. The conversations would go something like this: “Parents’ tax returns?” “I don’t have them.” “Why, are they dead? Death certificates, then.” “I don’t have them.” So, it was a crazy idea on my part. It’s a miracle that it all more or less worked out in the end.

If I had been in my right mind, I would have learnt a trade; I would have done the same as these kids. They manage to get back on the right track, build a family, learn a trade. Well done to them. Nevertheless, a very small level of vulnerability remains, as researchers such as Richard Josefsberg and Annick-Camille Dumaret have observed. These kids over-invest emotionally to such an extent that it unnerves them. Someone who has acquired a secure attachment might say, “I’d like to get to know this girl. If she accepts me, that’s great. If she turns me down, I might be upset but never mind, that’s life.” That’s how someone with a secure attachment would think. Of course, the first heartbreak is a crushing blow, no joke about it — but you get over it. Together with Michel Delage, we performed assessments, carried out tests and monitored the kids. After their first heartbreak, we saw changes in their emotional attachments. They were hurt and very unhappy. The majority of them learned to love better in their second emotional relationship. They would think, “I’ve gone a bit too far; I should have paid more attention.” They learn to love better, and for some of them, that [first heartbreak] is like a trauma.

However, they over-invest themselves emotionally to such an extent that they are scared of loving, scared of having children. They think, “I have to be a perfect father” or “I have to be a perfect mother”. It’s neither possible nor desirable to be a perfect mother. A mother or father sometimes needs to be less than perfect to teach their child to do things on their own and not to expect mummy and daddy to do everything for them. These orphaned kids end up being scared of having children. They might get married or start a relationship very late in life and, very often, they’re scared to have children. They get back on track: they learn a trade, they learn to read, they start a family and they have children whom they look after almost too well, which can also be upsetting to those children. They might be told by their parents, “I did everything I could so that you could go to university and you didn’t go.” Someone with a secure attachment will experience suffering just like everyone else and then they will get on with the business of living, they will learn to be a better parent and then they will get on with their life. They have got back on track and developed resilience — because there is a neo-developmental process at play that allows them to get on with their lives — but they have not healed; they’ve not returned to their previous state, and certain traces of vulnerability still remain.

To conclude, could you tell us something about the current state of play as far as research into resilience is concerned?

When we set up the first group on resilience in Toulon, I was convinced that resilience was going to expand into the fields of psychology, education and
sociology. What I hadn’t predicted were the surprising developments in the field of neuroimaging, which confirmed the need for psychotherapy, and confirmed strange behaviours when resilience comes into play, for example the self-harming behaviour of traumatized and isolated children.

In Romania, we saw lots of children – those who had survived either a natural or inter-personal trauma – who self-harmed. They engaged in repetitive behaviours which – and I hadn’t predicted this – had a soothing effect. When I was in Romania, or even when I was practising psychiatry in France, I saw isolated children, children who had been deprived of affection, children who scratched themselves, teenagers who cut themselves, babies who hit their heads on the ground or the against the walls with real force. It was so frightening to see these babies banging their heads so hard on the floor. It was frightening and it seemed completely illogical to us.

Now that we have access to neuroimaging, neuroradiologists can show us that when children, adolescents or adults self-harm, it switches off part of the amygdala because physical pain is more bearable than mental pain. Mental pain lights up the rhinoencephalic amygdala; this can be fear, anger, intolerable personal torture. When they cut themselves, they feel better because the physical pain is more bearable than the mental pain.

This explains certain things. For example, when I was working as a clinical psychiatrist and was briefly the head of the department specializing in schizophrenia, patients would start to scream in horror at the hallucinations haunting them, run through the corridors and then, all of a sudden, they would smash a tile, take a piece of that tile and cut their forearms with it. Once they’d cut their forearm, they would come to the infirmary and stretch their arm out and – if it wasn’t too deeply cut, namely if only the skin and the underlying muscle had been cut – I would stitch them up. And then, suddenly, I was once again dealing with an apparently healthy patient. Once they noticed their injury, they would come to the infirmary and I would do my job as a technician and stitch it while we chatted. Back then, I had no idea why these incidents happened. Now, neuroimaging can show us that the physical pain brings patients back to reality and that they prefer that to the auditory hallucinations which terrorize them. Well, that was the first surprise.

There was also a second surprise. I presented a paper at the most recent World Congress on Resilience\(^\text{13}\) at Trois-Rivières, on what I referred to as “the five narratives”. First, we have the preverbal narrative, namely the narrative that you create for yourself when you cannot share your story. Then we have the solitary narrative and the shared narrative. If the narrative is shared within a safe environment – with someone who can provide this kind of safe space and has known how to do so in the past – it has a calming function. However, if it’s shared within an unsafe setting – with an adversary, an enemy, a cop, or perhaps a judge – the function of the narrative changes. It fails to provide a sense of

\(^{13}\) The 3rd World Congress on Resilience took place from 22 to 24 August 2016 at the Université du Québec à Trois-Rivières, in Canada.
security; it doesn’t have any psychotherapeutic effect. Next, we have the collective narratives that we mentioned before, provided by artists, people’s prejudices and television series, for example.

The fifth narrative is the technological narrative, something that we haven’t yet discussed. Hitler seized power largely thanks to the cinema and the stance taken by the world of opera. In the cinematic field, we had Leni Riefenstahl – the Nazis were crazy about cinema. All totalitarian regimes promote journalists and writers who reflect their ideas, but they torture, eliminate, kill and imprison any writers or journalists who sow doubt. This promotion work reinforces totalitarian narratives and leads, of course, to the elimination of dissidents. The Internet and television play a key role in the dissemination of narratives. In the blink of an eye, certain narratives become widespread, bypassing the dominant culture and parental control.

Something else that I’ve not yet mentioned, and to which we’ve not paid sufficient attention, is religion. When migrants arrive who have a religious faith, religion acts as an incredibly important protective factor. It is extremely important. When they are made to feel safe and secure by their religion, whatever that religion may be, when they experience solidarity through religion, when their self-esteem is strengthened by religion – when they think, “You’ve prayed well, you’ve helped those close to you, you’ve obeyed the law, you are really a good believer” – there is very little crime in their community, very little depression, and a strong sense of mutual support which helps them to socialize better. Problems arise when religion takes on a totalitarian aspect, as is the case in the Middle East at the moment, and even to a certain extent in France as well. People say to one another, “You don’t have the same god as us, you’re a heathen, you deserve to die. Even killing yourself would be a moral act because you’re an infidel. You blaspheme against the one true God, my God, so of course you deserve to die.” We are seeing the reappearance of a totalitarian narrative that is rapidly spreading via the Internet and which evades control by inter-human regulatory mechanisms. People adhere to a perfect representation of reality that brooks no criticism, silences judgement and is, essentially, a totalitarian system. I mentioned just now that the Germans were cultured people but that a totalitarian language took root within their culture that made them lose the virtue of doubt and subjected them to a single narrative. We are currently seeing a resurgence of this. While religion is necessary for solidarity, security, moralization – among other things – it becomes dangerous when it turns into a totalitarian force.

Hélène Dumas

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Abstract

Drawing on a corpus of accounts written by survivor children in 2006, this article looks at the Tutsi genocide through the eyes of children, enabling us to see the radical social and emotional transgressions of 1994 from a new angle. As members of society and prime targets of the genocide, these children tell how the world of their childhood was turned upside-down, through the unique intensity of their own words. An idealized “before”, inhabited by the beloved characters of their parents, brothers and sisters, is brutally swept away as everything they have known becomes inverted. Forced to watch killings and cruelty, they adopt survival strategies that show how thoroughly they understand the radical nature of what is unfolding. An extreme distrust of adults will forever mark these children – now orphans – who still live in “the time of the genocide”.

Keywords: Tutsi genocide, Rwanda, children, survivors, orphans.
Introduction

*Ijoro ribara uwariraye:* “Only the one who passed through the night can tell its story.” Since the Tutsi genocide, this proverb has taken on extra significance and become inextricably associated with the experiences of those who survived. The stories of their never-ending journey provide an invaluable source of material for writing a history of the genocide centred on the subjective experiences of the survivors. It is of vital importance that we understand these events through the eyes of their victims. Our aim should not be to construct two parallel historiographies, one examining the genocide by studying those responsible and the other only reporting on the fate of the victims. On the contrary, we should construct a history that takes into account the interactions between the different categories of actors. It is from such a perspective that we can understand the powerful and deadly dynamics of the genocide, which made it possible to exterminate almost a million people in less than three months, between April and July 1994. Contrary to any image we may have of the Tutsi as passive victims, they developed multiple survival strategies as they were hunted, resisting the killers directly, using ruses and creating the conditions for survival in the bush and in churches. The killers responded to this palette of survival strategies by intensifying their efforts to track and slaughter. If we can see the stories of the survivors as more than just a reason for sorrow or a basis for moral edification, if we can use them as real historical material, then we may be able to see the genocide through different eyes.

The eyes through which we shall see these events in the present article are those not just of the victims, but more specifically of the children. The historiography of children during genocide or extreme violence includes several major works, all of which aim to give due weight to the testimonies of children, be they verbal or pictorial.1 From an early stage, the fate of children during the human disaster of Rwanda’s genocide attracted the attention of NGOs, of UNICEF and of the Rwandan government. Later, specialists in psychology studied the new types of parenthood that grew out of the genocide, and in

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particular the phenomenon of orphans as heads of households. All of this work is of great value when it comes to writing a history of childhood during times of genocide, but that is not the purpose here. The author wishes to construct a history of genocide that is not so much about children, but is, rather, told through them. By looking through the “eye of childhood”, we shall examine both the unique experience of children and the genocide itself, from the perspective that is theirs and theirs alone.

However, we must first consider the macro-historical context if we want to fully appreciate the position of children in the process of genocide. In Rwanda, as during the genocides of Armenians and of European Jews, the intention to exterminate became apparent as soon as the systematic mass murder of women and children began. Their deaths sever the line of descent forever, breaking the link between generations. Children are the primary targets of any genocide. To understand—or try to understand—the intention of Rwanda’s killers to exterminate, we need only recall the frequent practice of disembowelling pregnant women and the murderous fury directed against their foetuses, branded with a racial identity before they were even born. The youngest, like their parents, were bracketed off from the rest of humanity, and given animal nicknames such as “little snakes” (utwinzoka) or “snake eggs” (amagi y’inzoka). It is not surprising, therefore, that children appear in large numbers on the lists of victims. In fact, they form the majority. They also account for the majority of bodies found in the mass graves exhumed for forensic analysis, such as in the case of Kibuye. Of the almost 500 bodies examined, 66% were either women or were children under 15. A quarter of the victims were under 10. Because of the demography of Rwanda, with its high percentage of children and young people at the time, children under 15 accounted for almost 38% of those who survived, and over half were aged 20 or younger. The very large number of children with neither mother nor father bears witness to the widespread destruction of families.

3 M. Pignot, Allons enfants de la patrie, above note 1, p. 12.
5 One can read the powerful account of Rony Zachariah, who was working for Médecins sans Frontières in Rwanda at the time. He was told how his staff were murdered at Butare University Hospital, including one of his nurses, who was a Hutu but pregnant by her Tutsi husband. Human Rights Watch (HRW) and Fédération Internationale des Ligues des Droits de l’Homme (FIDH), Leave None to Tell the Story: Genocide in Rwanda, 1999, p. 374, available at: https://tinyurl.com/yxf3r6dh (all internet references were accessed in March 2019).
8 Ibid., p. 40.
9 MINALOC, Raporro y’imirimo y’ibarura ry’abacite ku icumu ry’Itsembrobo woko n’Itsematsimba ha gati ya tariki ya 01 Ukwakira 1990 na tariki ya 31 Ukoboza 1994, Kigali, 1998, p. 12. The author would like to express her warmest thanks to Assumpta Ingabire for facilitating access to the archives of MINALOC.
The total destruction of family structures ceases to be a mere question of statistics when children tell us what they experienced. “No-one can live without parents”\textsuperscript{10} writes one girl, aged 10 at the time of the genocide, expressing her indifference as to whether she was going to be found and killed. As she hid in the bush, she did not believe that a child could survive without those who had given it life. These words, written against a background of absolute abandonment, are taken from a corpus of approximately 100 accounts written by survivors who were children at the time of the genocide. The accounts are held in the archives of the National Commission for the Fight against Genocide (Commission Nationale de Lutte contre le Génocide, CNLG). Almost 1,800 sheets of paper, covered in careful or sometimes jerky handwriting, tell the genocide stories of 105 children, aged between 5 and 19 in 1994. These notebooks were written in April 2006 and assembled at the initiative of one of the main survivors’ associations, the Association of the Widows of Genocide (Association des Veuves du Génocide, AVEGA). The object was mainly to provide a form of catharsis for the people concerned, but also to record what had happened. Given that these accounts were compiled twelve years after the genocide, it would be reasonable to ask whether this was not a case of young adults writing down their tragic childhood memories. Are these really the words of children? When one reads these notebooks, there can be no doubt: these are children who are writing. Not only do the authors constantly describe themselves as children, but their way of writing – of creating themselves through the written word – is that of children. The tones of childhood leap off the page, especially when the authors express their love and affection for lost family members. They will be orphans forever, and as one reads their stories, one feels that experiencing genocide at such an early age has left them locked in an eternal childhood.

Writings such as these raise many questions regarding historical, social and cultural definitions of childhood. It is worth mentioning that when they wrote their stories, none of them had passed through the coming-of-age rites of marriage and starting one’s own family. They are children, both to themselves and to their readers. One is struck by the unblinking brutality with which they describe the most horrible killings. The unique nature of unfiltered description has been mentioned in connection with the collecting of eyewitness accounts from Shoah survivors. It has been suggested that “children’s words are more ‘authentic’ than those of adults, as they have not been filtered by social convention”.\textsuperscript{11} Seen through a child’s eyes, genocide is exposed in all its brutal materiality, with meticulous descriptions of murderous words and deeds. While the special nature of such accounts certainly brings clarity, it creates other obstacles for the historian. The most obvious of these, and the hardest to overcome, is a powerful feeling of aggression when one is faced with such violence retold in the words of

\textsuperscript{10} CNLG Archives (CNLGA), story C44USC (born in 1984). The names of those who provided testimonies have been anonymized.

\textsuperscript{11} Audrey Kichelewski and Judith Lindenberg, “‘Les enfants accusent’: Témoignages d’enfants survivants dans le monde polonais et en yiddish”, in I. Jablonka (ed.), above note 1, p. 35.
a child. One has to be able to separate oneself from the images conjured up as one translates and reads those words, in order to be capable of paying equal attention to all parts of the story. But briefly achieving this detachment enables one to identify precisely what it is that has hit these children the hardest. When one looks past the inevitably different, subjective elements expressed in these texts, one common thread emerges – that of a world turned upside-down. Many of the young authors use a Kinyarwanda expression that puts it very well: *impfubyi zitagira hepfo na ruguru*,

12 which could be translated as “Orphans have neither Heaven nor Earth.”

It is this world with “neither Heaven nor Earth” that the author wishes to explore through the words of these children, by examining all the moments of sudden change, from the nostalgic descriptions of life “before” to the dramatic upending of their world and on to the unending time of the genocide. In so doing, we shall respect the underlying rhythms on which the stories are based.

**Life before the genocide: The world of childhood**

**The lost world of families**

AVEGA asked the children to tell their stories in chronological sequence in order to give them some sort of structure. However, they often departed from this, with individual timescales overriding formal indicators of time. Some of the authors even start their accounts with “life after the genocide”. The genocide period contaminates the chronology most clearly when the children are introducing their families. Most of what the reader learns about the family comes out as the author lists those members of it who died. In other words, the image of the family is based on the account of its destruction. One author, who was a boy of 15 in 1994, opens his story with this description of his family:

Mum and Dad got married in 1963. When the genocide happened, they were happy together. They had never been separated. They were separated by death in 1994. Mum could no longer have babies, and the youngest child was 9 years old. My parents had had eight children, and in 1994 seven of them were still living; four boys and three girls. Three boys were killed [he gives the names of his three brothers and two sisters who were murdered, along with their dates of birth]. The father who gave me life was killed [he gives his father’s name and date of birth]. Now there are just the three of us.

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Only the mother, a younger sister and the author survived, out of a family of nine. Similarly, a girl who was 13 at the time of the genocide starts her story by listing those who died, extending the inner family circle to include other relatives.

12 Literally, “Orphans have neither top nor bottom.”
13 CNLGA, story C54NG (born in 1979).
Whether we’re talking about Daddy, Mummy, Grandma, my big sisters, Grandpa or any of them … I haven’t seen anyone again, to give me advice. So what am I going to do? I never saw any relative who could love and care for me ever again. To this day, I have no-one to give me advice. But I try to cope with it. I can tell that I have no choice. To this very day, out of seven children, there are just the three of us, and I am the oldest. Before the genocide, I was in the third year of primary school. I had lots of uncles on my father’s side, I had uncles on my mother’s side, there were grandchildren. But today there are only ruins. I had playmates. Grâce, Agathe, Devota and Dominique for example. What brings me sorrow is that they are all dead and I am still here.14

Here we see how death has invaded a child’s circle of friends. Many of the children mention the friends that filled their childhood world. The enumeration of all these losses paints a far clearer ethnographic image than any number of academic papers on the structure of the extended family. This little girl, aged 10 at the time of the genocide, lists every single member of her family as having died:

When I arrived in Rwanda [a Hutu family had taken her with them to refugee camps in Tanzania] I discovered that my family had been exterminated as I thought. All my aunts on my father’s side were dead, all my uncles on my father’s side were dead, my aunts on my mother’s side were dead, my uncles on my mother’s side, my grandmothers, my grandfathers … there were only ruins. My parents, my brothers and sisters … they were all dead.15

We should note two points here. The first concerns the extent of the inner family circle. In 1994, Rwanda had one of the highest fertility rates in the world.16 These child-authors were therefore members of large families, which made the losses during the genocide all the greater. Secondly, they are not listing all these uncles, aunts and grandparents merely for the sake of precision. Relationships with paternal uncles (data (daddy) wacu) and maternal aunts (maman (mummy) wacu) involve a parent/child degree of affection. Their children are seen as brothers and sisters. Kinyarwanda has a rich, precise vocabulary for describing the position of every individual in the family structure.17 It is not unusual to read in these stories that the children were brought up by one of these relatives, or by grandparents. This is not the place for an ethnographic study of Rwandan family structures, but we should simply be aware, from what the children have written, of the extent of the emotional bonds between members of their family units. That extent is sometimes accentuated by the use of the term “family” in the plural (imiryango). Knowing the context makes it all the easier to understand why these

17 For instance, a maternal uncle is a marume while a paternal aunt is a masenge.
children repeatedly speak of loneliness, or of feeling as if they are living in a foreign universe, like one girl, aged 8 at the time of the genocide, who puts it so strongly: “I have no relationship with the world, and yet Rwanda is full of people.”

While recalling these lost parents (in the wider sense of the word) involves creating a genealogy of the dead, it also creates space for happy memories of childhood. Accounts of “before” are no doubt tinged with a great degree of nostalgia, given that “before” refers to a life that is gone forever. The effects of reconstituting these stories a posteriori (we must remember that they were written down twelve years after the genocide) are apparent primarily in these accounts of an idealized “before”. Whatever the age of these young writers, the world of childhood is described in terms of harmony, both within their families and in society. The details included in the images they paint underline this idealization. For instance, the 10-year-old girl mentioned above writes:

Our parents loved all of us, but they loved me a bit more than the others, because I was the oldest. … I also liked visiting my aunts on my father’s side who were married, they loved me very much too, and every time they saw me, they bought me clothes and lots of other things. … I was brought up mainly by my grandmother, and when I was 8 or 9 years old she started to teach me how to do housework. I imitated the other children, doing things like weaving little baskets or little mats. One thing that hurt is that the day before the genocide started, I had promised Mummy that I would weave her a little mat, and she died without receiving my present.

The first violence: School and war

The children soon move on to describing the first violence they experienced in their world of nostalgic images. The first division originated within the world of childhood itself – at school. The children’s discovery of “ethnic things” (ibintu by’amoko) starts with the school census that identified Hutu, Tutsi and Twa. As part of the quota policy set up by the Habyarimana regime to ensure “ethnic and regional balance”, school pupils were carefully counted, year after year, to ensure that Tutsi did not take up more than the 10% of secondary school places that were allocated to them. While it does appear that the organizers of the writing workshop had asked the children to mention this point, inclusion of several particularly realistic details demonstrates the children’s independence in how they recorded these events. With the exception of two children who were under school age in 1994, all report having discovered that they were Tutsi via school,

18 CNLGA, story C67MMGC (born in 1986).
as their parents appear not to have talked to them about this sensitive issue. The fact that these children were young at the time will not have been the only reason for their silence; under a regime that had elevated discrimination to the status of public policy, it was wiser not to mention that one was a Tutsi. For many children, the census was the cue for humiliation by both teachers and classmates. Fanned by the war propaganda against the Rwandan Patriotic Front (RPF), to which every Tutsi was assumed to belong, racism began to enter the classroom, as this girl born in 1981 explains:

When 1992–1993 arrived, I started having trouble at school. My problems were the following: at that time, there was something about asking about our ethnicity at school, every term or every year. The teacher asked the Hutu to stand up, and after they had stood up he asked the Tutsi to stand. There were lots of Hutu who stood up, and I think that at that time there were only two of us who were Tutsi. When we two stood up, we heard shouts [indurur] from the rest of the class. They liked to call us “snakes” [inzoka] or “cockroaches” [inyenzi]. On the day of the census, even the children you normally talked to refused to speak to you. I am talking about the Hutu we were at school with. Every time the teacher told the Tutsi to stand, the others, the Hutu, laughed out loud. That made me think about a lot of things. I asked myself whether the Tutsi were really human beings and I also asked myself what we had done. I was ashamed, and I even wanted to leave school. When we went home from school on the day of the census, my classmates made fun of me, a lot. I preferred to run home alone. This did not happen often. Just on the day of the census. Afterwards, the children might forget, but there were mean children who remembered.21

As well as being a target of ridicule and insults for the other pupils, this girl discovered that she was part of a minority – something she was powerless to change. It is reasonable to suggest that these racial tallies were intended not only to deeply humiliate Tutsi but also to give schoolchildren the idea that Tutsi were of little importance in Rwandan society. As we have seen, this type of violence was not just symbolic. In some cases it was met with a degree of fatalism, as evinced by this extract from the account of a girl born in 1978:

At the beginning of every school year, they would make us stand up, saying: “Tutsi, stand up!”, and then they would say, “Hutu, stand up!” That happened every year. This made me curious, and I asked my Dad what ethnic group we belonged to, because they always wanted to know at school. He replied that it was not necessary for me to know, but since this was an order issued by the school, he explained it to me, and said we were Tutsi. … When I asked him why the teacher kept asking us to stand up and kept counting us, he said that it was a government programme and that it was well known. One day, when I was in the third year of primary school (I had

acquired some intelligence), they made us stand up and I saw a Tutsi child stand up with the Hutu children. So I stood up as well, even though I knew that I was lying. The other children shouted “Look how the Tutsi are mixing in with the Hutu!” The teacher called us to him, and said we were wasting his time! This way of speaking was well known. People talked like that all the time and we were used to it. We carried on living like that and we got used to it. That was the policy of power [ingoma] at the time.22

In many cases, a child’s discovery of “ethnicity” at school prompted the child’s parents to tell him or her about the persecution that they themselves had experienced since 1959. The adults tried to respond to the children’s incomprehension regarding this “difference” that was thrust upon them. The fact that the parents only told their children about this violence in secret bears witness to the fearful silence maintained by Tutsi families. The threat was twice as real when yesterday’s looters and arsonists were today’s neighbours. One boy tells how his father explained these matters to him:

Later, when I started school, I found out that there was a programme to make a census of Hutu and Tutsi in each class. This is how I finally found out about my ethnic background: when they told the Hutu to stand up, I stood up too. … He [the teacher] said, “Sit down! You’re an agatutsi [a dirty little Tutsi]! Later, the teacher hit three of my classmates [he gives the names of these other – Tutsi – pupils], saying: “Him, with a nose like that [dore kiriya cy’umuzuru]? How dare he stand up!” … Later, when I got home, I immediately asked my Dad if we were Hutu or Tutsi, and he replied, “Why do you ask me that, my child?” I told him what had happened at school, and that is when he revealed that we were Tutsi. I started by asking him why he was keeping these things secret, what the reason was. Dad told me: “Since 1959, they have been killing us and we have been forced to flee, because they destroyed our houses.” He continued by saying: “The man we call K. burnt our property and killed our livestock. So we are afraid that they might start again.”23

As this story clearly shows, the world of childhood was impervious neither to racism nor to the violence it caused. As we mentioned above, war intensifies the violence that children describe. It is important to say a little at this point about the geographic origins of these young writers. The vast majority are from what is now Eastern Province, the former prefectures of Byumba, Kibungo and Kigali-Ngali,24 which were particularly exposed to the effects of the conflict that took place between 1 October 1990 and 1994. In many communes, there were numerous arrests, executions and even massacres of Tutsi on account of their supposed “complicity” with the RPF. Following the first RPF offensive on 1

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22 CNLGA, story C91KB (born in 1978).
24 In 2000 and 2006, Rwanda underwent extensive reorganization. The boundaries and names of the administrative units were altered to such an extent that one needs to work with two maps, one showing the situation as it was in 1994 and another showing the current situation.
October 1990, thousands of Tutsi and opposition Hutu were arrested and held for several months, accused of being *ibyitso*, or accomplices. The ferocious acts of repression that accompanied the war spilled over into the homes of the children. Many describe repeated searches of their homes by soldiers of the Rwandan Armed Forces who were determined to find rifles and ammunition supposedly hidden by the RPF. In October 1990, when he was barely 4 years old, one boy found out that his father had been arrested on suspicion of being an RPF agent. Although he was too young at the time to remember the details, his story is consistent with what we know of the situation in his home commune of Muvumba, which was close to the front. He was fully aware that the sudden arrest of his father led to the entire family moving to the southwest of the country, to the commune of Kinyamakara (Gikongoro prefecture) in 1992. In this instance, what was intended as a refuge turned out to be a trap: when the genocide started, Muvumba rapidly fell into the hands of the RPF, whereas Tutsi in Gikongoro prefecture suffered a horrifically intensive extermination campaign that lasted several weeks.

While the world of childhood was not protected from the warlike, partisan violence that swept the country between 1990 and 1994, it was nonetheless populated by the familiar and loved figures of parents, siblings and friends. This initial experience of what were sometimes bloody disturbances did not make the children’s shock any the less at the total upending of society during “the time of the genocide” (*icyo gihe cya jenocide*).

**Living the genocide: The total inversion of the world of childhood**

It is not the author’s intention to reproduce here the full diversity of these 105 individual stories of the genocide. Rather, this article shall attempt to describe the experiences through which the children witnessed the inversion of all their points of reference. One experience they all shared was the total collapse of the adult world, which was either incapable of protecting them or became a deadly threat. In all these children’s accounts, norms function in reverse, and it is through this radical axiological inversion that we shall examine their stories.

**Turning the physical envelope inside-out: Mutilated bodies**

Less than a year after the genocide, a UNICEF team started to assemble statistical data to obtain a picture of the extent and the nature of the trauma to which the

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26 CNLGA, story C90NJCC (born in 1986).


28 The author would like to thank Stéphane Audoin-Rouzeau for his valuable assistance in analyzing these texts; the physical traumas they describe sometimes caused a numbing horror.
The results give a first impression of the level of violence: almost 70% of those interviewed said they had witnessed killings or serious wounding. When we examine individual accounts, the survivors’ words translate those statistics into powerful, detailed descriptions. The first level at which we observe the inversion of norms is that of the mutilated bodies. The passage from the interior to the exterior is described with almost anatomical precision: the spurting of blood, the dismemberment of bodies, the spilling of brain matter and intestines. Bodies that had literally been turned inside-out play a central role in accounts of the massacres. On 13 April 1994, Tutsi who had taken refuge in Kabarondo Church were the victims of an attack coordinated by the local administrative and military authorities. A boy, aged 12 at the time, was inside the church. He describes the massacre:

They threw a grenade at where I had just put myself, and it blew my leg off. A river of blood [umuvu y’amaraso] was preventing people from moving. Lots of blood was coming out of the corpses and running out under the door. A big bomb [igisasu] exploded. It lifted up lots of people and lots of bodies fell on me, with lots of blood. I could not escape. They threw another grenade, which lifted us up again. I was hit in the head by splinters and then I fell in front of the altar. I tried to stand up to go and see the people with whom I had arrived at the church, and my neighbours. I saw that they had preceded me into death, and grief killed me. There was a door at the side, in the middle of the church. A woman [he gives her name] was leaning against it. She was carrying a small child. Other people whom I did not recognize were also leaning against this door. They brought the big gun with tyres and they fired a big bullet into this door. I saw everyone become like flour. Then the bomb lifted everyone up and C. [the woman mentioned] collapsed onto the altar. All she had left was her head and one arm. She was letting out screams [aboroga] of pain and when I hurried over to help her, she had died. They kept on firing. People, innocent people, kept on dying. At some point, I lost consciousness and lay down in the blood, as if I were dead.

This extract, deliberately quoted in full, illustrates both the awful fate of the victims and the determination of the killers. The young writer is as careful to describe the projectiles (“a big bomb”, “a grenade”, “the big gun with tyres”) and the points

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31 The Kabarondo Church massacre was closely examined in 2016 and 2018 by the Paris Assize Court during the initial trial and appeal in the cases of Tito Barahira and Octavien Ngenzi, who succeeded each other as burgomasters of the commune. Both were sentenced to life imprisonment for genocide and crimes against humanity. Until 12 April, the parish priest Father Oreste Incimata maintained a register of those who had taken refuge. According to his testimony, at least 1,500 people died in this attack: High Criminal Court, Paris, hearing of 30 May 2018. An estimate by the Diocese of Kibungo puts the number of victims at 2,000. See the diocesan bulletin of Kibungo, *Stella Matutina*, No. 112, June 1995, p. 7. The author would like to thank Brother Benjamin Ngororabanga and Jean-Népomuscène Ntambara for making her welcome at the Dominican library in Kacyiru.

32 CNLGA, story C46HY (born in 1982).
from which they are fired at the crowd (“the altar”, the “imposing door at the side”) as he is to describe the effects of the violence on the human body. As in the drawings covered in red, blood dominates the scene. His experience is both auditory and visual; we can imagine the crash of the weapons, mixed with the “screams of pain” of the woman who has collapsed on the altar, her body ripped apart.

Often, the children apply their descriptive powers to recounting what happened to members of their own families. The mental trauma of seeing bodies being emptied is even more severe when the bodies are those of their parents. Among those who provided testimonies, the vast majority of children witnessed the deaths of family members. This is how one girl, aged 9 at the time of the genocide, describes the deaths of her family in Nyarubuye Church, during the large-scale massacres of 15–17 April 1994.34

I saw my Mum die, her head was cut off; I saw my big brother, how they hit him repeatedly on the head and how they fired an arrow into him; I saw my big brother who was at secondary school, they cut his neck and they crushed his head; I saw my big sister, how she died; I saw my big brother, who was older than me, how they cut his throat, he died gasping for breath; I saw all my family, my uncles on my father’s side, their children, my aunts on my mother’s side, my sisters-in-law, my cousins, my uncles on my mother’s side, my grandmother and everyone I was related to, how they died and where they were.35

Given the scenes they witnessed, it is hardly surprising that images of the mutilated bodies of their parents haunted the minds of the young survivors for a long time. We see examples of obsessive precision, as in the account written by this girl: “I see Mummy, cut in two. I cannot stop seeing that image and that makes my despair even worse.”36 In the case of another girl, the sight of her parents’ dismembered and decapitated bodies seemed so incongruous to her that her first action once the killers had left was to “put the heads back with the bodies they belonged to” and cover them with a skirt, one of the few garments to have escaped the looting.37 But this child was soon to see her efforts to give some kind of dignity to the bodies of “her Mummies” – her actual mother and her maternal aunt – undone by the actions of scavengers and dogs. One point that crops up in many of these accounts is how canids acted as the animal successors to the killers: “even their dogs were full. They started to eat the people in the morning, they drank their blood until the evening, and then they had eaten enough.”38 The final humiliation for the victims came when the killers returned after several days, and merely covered the bodies with a little earth “to protect themselves against the

33 Serge Baqué, Dessins et destins d’enfants: Jours après nuit, Hommes et Perspectives, Paris, 2000, p. 103.
34 For a full account of the genocide at Nyarubuye, see Privat Rutazibwa and Paul Rutayisire, Génocide à Nyarubuye, Éditions Rwandaises, Kigali, 2007.
35 CNLGA, story C87MFC (born in 1985) (emphasis added).
36 CNLGA, story C72URC (born in 1987).
37 CNLGA, story C88MVC (born in 1986).
38 Ibid. (emphasis added).
bad smell of the snakes’. \(^{39}\) Even in death, the Tutsi remained snakes, giving off a recognizable smell. This little girl perceived and described the words and the careless covering-up of the bodies as something extremely offensive. She even uses the word *gutaba*, which normally refers to burying rubbish, showing that she has fully understood how “her Mummies” have been relegated to the status of foul-smelling refuse.

The children witnessed not only these dismembered and bleeding bodies, but also their decomposition. The texts are full of horrible descriptions of piles of putrefying bodies. Here again, the established order of things is turned upside-down; the care with which the dead are treated under normal circumstances meant that the living never witnessed the process of decomposition – not even adults, let alone children. Many of these writers underline that point – they had never seen a corpse before. “I had never in my life seen a dead person before, but from that moment on, I knew what death was”, writes the same little girl, aged 8 at the time of the genocide.

**Experiencing one’s own death**

Many of the texts describe the disappearance of the boundary between life and death, as if the children die many times over. One should take these accounts of successive deaths seriously; the fact that they are so widespread is an indicator of the depth of the mental trauma caused. Let us return for a moment to the UNICEF study, which mentions this phenomenon: 90% of children interviewed had thought they were going to die. \(^{40}\) “That is how I died”, writes one girl at the end of her account. \(^{41}\) The young authors talk about experiencing their own deaths at specific moments. Seeing their parents killed is one of those, as the girl mentioned earlier explains: “We – children – were terrified. We no longer expected any mercy from them. We could see that humanity had left them. We died exactly at the moment when we saw the deaths of those who had given life to us.” \(^{42}\) Many of these texts mention the impossibility of living without parents; the death of the child’s family was their own death. These “deaths” are not symbolic, nor are they a rhetorical game of words; they are even more real when the children are thrown into mass graves with the corpses after large-scale attacks. Living and surviving in close proximity to the dead reinforces the already powerful feeling of being a corpse among corpses. The verb *guhembuka* that the authors use in this context conveys the idea of being dragged back gradually from the world of the dead to the world of the living. The disappearance of the most certain of boundaries in human experience – that which separates life from death – is all the more apparent when one owes one’s survival and one’s life to

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\(^{39}\) Ibid.

\(^{40}\) A. Dyregrov *et al.*, above note 29, p. 6.

\(^{41}\) CNLGA, story C42IE (date of birth not indicated).

\(^{42}\) CNLGA, story C88MBV (born in 1986).
dead bodies. It is worth citing at length one particularly striking account on this topic:

Not one part of my body was alive, perhaps because of the time when I was in the pit and they threw heavy people onto me. ... I had lots of bruises and illnesses when I was in this pit. Lots of blood ran onto me. Sometimes I went for weeks without eating or drinking, so I started to drink their blood and I noticed it had a taste; I was hungry and it was as if someone had added salt. I think it was this blood that gave me the strength to get out of the pit. ... I was very ill. I was vomiting a lot, and I was vomiting black things. They [the doctors who provided care immediately after the genocide] asked me what it was, but I was afraid to tell them because I did not want them to know that I had been drinking people's blood. I was still afraid, and I did not know where I was. The doctors took good care of me, and at some point I recovered.44

This experience may be extreme, but it is not exceptional; many children were pulled out of these pits. While we will probably never know their exact number, the phenomenon is sufficiently widespread to be recorded statistically in the UNICEF study mentioned above. Almost 16% of children interviewed replied in the affirmative to the question of whether they had hidden among the corpses.45 Another indication that the frequency of this situation was not insignificant is that medical practitioners working in Rwanda after the genocide noted a pattern of behaviour so prevalent that it was classified as an actual syndrome. This new syndrome, known in French as chasse-mouche or fly-swat syndrome, consists of a compulsive repeated movement as if brushing away a fly, observed among children rescued from the pits. The children explained that they were swatting the flies away from their parents' bodies.46

The blurring of the distinction between life and death is apparent in another type of experience reported by these young authors. As we know, sexual violence was an integral part of the Tutsi genocide, so it is not surprising that it crops up in these texts. Here, sexuality is not a source of life – it is an instrument of death. Both boys and girls record these rapes. There is no gender analysis. One of the indelible memories of the genocide for this 10-year-old boy is the torture and death of a girl who lived nearby, and of his own sister:

People continued to die, but they died a bad death [urupfu rubi]. Before I forget, let me recall the death of a girl called U. The Interahamwe seized her. They took turns with her. They just kept going. When they finished, she was still alive. Then they impaled her with a stick in her vagina, and the stick came out of her mouth. Afterwards, they crucified her in front of the church, between the

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43 It is more likely that she spent several days in the pit, but one can well understand that such an experience would make the time seem longer.
45 A. Dyregrov et al., above note 29, p. 6.
46 The author found this description in Jean-Paul Turindwanamungu, “Contribution à l'étude de l’impact du génocide sur la schizophrenie”, dissertation in psychology and education science written under the supervision of Jean-Damascène Ndayambaje, Université Nationale du Rwanda, Butare, 2000, p. 77.
trees that were there. The other death that I will never forget is that of my sister, whom they raped. They impaled her with pieces of wood as well, and when they had finished, they killed her.\textsuperscript{47}

The massacres may have ended in July 1994, but for the children who survived, the genocide had still not finished killing, as their aunts, mothers and sisters died of AIDS, having become infected through rape.

The collapse of the world of adults: Reversal of the protective role and inversion of societal relationships

Whether separation from adults occurred following a decision to split the family or as a result of their parents’ murder, children often ended up unaccompanied by any adult during the genocide. In the absence of other protection, they sometimes banded together and tried to survive on their own. One story, that of a boy who was 13 at the time of the genocide, is worthy of closer attention as an illustration of the protective role that children took on.\textsuperscript{48} After escaping from the massacre at Kibeho Church on 14 April, this boy first hid in a sorghum field before moving into the tea plantations, which were denser. There he found other children already hiding in jackals’ dens. A micro-society of children emerged, its ranks swelling as other young survivors managed to reach the tea plantations. Their first priority was to track the movements of the killers – they were constantly on the alert because of the dogs sent out to find them. At one point they asked one young survivor about the “enemy” position: “We asked him where the killers were, and he said they were killing the pupils of Marie Merci [a school near Kibeho Church], and that it was the gendarmes who were doing the killing.” As well as guiding the group’s choice of hiding place, such knowledge was also essential to the children’s ability to obtain enough food. The killers did not leave their roadblocks at night; they continued to probe the darkness in search of Tutsi. But night-time was precisely when the children went looking for sweet potatoes to feed the group. This involved a specific gendered dynamic, in that only the boys were allowed to undertake these dangerous operations: “We did not allow the girls to go into the fields, because they were much more afraid than us and they could have given away those who were hiding with them if they had been caught; they would have shown them our hideout.” The children had all sworn that if they were caught, “no-one is allowed to say where the others are”. This was absolutely essential if the group was to survive. There was almost a routine in the distribution of food-related tasks:

Life went on, and as usual we went looking for sweet potatoes during the night. We came across roadblocks on the path. They often lit a fire next to a roadblock.

\textsuperscript{47} CNLGA, story C30BD (born in 1984).
\textsuperscript{48} The account that follows is based on CNLGA story C61HIC (born in 1981).
A fire meant that there was a roadblock, and we went around it without their seeing us.49

But the few sweet potatoes they managed to gather – and which had to be eaten raw, as the smoke from a cooking fire would have given the children away – were nowhere near sufficient, and the children knew what it was to be hungry. They did their best to dispel the hunger pangs by tying strips of cloth around their bellies. In Rwanda, it was common practice in times of famine to tie a cloth around one’s abdomen so as to be less conscious of one’s hunger.

The cunning of the children, seen here in collective form, partly made up for the absence of parental protection in a world of adults who had become a deadly threat. In particular, the very nature of the lies the children told shows indirectly that they were fully aware of the transgressions which were being committed during the genocide. The first of these, which they understood early on, was related to the deadly manner in which the meaning of “neighbour” had become reversed. One thing we notice all through these accounts is that in order to stay alive, the children tried to avoid the consequences of knowing others and being known by them. Separated from their parents, and with no identity cards, they made up “Hutu” genealogies, sometimes choosing fictitious parents from the families of particularly zealous killers. For instance, when he emerged from the tea plantations, the boy quoted above went to “live with these Hutu who didn’t know [me]”. A prisoner of the “humanitarian safe zone” set up by the French armed forces during Operation Turquoise50 at the beginning of July, he tried to hide among the crowds of displaced Hutu. But killers among those who were fleeing the RPF continued to flush out Tutsi. On one occasion, when he was stopped at a roadblock, the child explained that he was fleeing the RPF and had become separated from his parents in the general panic. The men at the roadblock were not convinced, and told him to undress so they could examine his ribs, as racial imagery ascribed a larger number of ribs to Tutsi than to Hutu. He did as he was told, and received a blow to the head from a club. When he came round, he had to use all his cunning to find an explanation for his injury. He succeeded, and thanks to this new lie was taken in by an old woman who used him as a servant. Later, he was almost given away by a displaced man from the same area as him. When he was interrogated, it was ultimately the very effectiveness of the genocide that saved his life, as he heard the reply: “Nothing to do with us. Let’s go. He must have mixed you up with someone else, because we know for sure that there are no more Tutsi here.”

The danger was not limited to the male half of the adult world, as women often barred children from the domestic sphere, refusing to give refuge or betraying

49 Emphasis added.
them to the gangs of killers. Even when women remained passive, they were complicit in the children’s fate. The words of adults were legitimizing the massacres. A girl aged 10 at the time of the genocide reports the words of the housewife with whom a militia member had placed her: “The time came when this igitero (gang of killers) returned. She took us to the doorstep and this lady bade us farewell, saying, ‘They are going to kill you. They will not let any of you live.’”\footnote{CNLGA, story C44USC (born in 1984).} As the children left, not a single word of compassion was said to them.

The lethal inversion of societal relations also comes out in the accounts of some rescues. Earlier, we mentioned the story of a girl (then aged 9) who had escaped the massacre in Nyarubuye. After she took refuge with other survivors in a small room that served as a kitchen for the priests, a man arrived with some courgettes and a little juice. She appreciated this kind gesture on the part of an unknown man all the more because of the way her neighbours had betrayed her: “The fact that he helped us even though he did not know us touched me deeply. But those who knew us, our neighbours, they were the ones who killed our families, even though we had no problems with each other.”\footnote{CNLGA, story C87MFC (born in 1985).}

It would be naive to think that the children’s world could simply return to normal after it had been so radically upended. Deprived of their families, filled with a total mistrust of adults, their suffering continues to express itself in their words. The ultimate form of inversion is that their pain becomes more intense with the passing of time. We shall now turn our attention to these “words of suffering”\footnote{An expression coined in French as dits de souffrance by Arlette Farge in her work Des lieux pour l’histoire, La Librairie du XXe Siècle, Seuil, Paris, 1997, pp. 16–17.}

\textit{Ishavu ry’abato (The sadness of the children)}\footnote{From the title of one of the rare collections of children’s accounts published in Rwanda: Dukundane Family, Ishavu ry’Abato: Ubuhamya kuri Jenoside yakorewe abatutsi mu Rwanda [The Sadness of the Children: Accounts of the Genocide Perpetrated against the Tutsi], Kigali, April 2009.}

Written in 2006, these accounts are a valuable opportunity for children who have become orphans to record their experiences. Their testimonies form a subjective history of the survivors, blending grief, mental anguish and material deprivation. The vast majority of those children who asked AVEGA for help said they wanted assistance in obtaining decent housing. The end of the massacres did not mean the end of their wanderings, as the destruction of a family always meant the destruction of its house and other property. A telling description of material devastation crops up repeatedly in these notebooks as the children describe their return to the hills: “We went back to our ruins.” In 1998, according to a survey by the Rwandan government, almost half the survivors were homeless.\footnote{MINALOC, above note 9, p. 25.} Very few of the children who provided testimonies were living in the orphanages to which the social workers had given the euphemistic title “centres for unaccompanied...
children”. The story of Rwandan orphanages in the immediate post-genocide period would merit a study of its own, but we shall simply mention certain aspects here. Firstly, there were not nearly enough orphanages for the number of surviving children. According to a study carried out in November 1994 by the Rwandan authorities and UNICEF, there were forty-nine centres, very unevenly distributed across the country, with over half in Butare and Kigali. Secondly, these orphanages were overcrowded, and Rwandan government policy was not only to reunite families but also for orphans to be adopted by Rwandan families. One other phenomenon no doubt explains the small number of children who were living in orphanages: they were setting up homes themselves. This social innovation, which arose out of the genocide, had a profound effect on family relationships. Boys and girls taking on the role of head of a family of orphans had been turned into mothers and fathers by the genocide. One could not put it any better than this young woman, who describes the difficult conditions she experienced following the genocide:

There were times when we could not pay [the rent] for a whole year. They [the authorities] kept lying to us, saying that they were going to build houses for us, but up until now we have been renting a house, with all these children. There are eight of us in a tiny little house. That is how we have been making progress in life. In addition to all that, one of the children [aged 14] had been infected by the AIDS virus by the man who raped her. I was feeding all these children. Afterwards, I tried to go back to school to see if I could improve my future life. Because we had no home, because we had no food and because we spent many days at the hospital because of the child that had got infected, I was not able to attend school. I went to school for a year, and then the following year I was taken up with all those things. Either I was at the hospital, or else they threw us out of the house because we had no money to pay the rent. And when I did go to school, I was always worried about these children. I would be wondering whether they had gone without food the night before, whether they had been thrown out of the house or whether they had been attacked and killed. The Hutu kept saying that those who were left would accuse them, so I was always worried. I was afraid that they had been attacked. I could not concentrate on my schoolwork. Instead of concentrating on school, I kept thinking about the lives of the children I had left behind. Everything I learned left my head as soon as I remembered the situation of


57 If we take the figures available (which we do with caution), the number of these orphanages fell from forty-nine to twenty-five between 1994 and 2003, and the number of children living in them fell from 10,000 to 3,600 over the same period. See ibid. and MINALOC, National Policy for Orphans and Other Vulnerable Children, Kigali, 2003.

58 MINALOC, above note 57.
my children. Even though I have never actually had a baby, they are my children.59

Having become a mother at the age of 19, this young woman completely accepts the role that the genocide has thrust upon her – and indeed does so with great courage. These few lines contain several references to other experiences. Firstly, there are what have been called in French les morts différées, or “postponed deaths” 60 as the genocide carried on killing after the massacres of July 1994 had come to an end. Another pointer to this long-lasting genocide – so long-lasting that one wonders whether there can ever be such a thing as an “after” – is the permanent threat from hostile neighbours. In fact, this ongoing fear extends to everything to do with adults, to such an extent that some children place their confidence in inanimate objects. These objects may include “a little patch of bush”, as in the case of this girl:

Let me explain that there were times when I was on my way to school and I saw a little patch of bush, and I looked at it, and I thought it was pretty, and I thought how nice it would be to hide in it. Also, I wanted to go in and see if anyone would find me if I hid there. We went on living, but we were afraid. We no longer trusted anyone.61

Another girl, who had been only 4 years old in 1994 and was the sole survivor from her family, did not start to talk until she was 10. She had such a deep distrust of others that she confided only in a tree. “My tree looked after me at this time, because I could not talk to people.”62

The orphans were also affected by serious psychological trauma. While the word “trauma” has entered the vocabulary of psychological theory and practice in Rwanda, it is primarily described in terms of somatic experiences, using terms specific to Kinyarwanda. Just as there was no word in Kinyarwanda to describe the event that had just occurred, there was no suitable word for describing the symptoms of the intense psychological pain linked to the genocide. It became “less acceptable, or even degrading, to describe someone as ‘crazy’ or ‘possessed’ if everyone knew full well that it was all due to the genocide”.63 A form of popular nosography has filled the gap, and the terms ihahamuka and ihungabana have become part of everyday language. The term ihungabana refers to the “distress experienced by the subject in their internal mental domain”, whereas ihahamuka – which literally means “to have ones lungs outside oneself” – conveys the idea of an “expulsion from the inside to the outside, a process

59 CNLGA, story C31UM (born in 1975) (emphasis added).
60 The author is borrowing this highly apt expression from Anouche Kunth, who used it to describe the survivors of the 1915 Armenian genocide.
61 CNLGA, story C81MI (born in 1982).
63 Ibid., p. 165.
whereby internal suffering enters the public sphere”.

The young authors regularly use both words to describe their mental anguish. As in the disturbing collective attacks of *ihahamuka* seen during commemoration ceremonies, it is through the body that they express their deep distress. Trauma comes out primarily through somatic phenomena; it is the “disease of problems” (*indarwa z’ibibazo*), as one girl rightly calls it. The children’s accounts frequently mention headaches, stomach aches and high blood pressure. They appear in a unique biographical context that mixes material deprivation and the memory of dead loved ones in an inextricable fashion.

While we were at school thinking about our little sister, all on her own with no food and no clothes, we were trying to do our schoolwork with no school supplies, no shoes, no clothes, no pullover to keep us warm. We were often ill while we were at school. … This life continued to submerge me. I saw that not one single living person loved us. I do not know what happened, but I became ill. It was the trauma [*ihahamuka n’ihungabana*].

The head and the heart are the most frequent sites of the “diseases” that the children describe. For instance, one girl says her head is “full of water”, while a boy describes his heart as “a stinking piece of rottenness”. The bodies and minds of the survivors continue to suffer the powerful aftershocks of the genocide, out of touch with the period of social and political reconstruction. Clearly, the texts do not yield a linear history of “resilience”.

**Conclusion**

There can be no doubt that seeing genocide through the “eye of childhood” means seeing it with a new intensity. Using their own words, children recreate the brutal materiality of the tragedy. Not a single taunt, not one insult, no act of cruelty escapes their descriptive skill. In the writings of the child-authors, massacres come to life in all their violence. These children are writing about the genocide in the present tense. This is a literal expression of the violence they have experienced, and we must receive it as such. We must not succumb to the temptation to interpose the filters of psychological interpretation or a

64 Ibid., p. 167.
65 We have already mentioned the most complete work on the subject – that of Darius Gishoma, *ibid*.
66 CNLGA, story C91KB (born in 1987).
67 Ibid.
68 CNLGA, story C12RNIC (born in 1982).
70 In this respect, the present author agrees with the following comment: “The notion of resiliency in children could easily become a new form of denial of trauma among children, whereby political systems evade responsibility for helping war-traumatized children.” A. Dyregrov et al., above note 29, p. 14. Such denial can easily extend beyond the confines of politics and without a doubt helps to salve our own consciences.
condescending view of their accounts. If these child-like words and their striking hyperthymesia are taken seriously, new opportunities to deepen the knowledge of the genocide will open up. Not only do these stories tell us about the many survival strategies that the victims developed, but they also give us valuable insights into the belief systems of the killers and their murderous and cruel acts. All those involved in the genocide come together in the complexity of the behaviour adopted in response to the new order imposed by the command to exterminate. The richness of this material opens up the possibility of writing an “integrated” history of the genocide, without two separated historiographies based exclusively on killers or specifically on victims: a history of the Tutsi genocide that could examine interactions between all the actors.

...And if there was also a duty to forget, how would we think about history then?

David Rieff
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Abstract
Is remembrance an absolute moral duty or is it better thought of in more ethically constricted pragmatic and empirical terms? This essay argues that both individuals and societies should strive for remembrance where possible, but accept that there are times and places where more forgetting is the only safe choice to make. One may hope that at some point in the future the need to remember will sweep away a prudential decision to forget, but while we are within our moral rights to hope that, in a given case, forgetting itself will outlive its usefulness, conflating our wishes with teleological certainties is an exercise in hubris, not morality. But on no account should memory be thought of as a categorical imperative.

Keywords: memory, duty to remember, forgetting, history.

We have no direct access to historical truth, and what we feel or assert to be true depends as much on our imagination as on our senses.

Oliver Sacks

Anyone who chooses to question the idea that both individuals and societies have an absolute moral obligation to remember the past, and above all,
never to let its horrors be forgotten, has an obligation whilst making such a case to recognize fully the hurt and offence that doing so is likely to cause, and how understandable it is that it should do so. Nanjing, Dresden, Hiroshima, Auschwitz – how could any person of conscience even fleetingly entertain the thought that any one of these paradigmatic twentieth-century catastrophes is better off forgotten? Surely, if there is a problem with contemporary attitudes toward remembrance and commemoration, it is not that we have become too obsessed with memory, but rather that we are not focused on it enough. But with apologies to Freud (and the political and ethical objections to forgetting are not without links to the psychoanalytic insight associating forgetting with the psychic dangers of repression), remembrance too has its discontents. It is all very well to speak of a duty to remember, and to correlate it with the exhortation “Never Again” – but to remember what, remember how, and remember for how long?\(^1\)

There is something unhelpfully Manichaean about the discourse of the partisans of “memory at all costs” in that for all intents and purposes they present remembrance as the party of the light struggling against the party of darkness that is forgetting, which is seen as memory’s immoral anti-principle, best shunned by all decent human beings. This sacralization of memory, whether in the literal sense or in the Kantian one of a categorical moral imperative that must never be evaded under any circumstances, serves as an effective prophylactic against thought. And as long as it persists, it is difficult to see how the current focus on the moral demands of memory could be enlarged so as to include a serious examination of the moral dilemmas of memory. To say this is emphatically not to claim that those who champion the duty of memory are blind to the difficulties inherent in their project. To the contrary, the best among them – Ricoeur, Nora, Todorov, Margalit – have understood perfectly that, no matter how important it is for a society to collectively remember,\(^2\) there can be no guarantee that such remembrance will be appropriate and will not be an abuse, or at least a misuse, of the duty to remember.

Tzvetan Todorov was especially alert to this danger. In his pamphlet “The Abuses of Memory”, he warned that “in the contemporary world, the cult of memory does not always serve good causes”, and pointed out that an obsession with commemoration had been a hallmark of Fascist Italy, Nazi Germany and Stalin’s Russia.\(^3\) But Todorov argued that it was still possible to devise some sort of general moral paradigm that would allow one to distinguish the proper uses of memory from abuses of it. It is the weakest part of his argument. But in an email he sent to me in 2016 in response to my own book on collective memory and

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1. Much as we might wish it otherwise, assuming human civilization survives for many millennia to come, there is simply no rational basis for believing that eventually even the greatest crimes and world historical tragedies that are of cardinal importance to us will never be forgotten as we ourselves will be forgotten.

2. My own view is that there is no such thing as collective memory in the strictly neurological sense as it is normally understood when speaking of individual memory, and that instead, collective memory is a metaphor for what past events the present finds relevant and how it interprets those events. But for the purposes of this discussion, the question of what we mean when we use the term “collective memory” is not as relevant as it is in other contexts.

commemoration, *In Praise of Forgetting*, which contains a long discussion of his work, Todorov ended his lengthy critique of many of the book’s key propositions with these sentences:

I accept your critique of my effort to find some sort of formal test for separating the good and bad uses of memory. I grant you: it unfortunately doesn’t exist. In reality, [such uses] are good or bad solely as a function of their context. One must therefore resign oneself to judging on a case by case basis.\(^4\)

It was a characteristically generous concession on Todorov’s part, but at the same time, from my perspective it raised more questions than it answered. Above all, who was this “one” or this “we” who was going to do the judging? It is not that Todorov was unmoved by this problem. In *The Abuses of Memory*, he himself offers the example of the Serbs during the wars in the former Yugoslavia, who used history as one of their most important justifications for “their aggression against the other peoples of ex-Yugoslavia”.\(^5\) And Todorov cited two other emblematic cases of the dangers of memory weaponized: Northern Ireland and Israel-Palestine. On the latter, Todorov quoted approvingly the terms of reference of a meeting in 1988 between Israelis and Palestinians which had included these words: “in order to begin to talk, the past must be put in parentheses”.\(^6\)

Todorov’s case-by-case basis turns out no better than his general rule in determining who will have the legitimacy to decide when what is taking place constitutes a morally licit use of historical memory and when it is a morally impermissible one. The problem is as obvious as it is intractable. Todorov is certainly not suggesting that governments can be relied upon to adjudicate wisely, as is clear from his stern critique of the *Loi Gayssot* in France criminalizing any public denial of the reality of the Shoah.\(^7\) But if it is not to be governments, it is even less likely that the pronouncements on a given case by a group of philosophers, ethicists, historians or activists would enjoy any substantial legitimacy with the parties concerned. Was the Irish Republican Army (IRA) a legitimate military force fighting for the just cause of the unification of Ireland against an illegitimate colonial power, or was it a terrorist group made up of unlawful combatants whose cause was unjust and whose methods in waging their armed struggle breached the Geneva Conventions in innumerable ways? And the same sorts of questions can be posed with regard to the former Yugoslavia, Israel-Palestine, Kashmir or Sri Lanka, to name only a few of the conflicts whose opposing parties have not just conflicting but utterly incompatible visions of the rights and wrongs both of the past and of the present.

To be sure, there will always be circumstances in which a determination of who was in the right and who was in the wrong can be imposed on a community by a hegemonic force, be it internal or external, forcing that community to lay down

\(^4\) Private email communication from Tzvetan Todorov, 17 January 2016. On file with author.
\(^5\) T. Todorov, above note 3, p. 26 (author’s translation).
\(^7\) The Gayssot Law was passed on 13 July 1990.
not only its weapons but its narratives. An obvious example of the former was post-Second World War Germany in which the victorious occupying powers were in a position to in effect implant a repudiation of Nazism into the DNA of the two German successor States, the Bundesrepublik and the DDR. As for the latter, contemporary Rwanda provides an example of how the victorious side in an ethnically driven civil war succeeded in imposing on the Rwandan people as a whole an anti-ethnic vision both of Rwanda’s past and of its future. And legitimation crises tend to dissipate or at least go very deep underground when a State or an occupier not only has a virtual monopoly of force but also demonstrates its ability and willingness to use it.

But this “total victory” model is only one of several. This is why it is so profoundly misleading to generalize about post-war settlements, including the moral settlement that the duty to remember is supposed to lead to. For it tells us virtually nothing about what is to be done after a war in which there has been neither a clear victor nor a clear loser, a conflict that ends with a messy, more often than not unjust peace accord that leaves both sides seething, unreconciled, nursing their grievances, cultivating their hatreds. This is what one sees when one crosses from Loyalist East to Republican West Belfast, from Tel Aviv to Hebron, or from Sarajevo to Pale. And in these contexts, no outsider’s judgments, no matter what their merits, are likely to carry much weight, for they share neither the same starting point nor the same ethical basis. Insiders are a different matter, of course, but the problem is that in most intractable conflicts the cosmopolitans, the activists of “enlightened” civil society, find themselves politically marginalized and too often dependent on outside institutions for funding, which is itself delegitimizing in the eyes of many of their fellow citizens for whom they hope to offer humane alternatives to the rule of the gun, the plutocrat, or the populisms of either the right or the left.

It is in these places—the Northern Irelands, the Israel-Palestines, the Bosnias and the Colombias—that the moral superiority of memory over forgetting which Ricoeur and Margalit largely taken for granted needs to be questioned. To make this claim is not at all an effort simply to invert George Santayana’s celebrated contention that “those who cannot remember the past will

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8 This is obviously a gross oversimplification in the sense that the work of de-Nazification, begun by the occupying powers, was completed by Germans themselves; indeed, one can make a pervasive claim that the so-called successor trials of Auschwitz concentration camp guards did more to alter German public opinion away from any lingering Nazi sympathies far more effectively than the Nuremberg Trials did.

9 Todorov is more cautious. In a public conversation he had shortly before his death with the psychiatrist and writer Boris Cyrulnik, Todorov not only warned against “the Manichaeanism of judging” but went on to insist that “the temptation of the good is much more dangerous than the temptation of evil”, presumably Todorov’s own gloss on Pascal’s aphorism “Whoever wants to act the angel, acts the beast.” See Boris Cyrulnik and Tzvetan Todorov, Le tentation du bien est beaucoup plus dangereuse que celle du mal, Nouvelles Editions de l’Aube, La Tour d’Aigues, 2017; Avishai Margalit, *The Ethics of Memory*, Harvard University Press, Cambridge, MA, 2000; Paul Ricoeur, *Memory, History, Forgetting*, University of Chicago Press, Chicago, IL, 2006.
be condemned to repeat it”. To the contrary, where it is feasible during wars and dictatorships and in their aftermaths, it is clearly preferable to remember (though the advantages and risks of commemoration in such periods are less clear-cut). The reasons for this are obvious, even to this sceptic of a categorical imperative to remember. To begin with, remembering thwarts the efforts of totalitarian and other tyrannical regimes guilty of crimes against their own people to conceal what they did. It provides victims of these regimes, as well as the family and friends of those victims who were murdered, with both information about what happened and State acknowledgment that it happened, which is of benefit not only to those immediately concerned but to society as a whole. Finally, it opens the possibility that those who committed these crimes will be tried for them.

The experience of the countries of the Southern Cone of Latin America – Chile, Argentina and Uruguay – shows clearly that although the process was in none of these three instances a smooth or a linear one, it is absolutely possible to secure truth, justice and peace without making any significant concessions to either the leaders or the foot soldiers of their respective dictatorships (or, for that matter, the very substantial part of their citizenries that supported them). In short, everything else being equal, remembering is to be preferred both because memory facilitates criminal justice (whereas forgetting facilitates impunity for the perpetrators of crimes or injustices) and because forgetting stands in the way of the sorts of political and economic change that are needed if there is ever to be social justice.

But note the caveat: everything else being equal. For that is precisely the point – when is everything else equal? Take South Africa, for example. At first glance, the defeat of the Apartheid regime in 1994 and the establishment of a democratic government for the first time in the country’s history should have been at least as promising a context for truth with justice as that which obtained in Chile, Argentina or Uruguay. For unlike the countries of the Southern Cone, where, depending on the period, a majority or near-majority supported the dictatorships or were at a minimum ambivalent about them, the overwhelming

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11 If forgetting is, as I believe it to be, still judged by the great majority of people of conscience to be, well, unconscionable, this is at least partly because the imperative to forget in the name of a particular society “moving on” has been the last moral refuge of some of the vilest people on Earth, from South Africa to Chile. It is not only invariably in the service of the goal of securing legal impunity but is often (as in the case of South Africa) also an effort to protect from legal and political challenge the economic benefits those who served the dictatorship accrued from that service, and more generally “muzzling black pain and easing white guilt”, as the South African writer Pearl Boshomane has described it. See Pearl Boshomane, “20 Years after the TRC Hearings South Africa’s Pain Persists”, *Sunday Times*, 10 April 2016, available at: [www.timeslive.co.za/sunday-times/opinion-and-analysis/2016-04-10-20-years-after-the-trc-hearings-south-africas-pain-persists/](http://www.timeslive.co.za/sunday-times/opinion-and-analysis/2016-04-10-20-years-after-the-trc-hearings-south-africas-pain-persists/) (all internet references were accessed in December 2018).

12 This was done more successfully in Chile and Uruguay than in Argentina, where even today, though the governments of Nestor Kirchner (2003–07) and Cristina Fernandez de Kirchner (2007–15) overturned amnesty laws instituted by their predecessors and restarted the trials of those who had committed crimes during the dictatorship, many of the relatives and friends of the victims are no wiser about how their loved ones died or what was the fate of many of the children they bore in captivity than they were in the immediate aftermath of the restoration of democracy in Argentina.
majority of South Africans were jubilant at the end of Apartheid. In political and judicial terms, the victory of the democratic forces was a crushing one, but in military and constitutional terms, it had been nothing of the kind. Loyalists of the dictatorship still controlled the army, while the new South African Constitution was the product of a negotiation between the National Party that had ruled under Apartheid and the African National Congress (ANC). These were the realities that informed the lacerating conclusion drawn by Nelson Mandela’s new government that it would be impossible for it to impose either transformative economic change or criminal justice towards the butchers of the former regime. As critics of the Truth and Reconciliation Commission (TRC) argued at the time, the process was one that traded truth for justice. A torturer could present himself before the Commission and, provided he admitted what he had done and replied truthfully to the commissioners’ questions, he would be immune from prosecution no matter how grave his crimes.

Mandela’s reasoning for why this was necessary was quite straightforward: the risk of an uprising by diehard whites for whom amnesty for the crimes of Apartheid was the sine qua non for acquiescing to a democratic South Africa was simply too great.

As a result, Mandela found himself faced with the worst-case scenario that Ricoeur had warned against in Memory, History, Forgetting, one in which what he called “the thin line of demarcation separating amnesty from amnesia” would be crossed, and in which “private and collective memory would be deprived of the salutary identity crisis that permits a lucid reappropriation of the past and of its traumatic charge”. This certainly does not mean that the TRC served no useful purpose. To the contrary, a central moral purpose of the duty to remember is to enable the relatives of the victims of criminal regimes to finally learn what actually happened to their loved ones. But those who champion the moral imperative of remembrance make a wider claim, which is that collective memory serves the goal of human emancipation and not further enslavement. Given the realities of present-day South Africa, it is difficult to see how the TRC did anything of the sort.

And at least some accountability, however insufficient, was a realistic expectation in the South African case; the victory of the ANC had made that possible, if little else. But when one shifts focus to other post-conflict societies such as Bosnia or Northern Ireland – that is, to cases in which there is neither a

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13 White South Africans were the sole exception, for obvious reasons, though at least a substantial minority of whites accepted that the end of Apartheid was inevitable, and a small but not insignificant minority believed it to be desirable.

14 Many of those who were granted amnesty were wholly unrepentant, as in the case of Jacques Hechter, formerly a captain in the Northern Transvaal police, who admitted to the TRC that he had murdered twenty-six people but also said, “I did a good job, and I’d do it again.” See Susie Linfield, “Trading Truth for Justice? South Africa’s Truth and Reconciliation Commission”, Boston Review, 1 June 2000, available at: http://bostonreview.net/world/susie-linfield-trading-truth-justice.

15 See P. Ricoeur, above note 9, p. 456.

clearly victorious nor a clearly vanquished side—even lower expectations are required regarding what remembrance can achieve. If in South Africa the duty to remember had failed to live up to the claims made for it, in Northern Ireland and the former Yugoslavia the duty to remember had been viewed as having been incompatible with securing a peace agreement in the first place, and as remaining immiscible with the continuation of that peace. In Bosnia, the dominant view in each of the three principal communities—Bosniak, Serb and Croat—about what happened during the war is quite irreconcilable with those in the two others. In theory, it’s possible that had the European Union, the United Nations or NATO chosen to maintain Bosnia-Herzegovina indefinitely as some sort of colony, a single version of the past could eventually have been imposed on all three groups. But there was certainly no willingness on the part of the major outside actors to make such a commitment. Nor was success assured, and if the last fifteen years have taught us anything, it is that occupations are wickedly difficult to get right.

The case of Northern Ireland has been even less promising. Ever since the Good Friday Agreement of 1998 brought the fighting to an end, it has been clear to everyone but the most diehard human rights fundamentalists that there was no realistic possibility in the near or medium term of arriving at a consensus about what happened during the thirty years of low-intensity guerrilla war that is rather euphemistically known as “The Troubles.” If in Bosnia the uneasy Bosniak–Croat condominium got one statelet and the Serbs the other, in Northern Ireland the price of peace was the handing over of political control of the province to the belligerents themselves, with the political leader of the leading Unionist party becoming first minister of Northern Ireland and the former commander of the IRA becoming his deputy. To emphasize this point is in no way to belittle the civil society initiatives aimed at fostering reconciliation, almost all of which have been constructive and some of which have been absolutely heroic. But even today, a full two decades after the Good Friday Agreement, and at a moment when the Loyalist–Republican coalition has rarely been more dysfunctional, few people believe that the time is yet right to break the de facto public silence about the past. To do so would simply be too great a risk to what social harmony has been forged in post-war Northern Ireland.

This is certainly the view of the belligerents themselves, and that of a wide cross-section of the civil society out of which they emerge and on whose loyalty their legitimacy is based. But the conviction that peace is best served by forgetting rather than remembering is grounded in history as well as ideology. In his 2010 book *The Imperative to Forget and the Inescapability of Remembrance*, the German classicist Christian Meier looked at post-war settlements going back to the conclusion of the Peloponnesian War, and passing through the unsuccessful effort by Henri IV

[17 Speculating on what may happen in any given society in the very long run is best left to soothsayers.
18 The concept of civil society is too often misrepresented as describing those non-governmental groups that *bien-pensant* people think well of—an Amnesty International, say, or the food rights group Via Campesina. But as a descriptive term rather than a prescriptive one it surely applies just as much to Protestant lodges in Ulster that supported the Loyalist paramilitaries or to the civic groups in Serb areas of Bosnia that supported the Siege of Sarajevo.]
of France to end the Wars of Religion in sixteenth-century France through the issuing of the Edict of Nantes in which the French people were commanded to forget, and the Treaty of Münster in 1648 that successfully ended the Thirty Years’ War by decreeing “perpetua oblivio et amnestia”, up to and including our own era. What he found was that it has been an imposed public silence about the past and not public remembering that has promoted the peace and kept renewed conflict at bay.19 To believe otherwise either presupposes that war has become an atavism destined to disappear – which, given that historically war and not peace has been the constant in human history, requires one to believe that our era represents the most radical break imaginable with the species’ entire past – or is just wishful thinking, pure and simple.

But it is precisely this view of our own time as being sui generis that informs much of the contemporary human rights movement, with its adherence to the view best expressed by Michael Ignatieff that the post-1945 era had been one in which a largely successful “revolution of moral concern” had taken hold of humanity’s collective conscience. On this view, it is anything but magical thinking to insist that Martin Luther King was right when he said that “there can be no justice without peace and there can be no peace without justice”.20 But even Human Rights Watch, which has advanced the most uncompromising case for refusing to forego justice in the name of peace, has acknowledged that “there is not one formula that is suitable to all situations”, and that “well-known counter-examples do exist”.21 The example that Human Rights Watch cites is Mozambique, which it concedes never meted out any form of justice for the crimes committed during the civil war but has remained stable since the peace agreement of 1992 that ended the conflict. My own view is that Northern Ireland and Bosnia are equally powerful counter-examples. But even if I am wrong about both, the fact that counter-examples exist – as, per Human Rights Watch, they undeniably do – radically undermines the case for the duty to remember being regarded as a categorical moral imperative.

Meier’s work largely vindicates this view, but with the notable exception of Auschwitz, which he presents as an exceptional case.22 In this, he approaches the view expressed by Hannah Arendt when she laid down as a necessary prerequisite that “[i]n fear and trembling finally to grasp all that humanity is

22 See C. Meier, above note 19.
capable of – that is indeed a precondition of modern political thought”. Implicit in this view is the idea that it is a precondition of any decent modern political order as well. This Auschwitz exception is one that many people of conscience and historical sophistication continue to insist upon without any illusions, contra the Human Rights Watches of this world, about what the immediate effects of memory on peace are likely to be. And on one level, the claim is unarguable in that it is a metaphysical assertion, and as such immune to falsification. A moralist is perfectly within his or her intellectual rights to say: “It doesn’t matter whether remembering will help communities formerly at one another’s throats to reconcile; remembering is a moral imperative whatever its practical effects, even if those effects historically have often been negative for the at-risk polities in question.” Indeed, while I do not share it, it seems to me that only the moralist’s claim and not the pragmatist’s, let alone the legalist’s, supports the assertion that there is a blanket duty to remember.

Where does all this leave those of us who are not confident about what is an absolute moral duty and what must be thought of in admittedly more ethically constricted pragmatic and empirical terms? The short answer, I think, is that one should strive for remembrance where possible, but accept that there are times and places where more forgetting – by which, again, I mean silence in the public spaces and contexts of the State and of civil society – is the only safe choice to make. One may hope that at some point in the future the need to remember will sweep away a prudential decision to forget. But while we are within our moral rights to hope that, in a given case, forgetting itself will outlive its usefulness (something that seems to have been taking place in Spain over the course of the past decade with regard to the memory of the Civil War), conflating our wishes, however well-intentioned, with teleological certainties is an exercise in hubris, not morality. So no, no sacred duties, no categorical imperatives – either for memory or for forgetting.

24 Annette Becker’s work is a fine articulation of this view.
25 Despite being the intellectual rock upon which the human rights movement has founded its church, the claim that memory is a moral requirement for all societies at all times because a swelling canon of international law mandates justice for perpetrators of genocide, crimes against humanity and grave breaches of international humanitarian law is actually an extremely weak justification for the duty to remember. The most obvious (of several) problems with this position is that it attempts to present the law as being above or beyond politics and ideology, thus conflating law and morality to a degree that even Carl Schmitt would have found caricatural. This reliance on the law as morally unchallengeable is also what has led to the current crisis of international humanitarian law, which seems quite incapable of adjusting to the fundamental changes in the nature of warfare that we are witnessing today.
Eradicating war memories: Neuroscientific reality and ethical concerns

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Abstract

Traumatic memories of war can result in mental disorders such as post-traumatic stress disorder (PTSD). PTSD is characterized by intrusive trauma memories and severe stress responses with devastating personal and societal consequences. Current treatments teach patients to regulate trauma memories, but many experience a return of symptoms even after initially successful treatment. Neuroscience is discovering ways to permanently modify trauma memories and prevent the return of symptoms. Such memory modification techniques (MMTs) have great clinical potential but also important ethical, legal and social implications. In this article, the authors describe

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PTSD, the role of memory in PTSD, its effects on the brain, and the limitations of current treatment methods. Then, the state of the art of the neuroscience of MMTs is presented. Within this realistic scientific framework the authors will discuss the ethical, legal and social implications of MMTs for the treatment of war-induced PTSD, especially in a military population. Three major sets of issues will be focused on: safety and social justice concerns, concerns about threats to authenticity and identity, and the possible legal and moral duties to retain certain memories. Finally, the article concludes that within scientific reality, concerns are limited and do not outweigh the potential benefits of developing treatments for patients.

Keywords: war, post-traumatic stress disorder, memory modification, neuroscience, ethics.

Introduction

War can leave people with traumatic memories that can trigger mental disorders, such as post-traumatic stress disorder (PTSD). People with PTSD are haunted by intrusive traumatic memories that evoke severe fear responses. PTSD causes great suffering for affected individuals and weighs heavily as a disease burden on society. Current treatments help patients regulate fear, but many patients do not benefit from available treatments or experience a return of symptoms even after initially successful treatment. This highlights a need to develop more effective and persistent treatments.

Neuroscience is discovering ways to modify or even eradicate specific emotional memories. Memory modification techniques (MMTs) have great potential to prevent or treat PTSD as they could be used to target trauma memories, which are at the root of suffering in PTSD. MMTs might therefore become a valuable instrument in the care of the wounded and sick, which has always been one of the central preoccupations of international humanitarian law and is the original purpose of the Red Cross movement.

Given the intimate connection between memories and personal identity, and the social significance of some memories, MMTs also have considerable ethical, legal and social implications. Bioethicists have debated these implications extensively. Much of that debate, however, has taken place in broad terms, without being entirely clear what concerns or normative challenges relate to all uses, including therapeutic uses, of MMTs, and what concerns apply only to abuses or misuses (however those might be defined).

The bioethical discussion sometimes loses track of what is scientifically possible or even probable. We believe that, to reach a defensible conclusion, one must consider the actual effects (both intended effects and side effects) of MMTs.


2 For more information, see the section “Ethical, Legal and Social Issues” below.
We do not deny the value of speculating about scientific developments, which may help identify problems worthy of further contemplation, and we agree with the idea that “ethical reflection should precede technological [and scientific] progress and possible future applications”. But judgements about the propriety or otherwise of biomedical interventions should be passed on the merits of those interventions, rather than on the basis of what other (more potent, more dangerous, etc.) interventions might be developed in the future. After all, to a sufficiently conservative observer, every advance in science and technology looks like the thin edge of some wedge. Moreover, an overly speculative approach can result in scientists discarding ethical concerns as unrealistic and refraining from participating in debate.

In this paper, we aim to do two things. First, we provide an overview of the neuroscience of traumatic memory and MMTs. We describe how traumatic memories contribute to mental disorders, particularly PTSD, and impact the brain, and we discuss current treatment methods for PTSD, their limitations, and the state of the art of MMTs. Second, drawing on these neuroscience insights, we discuss some ethical, legal and social implications of utilizing neuroscience to treat traumatic memories of war, especially in military populations. We focus on three major sets of issues: safety and social justice concerns, concerns about threats to authenticity and identity, and the possible legal and moral duties to retain certain memories.

War, psychological trauma, and the brain

Here we will provide a brief introduction to PTSD, discussing what it is, how commonly it occurs, what role memory plays in its development and treatment, and what impact psychological trauma (Latin for “wound”) has on the brain.

PTSD as a mental disorder

PTSD is a mental disorder that can develop after severely distressing events such as war, sexual assault or witnessing a death, resulting in a traumatic experience that damages the mind (psychological trauma) by impacting the brain (physiological trauma). People with PTSD persistently re-experience the traumatic experience via intrusive thoughts, nightmares, “flashbacks”, and emotional and physical distress. They suffer negative thoughts and feelings, avoid trauma-related

reminders and experience hyper-arousal symptoms such as irritability and difficulties concentrating or sleeping. In response to trauma-related stimuli they often experience dissociative symptoms such as depersonalization (“this is not happening to me”) or derealization (“things are not real”). Patients often report feeling as if the traumatic event is happening in “real time” instead of in the past, which evokes a sense of current threat.

Beyond psychological symptoms, people with PTSD often experience interpersonal, psychosocial and health problems. For example, they are at an increased risk of cardiovascular disease, drug addiction, intimate partner aggression, divorce, job loss and confrontations with the legal system. The economic burden of PTSD to society during the 1990s was estimated to be $42.3 billion per year, which will have likely risen by now due to the generally increasing medical costs.

Prevalence of PTSD

Exposure to psychological trauma is a common occurrence. An estimated 50% of men and 60% of women experience at least one trauma during their lifetime. Around 8% of these men and 20% of these women develop PTSD. In a given year, 8% of the general population has a current diagnosis of PTSD. Extrapolating, this means that ~26 million people in the United States, ~41 million in the European Union and ~110 million in China currently suffer from PTSD; numbers for developing countries might be even higher, as exposure to stressors may be greater.

The prevalence of PTSD amongst soldiers is higher than in the general population. Of the roughly 2 million US soldiers who served during Operations Iraqi Freedom, Enduring Freedom, Desert Shield and Desert Storm, 10–20%, or some 200,000–400,000, experienced PTSD in a given year. It is estimated that 30% of the approximately 3.4 million US soldiers (that is, roughly 1 million) who served in Vietnam will experience PTSD in their lifetime. Amongst civilians in

13 R. C. Kessler et al., above note 9.
armed conflict situations, the prevalence of PTSD is also around 30%.\textsuperscript{16} Given the nature of contemporary conflicts, however, many more civilians than soldiers experience war and thus end up suffering from PTSD.\textsuperscript{17}

**PTSD and memory**

While a number of psychological theories on PTSD have been put forward, memory plays a critical role in all of them.\textsuperscript{18} Indeed, PTSD might even be considered a memory disorder.\textsuperscript{19}

The defining onset of PTSD is a traumatic experience that results in the formation of a traumatic memory. The severity and the perceived threat of the traumatic experience predict PTSD severity,\textsuperscript{20} and are also factors known to strengthen memory formation.\textsuperscript{21} Moreover, PTSD may develop because the traumatic experience shatters our learned assumptions and beliefs about the safety of our world.\textsuperscript{22}

PTSD is characterized by intrusive memories. The content of intrusive memories often includes trivial stimuli or situations that preceded the traumatic event.\textsuperscript{23} For example, a war veteran may have intrusive memories of rustling leaves that were seen or heard prior to the emergence of enemy soldiers from the jungle. Such memories may serve as “warning signals” that are later interpreted as signals of impending danger and thus evoke a sense of current threat. As such, intrusive memories are learned predictors of danger that come to evoke defensive responses, avoidance behaviours and involuntary retrieval of thoughts, feelings and memories of the traumatic event.

People with PTSD involuntarily re-experience intrusive memories as if happening in “real time”, but often have difficulty purposefully recollecting the trauma memory.\textsuperscript{24} They tend to recall disjointed fragments of the traumatic


\textsuperscript{18} C. R. Brewin and E. A. Holmes, above note 5.

\textsuperscript{19} E. B. Foa, G. Steketee and B. Olasov Rothbaum, above note 5.


\textsuperscript{24} E. B. Foa, G. Steketee and B. Olasov Rothbaum, above note 5; A. Ehlers and D. M. Clark, above note 5; C. R. Brewin and E. A. Holmes, above note 5.
event; recall is often not chronological but jumps back and forth in time between events, and unlike in ordinary memory retrieval, people often get “stuck” or “hung up” on particular details and feelings. As such, traumatic memories in PTSD may be processed differently from ordinary emotional memories and may be qualitatively different and possibly stored differently in the brain.25

Many who experience psychological trauma will initially develop PTSD-like symptoms, but most will learn to overcome these symptoms over time.26 Only a portion of people who experience trauma will not learn to control traumatic symptoms and will develop PTSD.27 Thus, disturbances in learning to control emotional responses and memory for situations of safety also contribute to PTSD.

Effects of trauma on emotional memory systems in the brain

People with PTSD exhibit enhanced responses to aversive stimuli indicating hypersensitivity of the nervous system to stress, and hyper-reactivity to trauma-related stimuli. PTSD is associated with abnormalities in neurotransmitters (chemicals that allow communication between brain cells) and stress hormones, such as noradrenaline, serotonin and cortisol, as well as brain structure and function in regions involved in emotional memory and emotion regulation.28 Brain abnormalities have been observed in the amygdala (important for learned threat responses), ventromedial prefrontal cortex (critical to inhibition of threat responses) and hippocampus (important for behavioural inhibition and memory for episodic events). This may explain the hyper-arousal and hyper-reactivity symptoms, inability to regulate fear, fragmentation of memory for the traumatic event, and re-experiencing of symptoms in PTSD. These abnormalities may constitute vulnerability factors, or may be acquired following trauma exposure, or may interact to contribute to PTSD.

Current treatments and their limitations

Treatments for PTSD continue to be developed based on advancing psychological and neuroscientific insights into the disease. Antidepressants, specifically selective serotonin reuptake inhibitors (SSRIs), are the most commonly prescribed

27 Ibid.
pharmacotherapies for PTSD. However, SSRIs are only moderately effective for treating PTSD and are less effective than psychotherapy. The primary psychological intervention for PTSD is exposure treatment. In exposure treatment, patients are guided to vividly imagine the traumatic experience until their emotions reduce. People are asked to describe details of the traumatic experience and to re-evaluate and reinterpret stimuli, their meaning, and responses. The goal is to reduce emotional responses and avoidance, and increase the feeling of control.

Most modern psychotherapies have integrated exposure treatment with other behavioural and cognitive approaches. This can include reconstructing the traumatic experience in chronological order, learning to distinguish between stimuli and events that happened during the trauma experience (“then”) and innocuous stimuli that trigger re-experiencing symptoms in the present (“now”), substituting negative thoughts for positive associations, and acquiring relaxation techniques, so that patients regain a sense of control over their emotions.

Psychotherapy is effective in reducing PTSD symptoms and reaching remission. However, the majority of patients experience (some) return of symptoms even after initially successful treatment. This indicates that although psychotherapy for PTSD aims to restructure memory, it probably does not change the trauma memory itself, leaving the risk of a return of symptoms.

Neuroscience of memory modification

Modern neuroscience is discovering techniques to permanently modify the original threat memory itself, which has great potential for developing novel treatments for psychological trauma. To understand the clinical, ethical, legal and societal implications of MMTs, it is imperative to first understand something about the cognitive neuroscience of memory.

What is memory?

Memory is the capacity for persistence of information over time. For the purposes of cognitive neuroscience, memory can be defined as an internal representation of an experience captured in a physiological change in the brain, enabling the expression of the earlier experience in thought or behaviour. This definition contains two

30 Exposure treatment is based on extinction learning in Pavlovian conditioning; see text accompanying notes 46–48 below.
32 See C. R. Brewin and E. A. Holmes, above note 5.
33 M. L. van Etten and S. Taylor, above note 29.
34 B. Vervliet, M. G. Craske and D. Hermans, above note 1.
35 See text accompanying notes 48–50 below.
components: the expression of memory in thought or behaviour, and its neural underpinning. The latter component is called an “engram” or “memory trace”.37 This also means that with anything you learn, you are changing your brain.

Different “types” of memory

Different behaviours and thoughts are supported by distinct neural systems that all have the capacity for memory.38 As a result, psychologists have distinguished between different types of memories.39

Two memory types that contribute to PTSD and that we will mainly discuss here are conditioned memories and episodic memories.40 Aversive conditioned memories can be formed via Pavlovian threat conditioning where pairing a stimulus (such as a sound) with an aversive outcome (such as pain) can come to evoke defensive responses (for example, changes in heart rate), indicating the formation of an association between the stimulus and the outcome in memory.41 Such conditioned threat memories may contribute to the hyper-arousal and re-experiencing of symptoms evoked by “warning signals” in PTSD.42 Episodic memory involves memories of particular experiences that include associations between who, what, where, when and why43 – for instance, recalling “in our mind’s eye” a particularly distressing war experience. Episodic memories play a role in the re-experiencing of autobiographical events of the traumatic experience in PTSD. For example, “flashbacks” involve the reliving of the traumatic episode as if happening in real time. Furthermore, episodic memory of the traumatic experience is often fragmented in PTSD, and in extreme cases people may have no episodic memory of the traumatic event at all (amnesia).

Hence, different “types” of memory contribute to distinct symptoms in PTSD. But how are these memories formed, and why are they so difficult to control or modify?

Neuroscience of memory formation

Experiences create patterns of neural activation in the brain via our senses. The formation of a memory of an experience involves the strengthening of connections between brain cells activated by an experience and requires

42 A. Ehlers and D. M. Clark, above note 5.
43 L. R. Squire, above note 39.
neurotransmitter signalling, gene transcription and protein synthesis. Drugs or other interventions administered right before or after learning – that is, at the moment of acquisition of information of an experience – can impair memory. However, the same interventions administered hours after learning no longer have an effect on memory. This has led to the standard view on memory, which suggests that memories are initially labile (meaning they are sensitive to modification by interventions) but stabilize over time during a period of “consolidation”, after which they are stable and can no longer be modified. Neurotransmitters and hormones that are released during emotional experiences, such as noradrenaline and cortisol, can strengthen consolidation and as such result in an emotional memory enhancement. At the same time, this implies that immediately before and after a traumatic experience, there may be a brief window of opportunity to prevent a trauma memory from becoming permanently stored or to minimize its emotional enhancement.

Extinction and the return of symptoms

Patients often come into a therapist’s office long after a trauma memory has formed and been consolidated. The often-observed return of PTSD symptoms even after initially successful psychotherapy can be explained because treatment (particularly exposure treatment) is based on principles of extinction learning of Pavlovian conditioning. During extinction training, a threatening stimulus is repeatedly presented without an aversive outcome so that over time the person will stop displaying threat-related defensive responses. However, extinction learning does not modify the original threat memory. It rather forms a novel safety memory in the ventromedial prefrontal cortex that inhibits the expression of threat responses in the amygdala, and this can give way to the return of threat responses with the passage of time, changes in context or increases in arousal.

From an evolutionary perspective it makes sense not to overwrite a conditioned threat memory, as the threat memory is adaptive and protects us from danger. However, the unfortunate result is that psychotherapy most likely also does not alter the original trauma memory but forms a novel safety memory, even though trauma memory is clearly maladaptive/harmful in PTSD. This leaves the risk of the return of symptoms even after initially successful treatment.

45 Ibid.
46 Ibid.
47 See text accompanying note 68 below.
48 B. Vervliet, M. G. Craske and D. Hermans, above note 1.
50 B. Vervliet, M. G. Craske and D. Hermans, above note 1.
Flexibility of memories

Notwithstanding the stabilization and persistence of memories, it is known that memories, particularly episodic memories, can be flexible. Most of what we initially remember, we forget within twenty-four hours. What we still remember after twenty-four hours, we forget at a much slower rate. When witnessing distressing events such as the Challenger Space Shuttle explosion or 9/11, we are often very sure about the accuracy of our episodic memories, but in fact we accurately remember only around 30%. Furthermore, with a bit of suggestion, it is possible to make people remember things that never happened, like being lost in a mall as a child.

We thus forget most of what we initially remember, and our memories can be highly inaccurate or even completely false. This flexibility of episodic memory is adaptive, as it helps us to survive. Our environments continuously change, and forgetting may allow us to get rid of outdated and unimportant information and keep our memory “fresh”. At the same time, updating of episodic memories through new experiences and integration of memory from different experiences help us to better describe regularities of our environment. What is still unclear is whether the memory flexibility described here results from a modification of the original memory or confusion between different memories at the time of retrieval. Regardless, when discussing the ethical, legal and social implications of MMTs, it is critical to realize that memories are not a veridical reflection of the past but serve to support adaptive responses and decision-making in the future.

Memory reconsolidation

As discussed above, the classical view on memory suggests that memories are initially labile but stabilize over time during a period of consolidation, after which they remain essentially unchanged. Hence, consolidation provides a brief time window after learning to interfere with memory formation and potentially for prophylactic use of MMTs to prevent the development of PTSD. But the standard view on memory indicates that once memory is consolidated, MMTs would no
longer be able to prevent PTSD. Contemporary neuroscience, however, has challenged the classical view on memory and suggests that it is possible for MMTs to modify consolidated memories. We will first discuss laboratory studies on modification of consolidated memories, and will then turn to clinical studies.

In a seminal study, Karim Nader and colleagues used rats to show that a brief reminder can reactivate a consolidated threat-conditioned memory and temporarily return the memory to a labile state requiring re-stabilization processes (such as protein synthesis), referred to as reconsolidation. It was found that disrupting reconsolidation processes by blocking protein synthesis can result in the loss of the conditioned threat responses and prevent their return. Note that Nader and colleagues purposefully do not call this memory erasure; as such a null hypothesis is scientifically impossible to confirm. In addition, we believe we should refrain from using the term “erasure”, as such terminology may spark unnecessary negative sentiment among the public.

To disrupt reconsolidation, Nader and colleagues injected a toxic protein-synthesis inhibitor, which is clearly not safe for use in humans, into the brains of rats. Subsequent laboratory experiments showed that the administration of noradrenaline antagonists (or “beta-blockers”, such as propranolol) could also disrupt reactivated memories and prevent the return of threat-conditioned responses in rodents and humans. Note that the disruption of memory by interventions such as beta-blockers only occurs under specific circumstances, namely, when memory is reactivated by a brief reminder and when the intervention is administered within a short time period after the reminder – that is, during the reconsolidation window. Furthermore, behavioural interventions may also impair reconsolidation: reactivating a conditioned threat memory to return the memory to a labile state and then administering extinction training during the reconsolidation window (reactivation–extinction paradigm) can also prevent the return of conditioned threat responses. Here the idea is that when memory is returned to a labile state, extinction can overwrite or update the original threat memory and thus negate the formation of a separate safety memory. Hence, the reactivation–extinction paradigm suggests that existing exposure treatments could be optimized by a minor change in procedures. Collectively, these laboratory experiments suggest that pharmacological and

58 Ibid.
behavioural interventions, such as the use of beta-blockers or reactivation–extinction training, can disturb reconsolidation of reactivated threat-conditioned memories (e.g. memory for tone–shock associations) resulting in the loss of the expected reaction to a learned threat.

Interestingly, initial laboratory studies in humans indicated that reconsolidation interventions (both beta-blockers and behavioural interventions) specifically disrupted threat-conditioned defensive responses (e.g. sweating or startle responses) but left intact participants’ ability to explicitly recall the threatening experience to mind.61 This has led to the suggestion that reconsolidation interventions affect only the “emotional” component of memory and preserve episodic memory.62 However, subsequent studies indicate that reconsolidation interventions with beta-blockers and behavioural manipulations can diminish the emotional enhancement of episodic memory and that electrical brain stimulation can even fully eradicate specific episodic memories in humans.63 For example, in one study people who received electroconvulsive treatment (ECT) for unipolar depression learned two slide-show stories a week prior to treatment.64 Right before ECT, the participants were briefly reminded of one of the two stories to reactivate memory for this specific story. One day after the reminder and ECT, people could explicitly remember the story that they were not reminded of but could no longer remember the story of which they had been reminded. Thus, reconsolidation interventions can modify specific reactivated conditioned memories as well as episodic memories.

That said, reconsolidation interventions do not cause general memory impairments – meaning they do not impair all memories that we have.65 Only the specific memory that is reactivated and returned to a labile state can be modified.

From a clinical perspective, there are a number of limitations to reconsolidation interventions. First, evidence for reconsolidation has been obtained across many experimental paradigms and species, but not all studies have yielded positive results.66 Second, older memories, especially episodic memories, appear less sensitive to reconsolidation interventions.67 Third, much is still unknown about the conditions under which memories do and do not return to a labile state and can be modified. Fourth, if memory is reactivated but no intervention is administered or if interventions fail, reconsolidation strengthens

61 D. Schiller et al., above note 60; M. Kindt, M. Soeter and B. Vervliet, above note 59.
65 K. Nader and O. Hardt, above note 56; M. C. W. Kroes et al., above note 63.
66 M. C. W. Kroes et al., above note 63.
67 Ibid.
memory. Hence, the opportunity to use reconsolidation-intervention techniques to treat patients who often have had traumatic memories for many years may be limited and, if interventions fail, reconsolidation may inadvertently strengthen trauma memories. Much research is still needed to translate this laboratory research into effective clinical applications.

Reactivating a memory can provide an opportunity for interventions to steer the reconsolidation of a specific maladaptive memory in a particular direction and potentially treat stress and anxiety disorders, including PTSD. Importantly, reconsolidation interventions would require only minor changes to existing psychotherapeutic behavioural procedures (for example, adding a brief memory reactivation prior to standard exposure treatment) or would involve a precise combination of psychotherapy and administration of a single dose of medication.

Clinical trials of memory modification technology

Based on laboratory experiments, several clinical trials have investigated the potential to use MMTs to prevent the formation of trauma memory, enhance exposure treatment, or impair reconsolidation of trauma memory to treat patients.

The administration of a beta-blocker to people admitted to an emergency department after a traumatic experience reduced threat responses to trauma reminders and PTSD symptoms one month later. Thus, beta-blockers may impair the consolidation of trauma memory and prevent the development of PTSD. However, the usefulness of this approach is limited, as the treatment needs to take place right after the traumatic experience to be effective, whereas most people with PTSD do not seek treatment until months after the trauma.

Another approach has been to improve exposure treatment by enhancing extinction learning – that is, by pharmacologically strengthening the formation of the safety memory that comes to inhibit threat responses. The administration of D-cycloserine (a drug that stimulates NMDA receptors, which are critical for the formation of new memories) can strengthen extinction learning, and its application prior to exposure treatment can improve treatment outcomes in patients with anxiety disorders. However, the problem is that the medication needs to be given before treatment, when the outcome of the treatment cannot yet be known: if exposure treatment ends up being successful, the medication strengthens the formation of a safety memory, but if exposure treatment ends up being unsuccessful, the medication can inadvertently strengthen the trauma memory itself.

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68 Ibid.
The advantage of reconsolidation interventions is that they theoretically allow for the modification of specific memories at any time after learning and that the intervention can be applied after controlled memory reactivation. Initial clinical trials found that targeting reconsolidation of trauma memories with beta-blockers in PTSD patients can subsequently reduce threat responses to trauma reminders and reduce PTSD symptoms. However, there are limitations to these studies, and subsequent studies have failed to replicate them. The effectiveness of a beta-blocker reconsolidation intervention to treat PTSD thus appears limited. Note that PTSD patients are haunted by intrusive emotional episodic memories that they have often had for many years, and these may be particularly difficult to modify, as explained above. In that regard it is worth noting that targeting reconsolidation to treat specific phobias, which mainly involve conditioned responses, may be more effective.

A series of interesting studies has attempted to disturb intrusive emotional episodic memories by using the computer game Tetris. In a small clinical trial, having patients who entered the emergency department play Tetris was found to reduce intrusions, and there was some evidence for a reduction in PTSD symptoms. The idea is that playing a visual-cognitive game like Tetris competes for the same limited neurocognitive resources that are necessary for the formation of emotional episodic memories and will thus disturb memory formation and prevent intrusions. A laboratory study reported that playing Tetris following memory reactivation can reduce intrusions in healthy participants (those who do not have PTSD or other psychiatric problems). It would be interesting to see whether a Tetris reconsolidation intervention could reduce PTSD symptoms in a clinical trial.

In sum, clinical trials have shown that MMTs may prevent the formation of traumatic memories, can enhance exposure treatment, and may disrupt reconsolidation of consolidated memories. However, the efficacy of clinical...
translations has so far been limited, potentially because it is unclear how to optimally target trauma memories or because not all types of memory may be equally sensitive to MMTs.79

Ethical, legal and social issues

The possible use of MMTs raises important ethical, legal and social questions. Unfortunately, these questions do not lend themselves to comprehensive and universal answers.80

For one, any analysis would hinge upon whether an MMT is used (merely) to rid a person of an unpleasant and undesirable but adaptive memory, or whether it seeks to address a serious malady such as PTSD in which trauma memory is maladaptive to normal functioning and survival. Regrettably, much of the bioethical debate concerning MMTs has taken place in broad terms, leaving room for speculation as to whether the concerns raised apply to the use of MMTs therapeutically (however that might be delimited).81 In this article, we will specifically restrict our focus to the use of MMTs in the prevention or treatment of PTSD in members of armed forces. In doing so, we do not seek to deny that MMTs could be misused or abused, but we want to avoid over-generalizing problems associated with potential abuse to the intervention as such.82 After all, the fact that the recreational use of some medications (such as amphetamines) can potentially be dangerous and a source of serious social ills surely cannot mean that treating recognized maladies (such as narcolepsy) with that medication becomes objectionable. The problem of abuse would need to be managed with appropriate regulation and the professional ethics of medical practitioners, as is the case with many other medical interventions.

Furthermore, the juncture of intervention has considerable normative significance. As we noted earlier, MMTs could be used prophylactically to prevent symptoms of PTSD from ever developing, or as treatment when symptoms of PTSD have already manifested. These two options present somewhat different dilemmas. Much of the bioethical debate so far has focused on the prophylactic use of MMTs.83 In this article, we want to draw attention to the differences and similarities of the diverse approaches from an ethical, legal and social perspective.

We begin our discussion with a foundational question, namely whether MMTs are safe and effective, and whether equitable access to them can be

79 M. C. W. Kroes et al., above note 63.
81 President’s Council on Bioethics, above note 80, is a case in point.
82 Cf. N. Levy, above note 80, p. 131.
83 But see J. Elsey and M. Kindt, above note 62.
ensured. We then turn to a set of issues that we think are at the core of the debate around MMTs – though we doubt whether those issues are strictly speaking ethical, as they appear to be more broadly societal. The first of these is the notion that by modifying memories we jeopardize identities and fail to live an authentic life. The second is that MMTs interfere in normal psychological coping processes and deny benefits of learning to deal with trauma. The third and final issue that we will consider here is that, for different reasons, we might be duty bound to retain certain memories – that is, society may require us to retain certain memories.

Safety, effectiveness and equitable access

MMTs inevitably raise questions that pertain to all new medications or therapeutic devices. First, is the intervention safe – is it relatively free of serious adverse side effects? Second, is the intervention effective – does it achieve its intended purpose in clinical practice? Taken together, these questions are concerned with whether the benefits of the intervention in addressing a malady (here, PTSD) outweigh the known risks.

We addressed the effectiveness of different interventions in the previous section. To recapitulate, while more research is necessary, there is cause for cautious optimism that certain memory-modifying interventions may indeed bring relief from symptoms of PTSD.

With regard to safety, the question becomes more contextual. Different interventions, each with a different side-effect profile, can be used to interfere with the consolidation and reconsolidation of memories. Even the beta-blocker propranolol, generally regarded a relatively benign medication,84 has some side effects. Indeed, because it is used to treat certain cardiovascular conditions, it must necessarily have cardiovascular side effects when used to produce neurocognitive effects.

Safety is a particularly pressing issue when it comes to prophylaxis. An over-generous prophylactic use would mean that many people would be exposed to the side effects of the intervention without gaining any benefits. The problem is that it is difficult to predict if and when PTSD might develop: not all traumatic events are so serious as to trigger PTSD, and not all people experiencing the same event develop PTSD.85 Thus it is not clear who should receive prophylaxis.

The magnitude of this problem depends on whether we are concerned with pre-exposure prophylaxis (that is, in anticipation of a traumatic event) or post-exposure prophylaxis (that is, immediately after a traumatic event and in any event before symptoms of PTSD have developed). Pre-exposure prophylaxis is clearly more challenging because there is an added variable: not knowing if and when a traumatic event might take place. Thus, effective prophylaxis would require the use

of long-acting interventions or keeping the person on a particular medication for days on end. Because most side effects of medications are dose-dependent, a prolonged administration of a medication is more likely to produce adverse effects.86

Aside from the consequences of long-term medication use, the medications that are likely candidates for MMTs may have an immediate operational impact, such as an impact on the ability of a soldier to perform tactically important tasks at a predictably high level. We can use beta-blockers as an illustration.

First, beta-blockers have physical side effects because they reduce heart rate. Thus, beta-blockers would likely improve the accuracy of a sniper, as they would increase his or her ability to fire shots between heartbeats. Yet, through the same mechanism, beta-blockers would reduce the volume of oxygen that the cardiovascular system can deliver to the muscles. Thus, beta-blockers would inhibit exercise performance and impair the ability of soldiers to meet the physical demands of combat.87

Secondly, beta-blockers can have effects on behaviour and cognition.88 They interfere with the actions of stress hormones and as such can reduce arousal and feelings of anxiety. Stress hormones and arousal, however, “are central to the fight-or-flight response, and they trigger the heightened awareness necessary for soldiers to survive in combat situations”.89 Thus, beta-blockers might alter the fight-or-flight response, which has evolved as a survival mechanism, to a degree that it would place the soldier in greater danger in threatening circumstances.90

Finally, beta-blockers also affect decision-making,91 raising the question as to whether they affect the way people resolve morally significant problems.92 Recent studies indicate that propranolol leads to more deontological and less utilitarian decisions (at least in certain circumstances), and that it decreases response times and increases decisiveness.93 More impulsive and less consequentialist decision-

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89 E. Donovan, above note 87, p. 70.
making can pose problems for compliance with international humanitarian law. In particular, it might influence decision-making in circumstances where the law requires a fine consequentialist calculation, such as with the principle of proportionality, which requires balancing the anticipated military effect to be gained from an attack against the incidental loss caused to civilians and civilian objects.94 Looking prospectively, medications might cause people to make different decisions than they would otherwise. Looking retrospectively, this might affect the degree of moral responsibility that could be assigned to them afterwards.95

The situation with post-exposure prophylaxis is slightly different. In effect, one variable – whether or not a traumatic event will occur – has been removed, and thus there is no need to keep people on medications preventatively for long periods; a short-term intervention may be sufficient right after a distressing event has taken place. Also, the effects on physical performance and decision-making can be discounted relatively easily on the assumption that the person will not need to engage in physically strenuous or morally taxing activities while undergoing post-exposure prophylaxis.

That does not, of course, completely obviate the problem of not knowing whom to treat, but there are other measures that can be taken to reduce that uncertainty. In other contexts, for example as concerns infectious diseases, decisions about post-exposure prophylaxis are frequently made by means of a probabilistic risk assessment and on the basis of previously adopted guidelines. This is the case, for instance, in the event of a suspected exposure to the human immunodeficiency virus (HIV)96 or the rabies virus.97

Admittedly, the risk factors for developing PTSD are not as well understood as those for developing an HIV infection or rabies. However, already in one of the earliest clinical trials of propranolol as post-exposure prophylaxis, the administration of medication to people in a hospital emergency department after a traumatic event was based on psychological and physiological risk factors.98 As our understanding of risk factors improves, more reliable guidelines can be developed for PTSD prophylaxis.

In any event, post-exposure prophylaxis of PTSD and the treatment of PTSD once symptoms have emerged would require the administration of medication only a limited number of times. This would help mitigate some of the concerns about safety.

94 See Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 51(5)(b). The article prohibits the launching of “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.
98 R. K. Pitman, K. M. Sanders et al., above note 69.
Thus, as a general matter, the use of medications for memory modification is likely to be safer than the prolonged use of antidepressants, anxiolytics, antipsychotics and hypnotics currently used in the management of PTSD symptoms.

All biomedical interventions also raise the question of equitable access. Would all those who could benefit from the intervention be able to gain access to it? Again, the fairly limited number of times a medication would need to be administered as an MMT in case of post-exposure prophylaxis or treatment would likely mean that it is cheaper than a prolonged symptomatic treatment with various psychoactive medications. That could make it a more equitable treatment option.99

In conclusion, there are reasons to be cautious about PTSD prophylaxis, especially pre-exposure prophylaxis. The long-term effects of such prophylaxis are not necessarily well understood, and the immediate side effects could be problematic in the military context. Therefore, the benefits of such prophylaxis might not necessarily outweigh the risks. If post-exposure prophylaxis and, even more so, treatment at a stage where PTSD symptoms first appear are no less effective than pre-exposure prophylactic intervention, the former seems to be the more ethically defensible option.

Identity and authenticity

The principal concerns around memory modification go well beyond these relatively technical matters – which, moreover, are not unique to the interventions that might be used as MMTs – and raise broader questions. Perhaps the most prominent of these is the worry that by permitting our memories to be modified, “we might succeed in erasing real suffering at the risk of falsifying our perception of the world and undermining our true identity”.100 Much of this concern seems to be premised on the idea advanced by John Locke in the late seventeenth century that our memories are what define us as persons – what give us identities that persist in time.101 The problem that arises here relates to two interconnected philosophical notions: authenticity and narrative identity.102 These cannot be fully unpacked here, but the basic idea – we largely are what we remember about ourselves and the world around us – makes a lot of intuitive sense. Most people would probably agree that by erasing all our memories, we would commit a kind of cognitive suicide. Accordingly, by modifying some of our memories, we would in a significant way be transforming ourselves.

An argument frequently advanced to mitigate these concerns is that MMTs affect only conditioned defensive responses to threats (“emotional responses”) and

100 President’s Council on Bioethics, above note 80, p. 227.
leave episodic memories completely intact. The premise here is that mainly episodic memory contributes to our sense of self and, thus, if MMTs only affect conditioned responses, our identities would remain essentially unharmed. This argument is largely based on studies that have used beta-blockers. However, as discussed above, beta-blockers can also reduce the emotional enhancement of episodic memory. Furthermore, different MMTs, such as other medications or brain stimulation, can eradicate specific episodic memories altogether. MMTs can thus also impact episodic memories that contribute to our sense of identity. What’s more, a problem in the argumentation is the assumption that “emotional responses” contribute less to our identity than episodic memories. This Cartesian view of separation between reason and emotion is false. Emotion and cognition are necessarily intertwined, to the degree that one cannot exist without the other. Changing learned emotional responses would, thus, also alter reasoning and our personal identity.

Regardless of the effects of MMTs on both conditioned responses and episodic memory, we submit that MMTs do not necessarily impinge on identity and authenticity to such a degree that we should shun the treatment. As discussed above, by nature memories are flexible: we forget most of what we learn, and memories can be highly inaccurate or even entirely false. Yet none of this has been a source of major philosophical concern. The inability to account for each moment of one’s waking hours with complete accuracy and full emotional vigour neither undermines our identity nor hampers normal functioning in daily life. Quite the contrary, the flexibility of memory is adaptive and aids optimal decision-making in the future. Memory flexibility thus also constitutes a major way in which we build our autobiography and, by extension, our identity, which is fluid over time.

Even if concerns about identity might lead us to conclude that we ought not to have unfettered access to MMTs, this does not mean that they should not be used to treat PTSD. Indeed, the symptoms of PTSD can become so overwhelming as to fully consume a person’s life: daily existence becomes haunted by memories of the past, resulting in major changes in personality and withdrawal from society to avoid stimuli that might trigger episodes of anxiety. Moreover, PTSD and suicidal behaviour are strongly correlated. Thus, PTSD poses a risk not only to personal identity, but also to life. In PTSD, trauma memory is thus clearly

103 See the references cited in above note 62.
maladaptive. MMTs may allow people with PTSD to regain adaptive responses and return to normal life and, as such, may facilitate the maintenance of identity rather than undermine it.\textsuperscript{107}

**Normal recovery and traumatic growth**

Another common concern about memory modification is that it would interfere with normal recovery from trauma – “working things through”, if you will.\textsuperscript{108} Moreover, going through such a process has certain adaptive consequences, which have been conceptualized as post-traumatic growth (PTG). This may be manifested in different ways, including “an increased appreciation for life in general, more meaningful interpersonal relationships, an increased sense of personal strength, changed priorities, and a richer existential and spiritual life”.\textsuperscript{109} MMTs would seem to deny traumatized persons the benefits of experiencing PTG,\textsuperscript{110} which is said to be far more common in the wake of traumatic events than PTSD.\textsuperscript{111}

For persons who suffer from PTSD, however, traumatic memories and the associated emotions are so powerful as to make it impossible to “work things through”.\textsuperscript{112} Their “experiences are simply tragic and terrifying, offering virtually no opportunity for redemption or transformation”, and “even if it is better to weave traumatic events into positive, life-affirming narratives, many people are never able to do so”.\textsuperscript{113} Also, an individual who is afflicted to the point of functional loss or self-harm may simply be incapable of experiencing PTG.\textsuperscript{114}

Furthermore, it is by no means clear that MMTs and PTG are mutually exclusive. In fact, MMTs may lay the groundwork for recovery and PTG. It is perfectly possible that MMTs “might make it easier for trauma survivors to face and incorporate traumatic recollections, and in that sense could facilitate long-term adaptation”,\textsuperscript{115} “may enable such people to make life transformations that they would be incapable of making in the absence of the medications”,\textsuperscript{116} and “may aid in induction of PTG as well as relieve PTSD”.\textsuperscript{117}


\textsuperscript{111} E. Parens, above note 80, p. 102.

\textsuperscript{112} M. Henry, J. R. Fishman and S. J. Youngner, above note 90, p. 16.

\textsuperscript{113} A. J. Kolber, above note 105, pp. 1599, 1600.

\textsuperscript{114} E. Donovan, above note 87, p. 70.

\textsuperscript{115} D. L. Schacter, above note 108, p. 183.

\textsuperscript{116} A. J. Kolber, above note 105, p. 1600 (emphasis in original).

\textsuperscript{117} E. Donovan, above note 87, p. 70.
There is more merit in the concern over a circumvention of natural processes when MMTs are used prophylactically. The question does arise as to whether we should be prepared to “replace this near-universal feature of human life [i.e. PTG] with a mass preventative pharmacotherapy that benefits a small minority of the population.”\textsuperscript{118} Again, however, it is not clear whether MMTs would necessarily replace PTG; in persons at risk of PTSD, prophylactic MMTs may well contribute to ensuring that natural processes (including PTG) take place. To use an analogy, if a person fractures a bone, we do not allow nature to simply take its course. We may need to realign the fracture and set a cast in order for optimal healing to take place. Likewise, MMTs may return patients on a natural path to recovery.\textsuperscript{119}

A duty to remember?

Another major concern about MMTs is the risk of altering memories that we might be under a duty to preserve for the common good. Arguably, collective memories of atrocities, and of the carnage of war more generally, depend upon individuals retaining undiluted recollections of these events.\textsuperscript{120} Thus, modifying our memories of such events not only poses a risk to our personal identity “but also prevents the sharing of these narratives, which could potentially help others in society change and evolve”.\textsuperscript{121}

Lieutenant-General Roméo Dallaire, the commander of the United Nations Assistance Mission for Rwanda during the genocide, is sometimes used as an example.\textsuperscript{122} Dallaire had been put in an impossible situation—the wholly inadequate forces that had been placed under his command were unable to stop the slaughter of hundreds of thousands of Tutsis and moderate Hutus. As Dallaire himself put it in a poignant book about the genocide, he and his troops were “reduced to the role of accountants keeping track of how many were being killed”.\textsuperscript{123}

Through the book and many public appearances, Dallaire became a powerful advocate for humanitarian intervention—but he also suffered, and continues to suffer, from PTSD; indeed, his anguish has led him to self-harm.\textsuperscript{124} One commentator speculates that had Dallaire “taken memory-dampening agents, [he] may not have been able to achieve the same level of influence on society”.\textsuperscript{125} On one view, Dallaire may have succeeded so well in telling the world

\textsuperscript{118} J. E. Warnick, above note 110, p. 37.
\textsuperscript{119} E. A. Holmes, A. Sandberg and L. Iyadurai, above note 108.
\textsuperscript{120} President’s Council on Bioethics, above note 80, p. 231.
\textsuperscript{121} C. R. A. Aoki, above note 90, p. 357.
\textsuperscript{124} This is the subject of another book: Roméo Dallaire and Jessica Dee Humphreys, \textit{Waiting for First Light: My Ongoing Battle with PTSD}, Random House, Toronto, 2016.
\textsuperscript{125} C. R. A. Aoki, above note 90, p. 357; cf. D. Wasserman, above note 107, p. 12.
about the plight of Rwanda because he is “the most powerful and untainted witness” to the genocide. On an alternative (much more troubling) view, some of Dallaire’s effectiveness as an advocate may have derived from his own suffering. Thus, Dallaire’s suffering might have in some ways been symbolic of how the international community had failed the Rwandans, and may have served as a reminder of this failure to that community. This point could be formulated more broadly, suggesting that having struggling veterans in our midst serves to remind the society of the horrors of war.

While we sympathize with the idea that society should not be disconnected from the conflicts that are fought on its behalf, treating service members as instruments in obtaining that goal fundamentally dehumanizes them. We agree with one prominent bioethicist who thinks that “[t]he notion that we need to have suffering martyrs among us is cruel and exploitative”. Also, there is undoubtedly “some hypocrisy in the contention that soldiers ought to bear painful trauma for what others have commanded them to do”.

From a legal perspective, the problem with memory modification is that it may limit society’s access to memory as evidence, such as eyewitness testimony. While this point is well taken, it should not be overemphasized. For one, the value of eyewitness testimony is probably overstated in the first place. Individuals’ recollections of events are less reliable than one might think. It is all too easy to think of memory as some sort of a documentary film that can be replayed in court as necessary, but the ability of humans to remember has evolved not so as to forensically document the past, but so as to prepare us for the future. Thus, memories get reinterpreted and reconfigured as new experiences become integrated into an autobiography. For this reason, eyewitness testimonies require – or should require – extensive corroborative evidence.

In any event, even recognizing that society sometimes has a reasonable expectation about accessing someone’s memories, that right cannot be absolute. The interests of the society in obtaining the memory and the individual’s interest in not suffering from traumatic memories need to be balanced. What is more, for post-trauma MMTs to work, the details of a traumatic memory would first have to be identified by a therapist prior to treatment. As such, there would be a detailed archive of memory prior to modification.

Furthermore, MMTs are unlikely to completely eradicate a memory. Realistically, were he to be treated with MMTs, Dallaire would no longer suffer (as much) but would still remember what had happened and that he had suffered, so as to be able to appreciate the importance of the memory. This likely would still leave him as a strong spokesperson for humanitarian intervention. Also, persons with PTSD often have difficulty recalling particular events and articulating their

126 D. Wasserman, above note 107, p. 12.
129 See such concerns summarized in, e.g., A. J. Kolber, above note 105, pp. 1579–1582.
experiences as a coherent narrative; thus, PTSD treatment might not undermine but might instead enhance people’s ability to meet the duty to remember.

A duty to suffer?

A slightly different need to preserve memories arguably arises with respect to people who have committed objectionable acts and feel pangs of guilt afterwards. Lady MacBeth has thus become something of a recurrent character in bioethical discussions on MMTs.\(^\text{130}\) There appears to be broad agreement that people should not have access to MMTs to “relieve anguish that is proportionate to their own actions”.\(^\text{131}\) This seems uncontroversial inasmuch as such interventions are not meant to be available to anyone who simply wants to dampen undesirable and even troubling memories; rather, they are intended for people with maladaptive memories such as in the case of PTSD. Some of the commentary on this point might be interpreted as doubting the appropriateness of providing MMTs to persons who have developed PTSD as a result of their own wrongdoing.\(^\text{132}\)

This line of thinking may be based on an idea that PTSD is some especially sharp form of guilt or remorse. This is a misconception. PTSD is a serious and potentially debilitating mental health condition, not merely a feeling or a state of mind. Leaving it untreated is problematic both from a prudential and an ethical perspective. As for the former, a strong association exists between PTSD symptoms and the risk of re-offending.\(^\text{133}\) Thus, however attractive PTSD symptoms may seem to some as a form of retribution, perpetuating the condition seems wholly counterproductive from the perspective of rehabilitating offenders and reintegrating them into society. From an ethical perspective, a hallmark of a civilized society is that it provides adequate health care to those who it has convicted of wrongdoing.\(^\text{134}\) Conversely, the idea that a medical practitioner would deny treatment to a patient not because of futility or shortage of resources but simply because of legal or ethical misgivings about the patient’s prior conduct flies in the face of medical ethics.\(^\text{135}\)

\(^{130}\text{President’s Council on Bioethics, above note 80, pp. 206–207, 212, 232; D. Wasserman, above note 107, pp. 14–15; E. Paren, above note 80; A. Erler, above note 102; C. Bublitz and M. Dresler, above note 128, p. 1299; J. Vukov, above note 102, p. 243.}\n
\(^{131}\text{E. Paren, above note 80, p. 106.}\n
\(^{132}\text{For a careful examination of this issue, see Karola Kreitmair, “Memory Manipulation in the Context of Punishment and Atonement”, AJOB Neuroscience, Vol. 7, No. 4, 2016.}\n
Indeed, it would not be acceptable to modify the standard of care so as to increase or maintain suffering that has been caused by the antisocial conduct of the person. For example, it would be inappropriate for a medical practitioner to remove a bullet without anaesthesia simply because the person was shot in a firefight with police. In fact, refusal to provide anaesthesia to a person on the basis of their criminal history would almost certainly breach the prohibition against torture or cruel, inhuman or degrading treatment or punishment.136

Even more dubiously, PTSD treatment has been questioned in the context of warfare. For example, one commentator has asked – rhetorically, we presume – “If soldiers did something that ended up with children getting killed, do you want to give them beta-blockers so that they can do it again?”137 The question itself is problematic. No one would deny that the death of children – indeed, anyone – in conflict is unfortunate and regrettable. Yet even the death of children does not necessarily amount to a wrongdoing on the part of the individual soldier. For example, under the law of armed conflict, children taking a direct part in hostilities can be lawfully targeted.138 Soldiers who find themselves in a position where their only viable course of action is to use lethal force against a child soldier would, no doubt, be seriously scarred and potentially at risk of PTSD.

In any event, the two problems identified with respect to criminals arise with even more vigour when it comes to soldiers. For one, veterans with PTSD are statistically more likely to engage in antisocial behaviour than veterans who do not have PTSD.139 Thus, again, leaving PTSD untreated could be highly counterproductive both in terms of soldiers continuing military service and re-entering civilian society. Furthermore, one expects the armed forces to provide every medical assistance available to physically wounded soldiers in an attempt to restore them to health and, alas, to allow them to fight another day. With this in mind, to deny PTSD treatment to a soldier because the treatment might permit them to return to combat is simply preposterous. A serious ethical problem would arise, however, if some form of MMT was applied prior to conflict with a view to generally morally desensitizing soldiers. Yet this would no longer be a problem about prevention or treatment of PTSD, which is the focus of this article.

Conclusion

PTSD is a mental disorder that can develop following traumatic experiences such as war, is characterized by intrusive memories and has major personal, societal and economic consequences. Memory of a traumatic experience lies at the root of

suffering in PTSD, which has been associated with abnormalities in brain regions involved in memory and emotions. Although psychotherapy is an effective treatment for PTSD, many people experience a return of PTSD symptoms even after initially successful treatment. The return of symptoms can be explained because exposure treatment relies on the principles of extinction learning, which does not modify the original trauma memory itself but forms a competing safety memory that inhibits the expression of the trauma memory. One of the reasons for this is that memories are initially labile but stabilize over time during a period of consolidation, after which the memory is insensitive to modification. There is thus a brief period before and after learning during which consolidation can be disturbed, potentially providing a window of opportunity to prevent the formation of trauma memory. However, as patients generally do not visit a therapist’s office until long after the traumatic event, the practical application of MMT for disturbing consolidation and preventing PTSD is limited. An interesting potential solution relates to the discovery that reactivating a consolidated memory can temporarily return it to a labile state requiring re-stabilization processes to be maintained, referred to as reconsolidation. MMTs can steer or even disrupt reconsolidation and permanently change memory expression, potentially allowing for the development of more robust and persistent treatments for consolidated trauma memories.

Initial clinical trials allow for cautious optimism that certain MMTs may indeed bring relief from symptoms of PTSD. MMTs may disturb consolidation and prevent the formation of trauma memory, enhance exposure treatment to improve control over PTSD symptoms, or modify reconsolidation to eradicate maladaptive symptoms in PTSD. MMTs tap into the natural neural mechanisms that underlie the flexibility of memory to guide specific memories in a particular direction.

We focused our discussion of the ethical, legal and social implications of the application of MMTs to adjust maladaptive trauma memories in PTSD, particularly in military populations. With regard to the safety of MMTs and equitable access to them, there is reason to be cautious about the prophylactic use of MMTs for PTSD. Many concerns are, however, alleviated in the case of post-exposure prophylaxis where treatment can be restricted to people who have experienced a distressing event or have actually developed PTSD and because treatments can be restricted to short-term interventions. One set of concerns relates to the notion that MMTs may jeopardize our identities and our ability to live an authentic life. MMTs, however, do not cause general memory impairments but target specific memories. Moreover, the use of MMTs to treat PTSD is unlikely to result in a full loss of memory for the traumatic experience but may allow for a diminishment of maladaptive symptoms evoked by specific stimuli. MMTs may eradicate maladaptive intrusive memories, allowing people with PTSD to regain their usual identity and an authentic life. Similarly, the second concern is that MMTs could interfere with normal psychological coping following trauma. However, PTSD is characterized by an inability to cope with trauma that severely hinders people’s personal growth. MMTs may thus place people with PTSD back on a natural path to recovery. The third concern is that MMTs may impair memories which we are
Once again, MMTs are unlikely to fully eradicate memories and even if they can, in the case of post-exposure prophylactic use, an archive of the memory can be made first. Furthermore, memories are notoriously unreliable as legal evidence and in the case of fragmented trauma memory in PTSD, MMTs may even enable people to remember the traumatic event better. Most importantly though, refraining from treating a serious mental disorder such as PTSD on the basis of a social demand for memory, even in the case of criminal wrongdoing, flies in the face of medical ethics.

Based on the evidence available, we categorically reject any broad claim that “the costs to individuals and to society in using … memory-dampening agents would significantly outweigh their potential benefits”. In order to reach defensible ethical conclusions, MMTs would need to be assessed in a context-specific manner, and in light of their primary effects and likely side effects. Knee-jerk reactions to MMTs on the basis of their possible abuse are counterproductive.

Moreover, we agree with those who have suggested that investigating the viability of MMTs as a treatment in a military population is not only ethically permissible but required. A society that in the interests of its own security is prepared to place individuals in harm’s way must be prepared to succour those individuals when they sustain physical or psychological injuries. If MMTs prove to be a safe and effective means of treating PTSD, their use must be considered. That said, where there is a real risk to societally significant memories, there clearly arises a need to balance the interests of a person to be free from suffering and the society’s (narrowly construed) right to access the memories that are the cause of the suffering.

This article has focused on the use of MMTs to treat PTSD, specifically in military populations. MMTs provide an opportunity to relieve severe suffering from mental disease in military populations, restore people’s identity and authenticity, return them to a path of natural recovery and personal growth, and improve their memories to societies’ benefit. The risks of using MMTs are limited as MMTs target specific maladaptive memories and the modification of specific memories does not jeopardize personal identity, opportunity for personal growth or social demand for memory preservation. We recognize that MMTs may have other ethical implications for potential misuse, which require their own ethical discussion in the future, but we note that the likelihood of MMTs being misused is small within the near future and does not outweigh the potential benefits for patients, while legal regulations of professional ethics for medical practitioners are already in place. Assuming the safety and efficacy of a particular intervention, we see nothing strikingly unethical about treating soldiers who have developed PTSD with MMTs. If PTSD is construed as a health condition, it should be treated with the most effective means available, which might be MMTs at some point in time. Within a realistic scientific framework, the potential benefits of research into developing the use of MMTs to treat PTSD outweigh any potential ethical, legal, and societal concerns at this time.

140 C. R. A. Aoki, above note 90, p. 356.
141 See, for example, E. Donovan, above note 87, pp. 70, 72.
Does individual and collective remembrance of past violence impede or foster reconciliation? From Argentina to Sri Lanka

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Abstract

While the dominant human rights discourse on transitional justice constitutes a mix of reinforcing aims that seek to “make peace with” a violent past, this article complicates this notion by exploring how affective memories can prevent individuals from envisioning a future for themselves in which their individual and their nation’s past is safely left behind. In the context of ongoing debates over whether to remember or forget a country’s traumatic past, the article will show how affective memories of violence and disappearance prevail and disrupt the reconciliation paradigm, and need to be taken into account in transitional justice processes.

* The research for this paper is based on oral testimonies that the author collected in 2009 in Argentina as part of her PhD research. These testimonies were taken from two groups of women: those whose family members were kidnapped and murdered by armed political groups between 1973 and 1976, and those whose family members were kidnapped, disappeared or murdered by the military government between 1976 and 1983. The interviewees emphasized their preference for disclosing both their names and the identities of their missing/killed family members. For many of the families of the disappeared in particular, publicly repeating the name of their loved ones at any opportunity is highly significant to restoring their personal identity. All translations of the women’s quotes are author’s own. The interviews are on file with the author.
Keywords: affect, memory, reconciliation, transitional justice, Sri Lanka, Argentina.

We’re undone by each other. And if we’re not, we’re missing something.

Judith Butler¹

Introduction

While the individual and collective need to remember the violence of past injustices and those affected by human rights abuse, violations of international humanitarian law, genocide, and disappearance has become a defining feature of the late twentieth and early twenty-first centuries, debates ensue about the merits of remembering in transitioning societies and the possible ramifications this may have for national reconciliation. For a country trying to heal its wounds as it emerges from violent conflict or authoritarian rule, is it better to remember or to forget? Does collective remembrance of a troubled past foster or impede reconciliation?

The dominant human rights discourse on transitional justice constitutes a mix of mutually coherent and reinforcing aims that seek to “make peace with” and “find closure” on a violent past.² Indeed, truth commissions were adopted towards the end of the twentieth century as a way of acknowledging human rights violations and achieving national reconciliation, as well as a way of healing psychosocial trauma at both the individual and collective levels in post-conflict societies. Though truth commission literature and conflict resolution theory suggest that psychological issues – whether individual or collective – can be healed through mnemonic performances of oral testimony or storytelling,³ there is scant evidence to prove that this is true. Over time it has become clear that the individual psychological benefits from participating in these mechanisms of “reparative remembering”⁴ may be overstated, and that reconciliation efforts, more often than not, have yielded a thin form of coexistence rather than a thicker form of social integration.⁵

² A number of such terms have emerged within the field of transitional justice to describe strategies and initiatives used to achieve justice and to build trust among adversarial communities. Discourse around national reconciliation has more recently relied upon a therapeutic model that seeks to heal wounds in connection with past violence and focuses on recognition of the victims of violence to recover sovereignty. See Michael Humphrey, “Reconciliation and the Therapeutic State”, Journal of Intercultural Studies, Vol. 26, No. 3, 2005.
⁴ Graham Dawson, Making Peace with the Past? Memory, Trauma and the Irish Troubles, Manchester University Press, Manchester, 2007, p. 84.
“Remembrance may be the ally of justice, but it is no reliable friend of peace, whereas forgetting can be”, writes journalist and writer David Rieff. Rieff, believing justice to be a “chimera” and “reconciliation” a vain hope, reminds us to take heed of the words of the children of those tortured and disappeared and/or murdered during the Argentine military dictatorship, and who have recovered their real identity: “We will not forget, we will not forgive, and we will not reconcile.” For Rieff, there are contexts such as Argentina, where no reconciliation is possible and where the act of remembering the past is more likely to result in inciting further conflict than in reconciliation.

On the other side of the coin, Pablo de Greiff, the outgoing United Nations (UN) Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, believes “we have an obligation to remember what our fellow citizens cannot be expected to forget”. De Greiff agrees with Rieff that the past can be co-opted by different political elites to achieve their own ends, and that indeed, “counter-hegemonic” struggles for memory, as have been witnessed in Spain and Latin America, can foster further resentments, denials and exclusions. However, he maintains that to publicly remember the past as a process of fact-finding and truth-seeking will go someway to satisfying the victims of human rights abuses, who are entitled to be publicly acknowledged for the suffering they have endured.

In light of these arguments, this article will explore the relationship between individual memories and public memorialization in the country considered to be the pioneer of transitional justice – Argentina – and what this could mean for the newcomer to transitional justice – Sri Lanka. Since the return to democratic rule in Argentina in 1983, the human rights movement has continually demanded “truth, memory and justice”, and in recent years many dictatorship-era crimes have been prosecuted, resulting in the imprisonment of a number of perpetrators who have committed gross human rights violations. While 2018 marked the

7 Ibid.
9 Ibid.
10 Ibid.
12 Some of the most recent trials include those of former military soldiers who committed crimes against humanity in relation to the infamous “death flights” in which prisoners were sedated, stripped of all their clothing and thrown into the sea. Retired navy captain Adolfo Scilingo, who admitted to participating in two of the weekly “death flights”, calculated that during his two years at the ESMA detention centre, over “a hundred Wednesdays, between 1500 and 2000 people” were thrown into the Rio de la Plata: see Marguerite Feitlowitz, A Lexicon of Terror: Argentina and the Legacies of Torture,
35th anniversary of the return to democratic rule and the beginning of the country’s transitional process, however, Argentina still grapples with many legacies of its violent past.

The first part of this article briefly explores the various ways in which the Argentine public sphere has become an arena of struggle over how to remember the political and State violence of the 1970s and 1980s, as different memorial groups have struggled for the political, social, legal and moral recognition of their traumatic memories. Rather than rendering a factual narrative about the past, the article will then consider how affective memories13 can produce a different kind of narrative about processes and conditions of remembrance in Argentina over the past decades. The author will then consider the interpersonal pathways of traumatic histories and memories by exploring the role of the transmission of emotions and affects with regard to how and why they can stir individuals and collectives to such an extent that the past continues to operate as a source of social and political division, including across generations. Finally, parallels will be drawn between the two contexts, pointing to some of the challenges and considerations around memorialization faced by Argentina which Sri Lanka may soon face as it embarks on its own process of transitional justice.

The politics of remembering and contested narratives

Following Argentina’s return to democratic rule in 1983, then president Raúl Alfonsín created the National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas, CONADEP) to investigate the disappearances of individuals carried out under the direction of the military dictatorship during the years 1976–83.14 First-hand narratives of human rights violations experienced under military rule during this period were collected by CONADEP and published under the title of Nunca más (Never Again);15 this document became the authoritative text on human rights violations committed by the military junta, including the systematic disappearances of thousands of...
individuals and the abuses that occurred in hundreds of secret detention centres scattered across Argentina.16

In recent years, the consecutive governments of Néstor Kirchner (2003–07) and Cristina Fernández de Kirchner (2007–15) have officially recognized the sheer magnitude of the issue of the disappeared, endorsed new cultural models of collective remembrance and commemoration, and issued a number of presidential decrees that declared previous laws limiting prosecutions under the Alfonsín administration, and other policies of impunity pursued by the Menem government,17 null and void.18 As a result, in November 2018, the Argentine attorney-general reported that 867 people had been found guilty of crimes against humanity.19

However, despite the considerable political and legal gains achieved in recent years, individuals and families affected by State violence continue to feel a sense of injustice over a number of unresolved legacies of this violent past. Firstly, questions about the fate and the whereabouts of thousands of individuals who were disappeared remain unanswered by those responsible in the armed forces. With their loved ones thrown into the ocean by security forces, most of the families of the disappeared – many of whom had already been traumatized by the abduction and permanent disappearance of their children or partners – have had their trauma compounded by being unable to bury their loved ones’ bodies.20

16 In the mid-1990s, Nunca más was no longer regarded as a legal instrument but was seen as a vehicle for the transmission of memory. The 2006 administration of Nestor Kirchner encouraged the publishing of a new official interpretation of the original report, with the addition of a new prologue written by the national secretary of human rights. See Emilio Crenzel, “Between the Voices of the State and the Human Rights Movement: Never Again and the Memories of the Disappeared in Argentina”, Journal of Social History, Vol. 44 No. 4, 2011, p. 1072. The prologue was critical of the explanation given for the political violence described in the original report, stating that it was “unacceptable to attempt to justify State terrorism like a sort of game of counteracting violence, as if it were possible to look for a justifying symmetry in the action of individuals faced with the Nation and the State’s estrangement from their proper goals”: see CONADEP, Nunca más: Informe de la Comisión Nacional sobre la Desaparición de Personas, 7th ed., Editorial Universitaria de Buenos Aires, Buenos Aires, 2006, pp. 8–9, author’s translation. As Crenzel explains, the new prologue failed to place the political violence in its historical context, and did not establish civil and political responsibilities for the violence. Taking on a social justice tone, the report excluded any mention of guerrilla and political activity from the lives of the disappeared, and talked instead of the human rights movement’s thirty-year struggle for “truth, justice, and memory”.

17 Alfonsín’s successor, Carlos Menem, adopted a policy of forgetting the past when, on taking power in 1989, he extended pardons to military personnel who had been convicted of human rights violations.

18 For example, in December 1986, concerned about the destabilizing threat that a status of never-ending trials posed to an already rocky democratization process, President Alfonsín pursued measures to limit the number of prosecutions and placed a sixty-day statute of limitations on criminal complaints against the military officers, which became known as the Ley de Punto Final (Final Stop Law). He also introduced the controversial Obediencia Debida, or Due Obedience law, in June 1987, which allowed lower-ranking officials to claim that they had been “following orders” in committing crimes. In August 2003, Nestor Kirchner signed the law that declared the Punto Final and Obediencia Debida laws null and void. Louise Mallinder, The Ongoing Quest for Truth and Justice: Enacting and Annulling Argentina’s Amnesty Laws, Working Paper No. 5, “Beyond Legalism: Amnesties, Transition and Conflict Transformation” Conference, Queen’s University, Belfast, 2009.


Secondly, while the organization Las Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo) has recovered the identities and reunited the families of over 100 illegally appropriated babies and children, the organization estimates that 300–400 individuals are still living under false identities and remain unaware of the truth about their past.\(^2\) Thirdly, while legal proceedings in relation to State terrorism continue, many Argentines with whom the author spoke talked about the slow process of justice and described their lack of faith in a judicial system that had previously failed them, and which continues to accommodate biased judges who on some occasions sentence those convicted to house arrest, under which they are able to live “relatively freely in comfort”.\(^2\)

Many of the women\(^2\) with whom the author spoke were concerned that political and judicial gains to bring those accused of human rights violations to trial could be lost with a change of government. This has happened before,\(^2\) and it seems to be coming to pass again: on winning office in 2012, President Mauricio Macri declared that it was time to turn the page\(^2\) and refused to acknowledge the figure of 30,000 disappeared persons.\(^2\) While President Macri promised to continue the trials and to let the judiciary act independently, many human rights activists remain sceptical.

In what was a new constitutional cycle in Argentina’s history from 1983, the testimonial narrative of Nunca más established what had happened during the years 1976–83. However, it also sent a clear message about what should be left behind or forgotten. Significantly, victims of the armed political movement

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\(^2\) Las Abuelas de la Plaza de Mayo was founded when a group of mothers emerged among the relatives of the disappeared and began to realize that the abduction of their pregnant family members was more widespread than originally thought, and their search also extended to the fate of their missing grandchildren. The organization believes that up to 500 children who were taken from their incarcerated mothers and given to families with close military ties are still unaware of their real identities. As of June 2019, 130 children have been recovered with the assistance of Las Abuelas de la Plaza de Mayo. For more information, see: http://abuelas.org.ar.


\(^2\) Studies have shown collective memory to be the cross-generational oral transmission of events deemed socially important for a society: see Selma Leydesdorff, Luisa Passerini and Paul Thompson (eds), Gender and Memory, Transaction, New Brunswick, NJ, 2005. Despite women playing a central role in the transmission of memory to the next generation, in many transitional contexts the role women play is marginalized; their memories of violence are pushed out to the margins of the public sphere. As a result, the author wished to explore further the ways in which women remember the past, especially in Argentina, where women have done the lion’s share of work in terms of remembering the political and State violence of the 1970s and 1980s.

\(^2\) See above note 17.

\(^2\) Oleguer Sarsanedas and Estela Barnes de Carlotto, “The Grandmothers of Plaza de Mayo and the Rewriting of History”, Open Democracy, 8 December 2017, available at: www.opendemocracy.net/en/democraciaabierta/grandmothers-of-plaza-de-mayo-and-rew/. This article was written before the 2019 Argentine presidential election, in which Alberto Ángel Fernández replaced the incumbent Mauricio Macri. Cristina Fernández de Kirchner will become vice-president in Mr Fernández’s administration.

during the 1973–76 period were not included in the CONADEP report and the right-wing sectors of Argentine society have challenged the report ever since, claiming that CONADEP leader Ernesto Sabato denounced one side of events while remaining silent about the “terrorism” that occurred prior to the military takeover in 1976.27 Sabato responded to these accusations of partiality, saying that it was not the Commission’s central role to investigate the violent activities of the armed guerrilla groups during the period 1973–76.28 However, the omission of the testimonials of the victims of the armed guerrilla groups meant that certain groups’ experiences were not included in this new democratic chapter of Argentine history.29

Since the CONADEP report has been so influential and foundational to the creation of a “new public truth” within Argentine society,30 and has subsequently been used as the principal reference point for memory issues in Argentina, the omission of some groups’ experiences has had serious implications for the entrenchment of ideological divisions within cultures of memory. While the report repudiates the political violence in the lead-up to the military coup, this issue is confined to the prologue, and as such, the report as a whole ignores this period of Argentina’s past.31 In the years since the return to democratic rule, family members of victims of the armed guerrilla movement have made attempts to come to a sense of peace about their memories of a violent past. However, during the years of the consecutive Kirchner governments, the families’ feelings of victimization were reignited by what they saw as political efforts to remember one side of history while forgetting another.32

Since the return to democracy, members of both memorial groups33 have been engaged in endless mourning and remembering, as their painful memories vie for pre-eminence in a constant struggle for political, social and legal recognition in which (again) there are only winners and losers.34 As a result, debates about how the period of political violence and State terrorism of the 1970s and 1980s should be collectively remembered by the nation have caused deep political and societal divisions. The various actors who have taken part in these debates have linked their political programmes and orientations with the memories of a violent past,35 resulting in the polarization of groups struggling to

28 CONADEP, above note 16, p. 6.
29 E. Crenzel, above note 16, p. 1072.
30 Ibid.
32 J. Stockwell, above note 20.
33 The two different memorial groups fall into two political/ideological camps in Argentina. More broadly, individuals affected by military repression are commonly referred to as the political “left”, and individuals affected by armed guerrilla violence are referred to as the political “right”. See ibid.
overcome the injustices of public recognition over whose history should ultimately be acknowledged.\(^{36}\) As Barbara, whose father, José Miguel, was killed by the armed guerrilla movement in 1976, said:

I’m tired of it all. If they think they’re the “goodies” and I’m not, how am I ever going to be able to talk with them [human rights organisations, the government]? I don’t understand. What kind of communication could there ever be, because we’re never going to understand each other? … There is no such thing as “goodies” and “baddies”. There is no left and right. There are all sorts of people and we all, both left and right, make up a society. There’s us and then there are the politicians. They’re meant to represent us, but they don’t represent me. … I am discriminated against and segregated [within society]. … Argentina is like a jigsaw puzzle and my story has to be a part of this puzzle.\(^{37}\)

This dynamic has created a sense of enmity between the two “memorial groups” struggling for justice and for the memory of their loved ones to be recognized and legitimated in the public sphere. As those who personally experienced suffering have talked of their experiences with others, memory has become a common language through which individuals have been able to articulate and share their traumatic experiences. As a result, memory has become a dominant form of belonging in Argentina. Members of particular political and ideological groups have created a shared fabric of a life-world in which remembering their loved ones who were affected by political and State violence is central. The spread of these community-based groups, whereby being a group member means assuming a shared identity and subscribing to a shared group past, has resulted in the “pluralization and problematization of memory”.\(^{38}\) As the boundaries of memory parallel the boundaries of group identity, there is a sense of competitive victimhood as groups compete for the recognition and legitimization of their memories of victimhood, at the exclusion of others, within collective forms of remembrance.\(^{39}\)

Argentine writer Graciela Scheines likens Argentine history to being a “living burden” that produces “sorrow and anguish”.\(^{40}\) Widespread abuses by the State and by armed political groups have left behind a powerful legacy of deep pain in Argentina. This was abundantly clear as the individuals interviewed by the author related their traumatic experiences with what seemed to be the same emotional charge as they had shown more than thirty-five years ago, when some of them gave their first public testimonies. Both groups were as committed as ever to the daily task of bearing witness to those experiences that had irrevocably changed the course of their lives.

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\(^{36}\) J. Stockwell, above note 20.

\(^{37}\) Interview with Barbara Tarquini, Buenos Aires, 17 July 2009.


\(^{39}\) J. Stockwell, above note 20.

Traumatic remembrance

While public discussions of historical justice and memory are usually associated with memorials, museums, and artistic and literary works, much less exploration has been made of individuals’ private ways of remembering those who are missing. For families of those disappeared in relation to the 1976–83 State terror in Argentina, the task of remembering traumatic violence is to remember it fully, again and again, every day, until every tragic moment is relived, so that events which had been previously suppressed, distorted or altogether written out of history are never forgotten.

Holocaust survivor Charlotte Delbo wrote extensively about living with the deep memories of trauma and the challenges of envisioning a future in the midst of the destruction of one’s emotional and cognitive capacities. Delbo uses the term “deep memory”, as distinct to common or intellectual memory, to refer to those memories that record the physical imprint of a traumatic event within the individual, causing the past to continuously and unexpectedly rupture trauma survivors’ reconstructed realities.41 Deep memories are felt within the body and can be triggered by associations with particular sensations or objects. They do not fade over time and remain alive in the present.

Watching a loved one being violently kidnapped or disappeared has had long-lasting effects for many of the women with whom the author spoke. For example, Cristina, whose husband Carlos was kidnapped and disappeared, and who herself survived a violent attack with her five-day-old baby by the military’s security forces, explained how she has lived with her memories of violence:

It was a permanent feeling of distress … of anxiety more than distress … it was something that made your stomach churn to think that at any moment, something could happen to you. We had to be careful when we walked along the street, in the buses, anywhere we went, to see if anyone was following us … because, I tell you, it was really terrible. For many years, the feelings and the emotions that I had of fear, that I could feel in the middle of my stomach every time I spoke about this … I would be trembling. It’s very strong [to remember].42

Cristina’s comment attests to the way in which those affected by political and State violence in Argentina have become “a symptom of history that they cannot entirely possess”.43 Cristina’s body has become a site and focus for her memories of trauma, which remain ever vulnerable to revival. This raises an important issue about the long-term consequences of living with deep memories that are too painful to acknowledge in a person’s everyday reality and identity.

41 Charlotte Delbo, Days and Memory, Marlboro Press, Evanston, IL, 2001, p. 3.
42 Interview with Cristina Muro, Buenos Aires, 14 June 2009.
Cristina said there was no way to avoid remembering the violence that she and her family lived through. She said that she was constantly and unexpectedly faced with feeling deep pain in the subtlest ways. For example, she recounted how the trauma she experienced more than three decades ago continues to emerge in recurring dreams:

For a long time I have had a recurring dream; a dream in which my husband would come and I would ask him, “Where have you been all this time? I have been looking for you everywhere.” And he would reply, “Didn’t I tell you I had to go?” And I wake up totally anxious because I would never know where he had gone.44

The trauma Cristina lives with has “no beginning, no ending, no before, no during and no after”.45 Her narrative lays bare the way in which the distressing memory of her husband’s disappearance, juxtaposed with her own survival, returns repeatedly through her unconscious, placing her in a perpetual state of torment. Caruth argues that the “oscillation between a crisis of death and the correlative crisis of life: between the story of the unbearable nature of an event and the story of the unbearable nature of its survival” is what lies at the heart of a traumatic experience.46 Cristina’s dream suggests that what is terrifying for her is the way in which the event of her husband’s disappearance returns in all its fullness, but in a way that it was never experienced at the time it occurred. When Cristina asks, “Where have you been all this time? I have been looking for you everywhere”, one can gain a clear sense of the anxiety she unconsciously feels in being incapable of finding her husband. What also becomes clear is her inability to accept her husband’s disappearance and death as permanent and final, because she dreams that he finally returns to her. Cristina’s memories of trauma in the framework of her dreams show how her “narrative of a belated experience, far from telling of an escape from reality – the escape from a death, or from its referential force – rather attests to its endless impact” on her life.47

Cristina’s story is an example of just how difficult it is for the women interviewed to cope on a daily basis, when their existence has been so disfigured by the violent wrenching away of a loved one. In witnessing the recall of such deep memory, it becomes clear that no amount of public truth-telling can ease the pain of the women’s deep memories that persist outside the parameters of closure.48 Suffering a deep sense of defencelessness and powerlessness from being unable to prevent her husband’s disappearance, as well as being unable to predict at the time what might happen to herself and her children, Cristina has had to

44 Interview with Cristina Muro, above note 42.
47 Ibid.
find a way of living with the fear, uncertainty and guilt that comes from being a survivor of State terror. She still sometimes found herself paralyzed by uncertainty, but she told the author that she had put herself repeatedly in danger in order to help others. She explained this further:

When I see a situation of an abuse of power in a movie, on the street, in some place, I feel very frightened, but I react in the opposite way. I go and place myself [directly in the middle] of what’s happening.49

Cristina’s narrative shows how the locus of pain remains with the individual long after experiencing the original trauma. The voice that Cristina hears – telling her to put herself directly in the way of danger – comes from the original wounding that she suffered: the experience of being unable to save her husband and prevent the violent treatment of her children. As Dori Laub argues:

Trauma survivors live not with memories of the past, but with an event that could not and did not proceed through to its completion, has no ending, attained no closure, and therefore, as far as its survivors are concerned, continues into the present and is current in every respect.50

Laub’s understanding of trauma suggests Cristina will not transcend or overcome the trauma she experienced, but will rather undergo a ceaseless cycle of repetition and re-enactment of the original trauma throughout her life.

The interviewees’ testimonies reveal how their deeply embodied memories never leave them, and can inhibit the sense of relief and finality that the concepts of truth and justice are supposed to deliver.51 While we, as the international community, might wish for closure on the past in order to reach transitional justice goals, it is revealing how deep memory defies closure or indeed any type of certainty. This is particularly true for families of the disappeared, for whom the effects of the loss of a cherished family member are compounded because the fate and whereabouts of their loved ones are often remains a complete mystery.

The absence of bodily remains and a lack of knowledge about the fate and whereabouts of loved ones is a loss without end for family members, who become physically and emotionally exhausted as they endure a life of relentless uncertainty.52 Being a partner of a disappeared person has been painful and

49 Interview with Cristina Muro, above note 42.
50 S. Felman and D. Laub, above note 45.
51 J. Stockwell, above note 20.
52 Boss terms this “ambiguous loss” and assumes that ambiguous loss can traumatize. She argues that the symptoms of unresolved grief are similar to post-traumatic stress disorder (PTSD): see Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief*, Harvard University Press, Cambridge, MA, 1999. PTSD “is a disorder resulting from psychologically stressing events that were outside the realm of usual human experience. These events were never resolved and thus are continually reexperienced, even years after the original event” *(ibid., pp. 23–24)*. While ambiguous loss is also a psychologically distressing event that lies outside the parameters of a “normal” human experience and lacks resolution, it continues to exist in the present. “It is not post anything”, argues Boss *(ibid., p. 24)*. See also Pauline Boss, “Families of the Missing: Psychosocial Effects and Therapeutic Approaches”, *International Review of the Red Cross*, Vol. 99, No. 905, 2017. Another psychoanalyst, Elizabeth Lira, who has written about PTSD among individuals who lived through State terror in Chile, similarly argues that
distressing on a number of levels for Cristina, who believes the uncertainty about what happened to those who were disappeared will never leave her:

I believe that the theme of human rights and of the disappeared today, for me, is focused on the truth, justice, the trials, and in some ways the work of the anthropologists. For me, this [work of the anthropologists] is extremely important. Because what are we left with today? A group of old people who are all going to die. For me, I would like to find the remains of my husband and finish with this, close it, let go of the pain, not because I will forget, because I will never forget, even when the remains are recuperated, because it’s a lifetime commitment.53

The loss of loved ones, and the associated social and personal implications, have placed most of the female relatives of the disappeared in a state of limbo. The way that disappearance plays out – the feeling of being in limbo – can make it difficult for the women to go a day without mourning their loved ones. When loss is converted into absence, argues LaCapra, “one faces the impasse of endless melancholy, impossible mourning, and interminable aporia in which any process of working through the past and its historical losses is foreclosed or prematurely aborted”.54 The women with whom the author spoke struggle to acknowledge or accept the loss of their loved ones; instead, they embrace their absence. Another mother has said: “Let there be no healing of wounds … let them remain open. Because if the wounds still bleed, there will be no forgetting.”55

“Memory is the ultimate form of justice”, writes Roger Errera.56 The family members of the disappeared act as guardians of memory of State violence and repression, as a way of countering corruption within the judicial system. In so doing, they work against the “erosion” of memory caused not only by the passing of time and the nonchalance of a society preoccupied with other pressing concerns, but also by the counter-efforts of those trying to forget.57 By publicly remembering their loved ones, the women call into being those who are no longer present but call out to be made so; they reclaim and restore the humanity of those individuals whom the military regime attempted to leave in the absences of memory. Justice cannot repair what was broken, bring back those who are lost

the term PTSD cannot adequately capture the ongoing nature of State terror, “because there is nothing ‘post’ about it” (cited in Nancy Caro Hollander, Uprooted Minds: Surviving the Politics of Terror in the Americas, Taylor & Francis, Hoboken, NJ, 2010, p. 122). Lira prefers to use the term “culture of fear” to emphasize that an “individual subjective experience is shared simultaneously by millions of people, with dramatic repercussions for social and political behavior” (cited in ibid., p. 122). Julia Braun suggests that while PTSD symptoms may occur among a population at large or in individual cases, in contexts that have experienced state terror, PTSD is a “repetitive trauma” whereby one trauma is layered upon another (cited in ibid., p. 122).

53 Interview with Cristina Muro, above note 42.
57 Ibid.
or reverse time to return society to the earlier status quo. Indeed, the sense of injustice families feel in relation to the disappearance of their loved ones will not magically “disappear” just because of the political and legal gains they have received since 2004. Cristina told the author:

Justice would be that one day my husband would reappear and that he wasn’t disappeared, that none of this would have ever happened, because it is not just, what happened. It’s unjust. But given the circumstances, because this is unreal and could never happen, justice would be that one day the repressors would tell us the truth about what happened. That would be justice. I know that the trials are important because they show society that what we’ve been saying these last thirty years has been true. … For me justice would be that they [the military] tell us publicly everything they did and where the bodies are so we could recover them. … So for them [the disappeared] justice is what we do every day; we say their name, their life, their history, so that others may know them, so they know who they were; this is also justice because it is that which they [the military] tried to take away from them.58

However, the interviewed women’s “labors of memory-justice” are at their core forms of resistance “to the counter-moral course of time, to a force that constantly threatens to erase the events and persons of the past and to wash away whatever traces, whatever footprints in the sand they have left”.59 Not only does justice cast its light on the past, but by bearing witness and bringing the facts “from their refuge in the past” into the present, it also restores the “moral truth” of the past.60 The women’s labours of memory-justice act as a bridge between time past and present; they become a moral response, purging the past of its injustices and restoring justice to the affected parties—both present and absent.

Booth believes that the work of memory-justice “keeps alive the passion for revenge and retribution, fuels an inextinguishable resentment, chains the will to the ‘it was’”.61 The women with whom the author spoke do not hold on to feelings of revenge, but they do maintain a deep resentment toward individuals in the military and security forces. This deep resentment motivates them to give oral testimony despite the emotional pain involved in doing so. Persistence and resentment find their outlet in the endurance of the women’s work of memory-justice. These qualities work to address a void that nothing can fill. Punishing perpetrators and receiving legal and moral recognition for the loss of victims is, for the families of the disappeared, to see repair insofar as it is possible.

The memory-justice work carried out by the families of the disappeared is not an attempt to heal their wounds; in their minds, this would deny justice its due. Instead, the families give oral testimony to ensure that the crimes committed by the military continue to have a “moral reality” within Argentine society.62 In the face of

58 Interview with Cristina Muro, above note 42.
59 W. J. Booth, above note 56, p. 114.
60 Ibid., p. 115.
61 Ibid., p. 122.
62 Ibid., p. 122.
so much uncertainty, they wish to be at least certain that the truth of what happened to their loved ones will not become separated from the passage of time, acting as a force that exonerates perpetrators. The women with whom the author spoke were committed to publicly naming every single individual disappeared by the military until their own death, to stop the winds of forgetting from extinguishing their loved ones’ names, thereby fulfilling their obligation to the dead.

In their testimonials, the women re-create the lives of the disappeared, name their names, describe their personalities and call them back into being. When they tell their stories of the past, the women can hear how they themselves are in these stories; most feel as though they are trapped in old stories. While they do not necessarily want to be trapped, the women with whom the author spoke were hesitant to let go of these stories because they do not feel that there is another place where they can belong. For some of the women, their compulsion to tell their painful story again and again – their need to be heard – indeed appeared to be as Laub describes it: “The survivors did not only need to survive so that they could tell their story; they also needed to tell their story in order to survive.”63 Raquel explained how being haunted by the memory of her missing children and grandchildren locks her into the state of being consumed by their absence:

I am continuously thinking about them [her missing children and grandchild]. I can’t think of anything else.64

Raquel expresses her desire to remain with ambiguity, and as she does so she expresses her resistance to any form of conceptual or narrative closure which may be required within a transitional justice paradigm. She made a decision a long time ago to be engaged with a process of endless bereavement, and remains tied to the historical and social effects that she is recounting.65 The women find themselves bound to the disappeared in such an entangled way that loss will continue to be a part of their identity and the mourning will never end. The need of the disappeared to be remembered has become inseparable from the needs of the members of their families who remain without them. Rather than seek any sort of resolution or reconciliation, the women have allowed the past to take possession of their present lives, and with this has come the dismissal of any dissonant discourse.

The emotional currency of memorial groups

Memory belongs in the “intermediary realm” between individuals; it develops and grows out of the interplay of interpersonal relations, and as such, emotions play an

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63 S. Felman and D. Laub, above note 45, p. 7.
64 Interview with Raquel Marizcurrena, Buenos Aires, 17 June 2009.
important role in this process. The bonds formed between individuals situated within competing memorial groups in Argentina have resulted in the creation of precise collective memories. Much of the power of these collective memories has in part been derived from the strong emotions that they provoke, further feeding already heightened political and social tensions.

In particular, the recovery of knowledge about what happened to the disappeared and making this knowledge public through the giving of oral testimony have been crucial activities in recovering the past for human rights organizations and families. Graciela, whose partner Ricardo was disappeared in 1976, said:

The reality for me is that today, not identifying the remains signifies that everything that the military did is silenced. Because their [the military’s] intention was to make them disappear and to disappear in a way that they couldn’t be found; that is … they’re nothing. So if one doesn’t manage to rescue [the remains], they [the military] will have won.

Graciela has an ability to affect others, and to be affected, when she repeatedly and openly relates the emotional story of the disappearance of her partner by the military. As she relates her account, something she does most days, her private emotional experience “feeds” into collective memory through an important social psychological process called the “social sharing of emotions”. Research shows that emotions are essentially interpersonal communicative acts, involving long-term social processes: the more individuals are upset, the more likely they are to share their story with others and to elicit vivid and long-lasting memories of the event. As individuals repeatedly relate their emotional experiences to others, the social group gradually assimilates those experiences and, as a result, is furnished with new emotional knowledge. Exploring how emotions can both circulate between individuals and shape subjectivities is crucial to our understanding of how emotions can form and mobilize individuals or groups in different ways over a period of time. This process can influence the way a historical experience is organized in memory and perhaps recalled in the future.

The social sharing of emotions can further contribute to a culture of animosity and resentment among and between different memorial groups. In her model of the sociality of emotions, Sara Ahmed suggests that how we feel about others shapes individual and group perceptions and that this process is what

69 Ibid., p. 133.
70 Ibid., p. 133.
aligns us with a collective. One’s perception of another involves a form of “contact” between the individual and the “other” that is shaped by longer histories of contact: “These histories have already impressed upon the surface of the bodies at the same time as they create new impressions.” It is the “moment of contact”, shaped and informed by past histories, that allows the proximity of the “other” to thus be perceived as threatening. This point was clearly articulated by Barbara, who said that to talk about her father is to recuperate his memory. As she was only very young when her father was killed, Barbara has relied on newspaper cuttings and anecdotes from his colleagues to paint a picture of who her father really was. The role her journalist father played in the violence of the 1970s before his death – unsolved in her mind – can be a source of intense frustration. “He never killed anyone, I’m sure of it”, Barbara told the author.

Barbara described her internal anguish at the lack of evidence provided by those attempting to vilify her father as a member of a right-wing paramilitary group, and the frustration she has suffered when her efforts to clear her father’s name have been thwarted. She often dreams of her father when she is facing great inner turmoil in her life, and she sees him as her protector, not someone who was violent. She shared that reading his poetry helped her know that her father wasn’t a monster, but that he was killed for speaking publicly about his beliefs. Barbara does not know who killed her father, and told the author that her efforts to leave the past behind are to no avail. She said:

I never knew that I would be able to dedicate so much of myself to investigating this and it has taken up a large part of my life. I never knew that it would cost me so much emotionally, … They [her family] tell me to leave the topic alone; that Papa is dead; that we know who he was; that it’s futile to keep searching. … I went to the human rights organizations to demand my rights as a victim of the military government because my father was a victim. They told me no, that my father was a fascist, that he didn’t belong [to human rights organizations]. I went with witnesses, a lawyer, and friends. How could they say this to me? … They said that [my father] was an activist of the extreme right and that he had to have fought. But I said that my father wasn’t a bad person. … What a disaster. The truth is that the human rights organizations here don’t exist for me.

What is happening in Barbara’s case is explained by Brison, who writes:

How (and even whether) traumatic events are remembered depends on not only how they are initially experienced but also how (whether) they are perceived by others, directly or indirectly, and the extent to which others are able to listen empathically to the survivor’s testimony. The traumatic event is experienced as culturally embedded (or framed), is remembered as such (in both

74 S. Ahmed, above note 72.
75 Interview with Barbara Tarquini, above note 37.
traumatic and narrative memory), and is shaped and reshaped in memory over time according, at least in part, to how others in the survivor’s culture respond.76

Barbara struggles with feelings of stigmatization and public shame because of the presumed role her father played in the terror inflicted by the military. Because of her interface with political and social judgements about the actions of her father in the past, Barbara feels ashamed that she herself has done something wrong; she feels that she is to blame in some way for her father’s actions. Current political and social conditions produce within Barbara an ambiguous coexistence between feelings of shame and pride. She carries these contradictory emotions within herself, experiencing great anxiety at being unable to restore her father’s memory in the public sphere and attain a sense of pride about who she is.

In Barbara’s case, she has failed to elicit for herself a sense of social recognition. As Honneth explains: “Recognition itself must possess the character of affective approval or encouragement.”77 These affects, suggests Watkins, “are the corporeal instantiation of recognition, the sensations one may feel in being recognized, which accumulate over time, fostering a sense of self-worth”.78 Moments of recognition therefore function as an affective force. Barbara’s perception that political, social and cultural recognition is withheld from her when she remembers her father creates feelings of having failed in the eyes of the “ideal other”.79

In Barbara’s example, recognition functions in a negative way, and carries with it the resultant force of negative affects. Barbara’s sense of shame and her shattered sense of self-worth bind her negatively to others in her failure to “live up to” others. Not only does Barbara have the impression that the government and human rights organizations are marginalizing her personal memories of her father, but these groups also leave her with the impression that she has something to feel shameful about. She feels that she cannot be a legitimate and recognized player in Argentina’s collective memorial culture.

Dori Laub and Nanette Auerhahn write that the link between individuals is predicated on the possibility and expectation of empathy. However, when individuals’ vital needs either go unheeded or are ignored by others, those individuals lose the expectation that their needs will in some way be met.80 Though she was of a different political persuasion, Barbara was told by government agencies that she did not have the right to claim assistance as a

79 S. Ahmed, above note 73.
victim of the military dictatorship because her father was deemed a fascist. Barbara said:

I went to speak with forensic psychologists who were reconstructing cases. I wanted to know how they operated, how they worked out to which group the murdered belonged. And they told me, no, your father was a fascist. A lot of doors closed for me because of the ideology of my father.81

The lack of receptivity for her grief and trauma has made Barbara feel as if she is not regarded as a citizen with equal rights within Argentine society. Barbara feels there is no understanding or empathy for her experience of loss, and feels desperately alone as a result. “Being discriminated against for the ideology of my father doesn’t give me the motivation to keep fighting [for his memory]”, she told me. Barbara does not feel that she is able to engage within her environment interpersonally, and as such she is unable to elicit a sense of mutuality. She is left feeling that she has nobody within the government or human rights organizations on whom she can count.

In Argentina, considerable social damage has been caused by the significant absence of empathy for the grief of those in different memorial cultures. This has denied both groups of women what they desire: the acknowledgement and empathic engagement with their suffering by those individuals instrumental in, and directly responsible for, causing their emotional pain. What is then produced is a lack of what Ahmed calls “fellow feeling”:82 the women’s pain cannot be shared through empathy with others in different memorial groups. But what happens to empathic engagement when traumatic memories pass not only between bodies but across generations?83

**Intergenerational transmission of memory**

Susana Kaiser has conducted research on how the experience of living under terror has been transmitted to following generations, and how the psychic remains of fear have manifested themselves in Argentina’s post-dictatorship generation. In her interviews with Argentine youth who were born during or following the period of military dictatorship, Kaiser illustrates how fear has persisted throughout the years: it has been transmitted by those who were directly affected by the violence to those who were mostly too young to remember. Kaiser believes the “witness generation’s” transmission of memories has influenced and shaped the post-dictatorship generation’s ways of thinking and acting.84

81 Interview with Barbara Tarquini, above note 37.
82 S. Ahmed, above note 72.
83 Karl Mannheim was the first to problematize the concept of “generation” as a social phenomenon in 1972, when he argued that a “continuous transmission of cultural heritage” among generations exists. Karl Mannheim, *Essays on the Sociology of Knowledge*, Routledge and Kegan Paul, London, 1972.
For example, most parents of those interviewed had told their children to avoid activities that had been targeted for repression in the past. One young woman, mimicking her father’s voice and gestures, told Kaiser that her father can put her in a state of paranoia on passing a police station as he says, “Let’s cross the street”. “He always does that,” she told Kaiser. By witnessing her father’s embodied reaction, the daughter understands the embodiment of terror associated with the police station in the past. In another example, Laura talked about how “revolutionary” books by Marx and Lenin were well hidden in her home during the dictatorship. She believes the attitudes and experiences of the parents have been crucial in shaping the fear of the next generation:

[Some kids] were breastfed with fear. If a kid lives in a home where her parents are terrified and don’t go out at night, she feels those things. There were parents who were always afraid during the military regime. They couldn’t live a quiet life, scared that “[the military] would come and take us away”. When you live in fear, you transmit this to your children.

While the children of the witnessing generation that Kaiser interviewed did not think the political conditions were comparable to those that brought about the dictatorship, many discussed being afraid of being tortured, and could not discard the possibility of a repeat of the violence in the future. As long as torturers’ identities are still unknown and they continue to roam freely within society, it stands to reason that “if they did it once they could do it again”.

Those in the next generation of Argentines have become witnesses not to the original trauma, but to the affective traces that trauma has left on their ancestors. For the children of the witnessing generation and for those who were very young during the dictatorship period, recognizing and acknowledging the psychic life of their parents and relatives in their own psychic life means uncovering and deciphering their ancestors’ unspoken suffering and painful history as well as their guilt, shame and crime. Marianne Hirsch remarks: “For survivors of trauma, the gap between generations is the breach between a traumatic memory located in the body and the mediated knowledge of those who were born after.” Taking up Hirsch’s idea, Esther Faye suggests that a repressed, mnemic registration of an individual’s traumatic past in one generation can be experienced as a traumatic memory “at a later time and place” in another generation.

In particular, the generation of Argentine individuals who have recovered their identity in recent years with the assistance of Las Abuelas de la Plaza de
Mayo has been forced to cope with exceedingly difficult dilemmas, including the decision to condemn the persons they have for decades called their parents. They have had to cope with extreme confusion and powerlessness as their identities have been turned upside down and they have been made to feel as if they have been torn into parts. They have also had to open up to whole new families and grapple with new categories to define those who had previously been family. Many individuals who have managed to recover their true identity have had to deal with anger, loneliness and grief on learning that they have been lied to for decades.

These individuals form part of a generation of young people who continue to work to ensure that their deep memories of trauma are kept alive for decades to come, as they seek to recover their real identities and to recuperate the “unspoken suffering and secret histories” of their disappeared and deceased parents. Though they may have never known their parents, the children of the disappeared have nonetheless received and assimilated the effects of their parents’ traumatic histories belatedly, through the narratives and actions of the previous generation. In this way, trauma both solidifies and blurs generational differences. What does this mean for Argentina now and in the future?

It becomes clear that without understanding the transmission of affective memory, we cannot possibly understand Argentine social or public life; we cannot hope to understand the forces that are at play to keep such deep animosities in place decades after the end of the dictatorship. Affect is created as the women repetitively share their narratives of violence and loss in the public sphere. Affect is that which is said and which remains unsaid in the oral testimony encounter. It is that which can communicate and motivate overtly and publicly—but it is also an excess that may remain unprocessed and misrecognized, evading consciousness yet provoking behaviour all the same. In the same way that Laura feels fear and paranoia on passing by a police station because her father would regularly tell her to cross the road away from it, or in the way that hundreds of children who have recovered their identities feel they imbibe the suffering of their disappeared parents, we can see that the migration of affect between bodies carries ideas along with it. The next generation of Argentines’ histories of family trauma and suffering will continue to flare as the transmission of affect ignites the memory of their ancestors’ fate. Traumatic memory will always be, in this regard, an issue of the present.

This article has explored the production, circulation and transmission of memories of the political and State violence of the 1970s and 1980s within two groups of Argentine women. In doing so, it has demonstrated the ways in which unresolved legacies of violence continue to haunt Argentine society—a deeply paradoxical concept, considering that Argentina pioneered many of the justice-seeking and truth-telling mechanisms designed to “deal with” the past in transitioning democracies. The article has taken a twofold approach to

91 G. Schwab, above note 88, p. 80.
92 E. Faye, above note 90.
considering why this may be so. It firstly investigated the evolving and complex historical, political, social, cultural and legal factors that have shaped the cultures of remembrance in post-dictatorial Argentina. It secondly focused on a different kind of narrative about remembering and forgetting in a traumatized society – one that is concerned with the workings of deep memory and the transmission of emotions and affects. The author contends that these two kinds of narratives are inevitably and inescapably intertwined. The two stories of what happened to memory in Argentina need to be considered alongside each other, as a way of arriving at a much more complex, layered and dynamic picture of Argentina’s memorial cultures and as a way of understanding why, decades later, Argentina continues to grapple with its past. In the next section, parallels between the Argentine and Sri Lankan contexts will be drawn to explore the historical legacies, as well as the key notions of affect, that Sri Lanka will need to address in order to prevent a repetition of the Argentine experience.

**Drawing parallels between Sri Lanka and Argentina**

In Sri Lanka, while transitional justice is in its infancy, important historical parallels to the way the past has been remembered in the Argentine experience are becoming apparent. In the years following the return to democratic rule, Argentine families of the disappeared struggled to have their memories of violence and loss recognized in the public sphere as consecutive governments embraced a politics of forgetting and impunity. Such policies have been similarly emerging in Sri Lanka since the end of the armed conflict in 2009. Though Sri Lanka was declared a “global champion of human rights and democratic accountability” in 2016 and recently granted another two-year extension to implement Resolution 30/1, “Promoting Reconciliation, Accountability and Human Rights”, at the 40th Session of the UN Human Rights Council in March 2019, Sri Lankan communities are at the same time encouraged to “forget the past and move forward”, adopting a similar narrative of forgiveness and reconciliation to that which was espoused in South Africa.

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93 The Secretariat for Coordinating Reconciliation Mechanisms (SCRM) and the Office for National Unity and Reconciliation (ONUR) are two State-run agencies that have been established to work towards reconciliation and co-existence in Sri Lanka. The SCRM was established in 2015 and is tasked with designing and implementing Sri Lanka’s reconciliation mechanisms; see: scrm.gov.lk. ONUR, a key feature of the 2015 presidential campaign, is mandated to develop policies and programmes that work towards developing long-lasting peace through addressing the underlying factors which lead to the past violence and armed conflict; see: nirmin.gov.lk.


The level to which the concepts of truth, memory and justice permeate the public consciousness, particularly in relation to transitional justice discourse, is still to be fully understood.\textsuperscript{96} Indeed, questions abound as to whether or not it is too early for memory in Sri Lanka, with families divided over the issue.\textsuperscript{97} While some families insist that remembering their missing relatives is an important element on their own personal road to learning to live with the ambiguity resulting from disappearance, other families, who believe their relatives are still alive somewhere, resist the very notion. For these families, participating in processes of “reparative remembering” as part of transitional justice processes is akin to conceding that their loved ones are deceased. As a result, these families demand that the State firstly and urgently fulfil its obligations towards establishing the truth about the fate and whereabouts of their missing relatives and prosecuting the perpetrators of these crimes.\textsuperscript{98}

Lawyer and researcher Gehan Gunatilleke believes that memorialization has an important role to play in contemporary Sri Lanka, not only in creating a public space for truth, justice and reparations but also in challenging any State reluctance to fulfil its agreed-upon obligations towards realizing transitional justice processes.\textsuperscript{99} However, Gunatilleke is also concerned that a contemporary “Sri Lankan version” of transitional justice, which promotes restorative forms of “tolerance”, “forgiveness” and “leniency”, is a preferred narrative among some scholars as well as the Sri Lankan State. He rightly asks, “why are we not learning lessons from the past?”, and contends that “[d]espite recurring violence, the country has been unable to learn from its history and develop an effective approach to combat impunity and prevent violence”.\textsuperscript{100}

Over the past four decades, a number of commissions of inquiry have been established in Sri Lanka to deal with its violent past. Most recently, the government-commissioned Consultation Task Force on Reconciliation Mechanisms (CTF) was established, and public consultations were held across Sri Lanka in 2016.\textsuperscript{101} The CTF was mandated to elicit public opinion on how transitional justice processes should be designed and established, and how they should function to meaningfully address

\begin{footnotes}


99 \textit{Ibid}.

100 G. Gunatilleke, above note 96, p. 4.

\end{footnotes}
the legacy of violence and conflict between 1983 and 2009. An overarching theme of the 7,306 oral and written submissions made by families and local and international organizations was the importance of long-term psychosocial support during and following the completion of a transitional justice process. Some submissions to the CTF also claimed that the nation itself had been psychologically affected by the past violence and conflict, and iterated the importance of facilitating a “process for healing of memories for everyone” in order to repair the mistrust among and between Sri Lanka’s communities.

Like Argentina, Sri Lanka will, for decades to come, deal with a myriad of evolving and complex historical, political, social, cultural and legal factors that shape cultures of remembrance as well as ethnic and religious dimensions that will continually challenge the transitional justice paradigm’s goals of tolerance and forgiveness. “A reconciliation process always contains paradoxes, tensions, even contradictions. It is neither neat nor easy and at times can seem incongruous”, write Hamber and Kelly. Indeed, there is no one-size-fits-all approach to the peace-building agenda, and similarly to Argentina, Sri Lanka will need to resolve a number of legacies of how past violence is remembered, not least maintaining an inclusive approach to memorialization in order to avoid recognizing some memories of violence while engaging in the forced forgetting of others.

Ambika Satkunanathan, human rights activist and commissioner of the Human Rights Commission of Sri Lanka, believes that since the end of the most recent conflict in Sri Lanka in 2009, the government’s failure to recognize the memories of all victims of the conflict “has only served to generate anger, resentment and a sense of disenfranchisement amongst the Tamil people, which in the short-term will make reconciliation impossible, and in the long-term form the catalyst for another conflict”. Farzana Haniffa, however, also highlights the dangers of competitive victimhood status in Sri Lanka should the experiences and memories of the Muslim community, especially those who were expelled from the Northern Province by the Liberation Tigers of Tamil Eelam (LTTE), be omitted from transitional justice processes. Haniffa reminds us of the need for more nuanced and subtle discussions around victimhood and remembrance for all.

103 Ibid.
104 CTF, above note 101.
105 For further reading on the most recent violent attacks stemming from ethno-religious tensions, see Damien Kingsbury, “Sri Lanka Has a History of Conflict, but the Recent Attacks Appear Different”, The Conversation, 22 April 2019, available at: https://theconversation.com/sri-lanka-has-a-history-of-conflict-but-the-recent-attacks-appear-different-115815.
marginalized groups. For example, one Muslim civilian felt betrayed by the LTTE as a whole, saying:

We were of great help to the LTTE while they fought for our rights. Some of our people then betrayed the LTTE. But [the LTTE] did not realise that all Muslims are not like [those people]. We have even offered food to the LTTE. Even though they carried out some injustices, their cause was just. [But] the LTTE is [ultimately] responsible for expelling us from our own village, while we were living together.¹⁰⁹

Gunatilleke calls for a “victim-centred” approach to public memorialization, rather than a State-led approach, to ensure that all affected groups are considered and included.¹¹⁰ Currently, while public monuments and memorials in Sri Lanka’s capital Colombo commemorate the military causalities of armed conflicts, including servicemen who lost their lives during the most recent civil war, there is as yet no monument which commemorates all victims of armed conflicts.¹¹¹

The building of trust between communities and prospects for grassroots reconciliation will also be jeopardized as long as justice remains elusive. A recent report released by the UN Office of the High Commissioner for Human Rights points to the “slow progress” that Sri Lanka has shown in establishing “meaningful transitional justice measures” and the continued lack of progress in the area of accountability for past crimes. “The risk of new violations increases when impunity for serious crimes continues unchecked”, the report states.¹¹²

As in Argentina, as long as perpetrators of violence and disappearance seem to manage to keep their identities concealed and continue to live alongside their victims in Sri Lanka, and an endemic silence and denial continues about the fate and whereabouts of missing persons, the past will remain a source of eternal frustration and perceived injustice for families.

Like elsewhere, families of missing persons in Sri Lanka will have different views towards the concept of justice and how it applies to their experiences. And similarly to Argentina, demands for justice may not wane with time as long as the truth about the fate and whereabouts of missing persons remains elusive. Indeed summarizing the results of one study conducted with families of the disappeared in Sri Lanka, Gehan Guntilleke writes that “even a lapse of 28 years had not neutralized the demand among the participants for truth telling and the identification and prosecution of perpetrators”.¹¹³

With their loved ones still missing, many families will never be able to bury their loved ones’ bodies and Sri Lankans continue to evoke the memory of their disappeared relatives and make attempts to re-inhabit the world in the face of

¹⁰⁹ Ibid., p. 24.
¹¹⁰ G. Gunatilleke, above note 96.
¹¹¹ Ibid.
¹¹³ G. Gunatilleke, above note 96, p. 35.
persistent ambiguity over their loved ones’ fate. Malathi De Alwis believes that Sinhala women whose children were disappeared during the Janatha Vimukthi Peramuna uprising (1988–93) continue to identify as family members of disappeared persons.114

These unresolved legacies are part of what compels individuals to share their narrative in the public sphere and can play a crucial role in how events are collectively assimilated and remembered. As the significance of violent events and memories of loss are socially shared within and among memorial cultures, individuals’ perceptions and understandings of events are shaped to a significant degree by those sharing their traumatic experiences. The telling and retelling of individuals’ memories never “exhausts” the violence that was inflicted; instead, such testimony symbolizes and even evokes it. A Sinhala mother whose child was disappeared during the late 1980s explained: “They cannot identify him at least to know where he is, to be able to mark the location and to build a memorial to remember him and hold funeral rites.”115 For this mother, as long as knowledge of the fate and whereabouts of her son and some form of acknowledgment are lacking, she will continue to attest to the impact of his absence and ensure that it continues to have a moral reality within Sri Lankan society.

As affected individuals in Argentina have repetitively related their emotional experiences to others in the country, the social group has gradually assimilated those experiences, and as a result has been furnished with new emotional knowledge which can create both solidarity and antagonism. As feelings and emotions have been strongly communicated by individuals in their narratives, this in turn has engendered strong feelings in those listening.116 As a result, there is a sense that the past never moves on in Argentina but circles, raven-like, round and round. The sharing of narratives both publicly and privately in the Sri Lankan context is similarly done to ensure that the truths of a violent past are shared and never forgotten, for the benefit of the generations to follow.117 In the words of one survivor of violence:

I do not wish to sow seeds of revenge and conflict in the minds of our children. But the younger generation should know their history. They should know about their predecessors. Only when they are told about injustices will further injustice not happen.118

117 In submissions made by families to the CTF, which was mandated to listen to Sri Lankans island-wide about their views on the design and establishment of transitional justice processes in Sri Lanka in 2016, families stressed their concerns about being re-traumatized following the constant retelling of their painful stories. The psychosocial needs of those sharing their experiences in the public sphere, argue Salih and Samarasinghe, require further attention in the design of transitional processes. See M. Salih and G. Samarasinghe, above note 102.
118 G. Gunatilleke, above note 96, p. 16.
While some steps have been taken on the road to realizing transitional justice processes in Sri Lanka, the country has a long way to go to produce the conditions necessary for a peaceful coexistence between all communities. Many challenges remain unresolved, and one of the biggest of these is, as mentioned above, how to include the memories of all those who suffered in the public sphere of remembrance, including those of the most marginalized. Otherwise, like in Argentina, competitive ideological battles in the public domain over whose history and political culture should ultimately be recognized and validated will prevail. Warnings abound in Sri Lanka of the risk of fuelling renewed cycles of violence if the multiple narratives and truths around the experiences of conflict are not included in the public sphere of remembrance. Learning lessons from Argentina, should different groups of victims be compelled to compete for the recognition of their memories in the public sphere as if it were a “scarce resource”, this will ultimately have crucial implications for the shaping of Sri Lankan collective memorial culture and identity. Instead, the author suggests creating a memorial culture within which the complexity of the relationship between violence, power and affect is permitted, in order to create a culture of empathic alignment between different memorial groups and to allow for transformative and discursive possibilities to emerge.

Conclusion

While the traumatization of individuals and groups has been the central premise for national reconciliation projects, which seek to heal the wounds of the past and promote peace within fractured societies, the research findings in this article considerably complicate the notion that enacting transitional justice processes is automatically commensurate with the alleviation of individual trauma or suffering. While we may wish to imagine that justice is the answer in societies grappling with their traumatic pasts, such as Argentina and Sri Lanka, we are well advised to consider that no amount of public truth-telling in Argentina has been a catalyst for healing individuals’ deeply felt pain; the psychological and physical pain provoked by deeper memories will continue to be an irreducible part of their lives. When we drill down deeply beneath individuals’ more formalized accounts, we are able to see how those mnemonic layers that are unconscious, inexpressible and uncontainable in language can be lodged deeply within a survivor’s body and are prone to involuntary eruptions. Exploring deep memory exposes the unconscious ways in which individuals remain attached to violent periods of history, and this attachment can have serious and at times unpredictable implications for the politics of remembering in transitional contexts.

120 M. Rothberg, above note 34.
In post-conflict and post-authoritarian contexts emerging out of periods of violence, the notion of affect is particularly relevant to raising our consciousness of how individuals carry the legacy of surviving violence and how they continue living with their heart-breaking loss. In particular, the author believes that a focus on the role played by affective memories in shaping women’s narratives can further understandings of their experience of memory, trauma and testimony in other historical and geographical contexts. As illustrated in the Argentine context, exploring women’s affective memories in the testimonial encounter can challenge historically silenced versions of remembering. What if we were to take affect seriously, however, and explore what it has to tell us in other international contexts, where women’s affective memories are all too often marginalized within formal testimonial discourse?

In many ways, remembering affectively is a process of remembering the tragic effects of trauma and suffering on individual lives; it is a form of remembering that allows the women to acknowledge and articulate the persistent physical and psychological impact of living with suffering, their moral ambivalence regarding survival and their ways of living with memories that will not – and cannot – be contained. Exploring women’s affective memories in contexts re-emerging after conflict or authoritarian rule can challenge portrayals of women as selfless and passive victims; it can also foreground the embodied experiences of survivors and survival, and actively engender the transformation of pain into language. In this way, women are afforded a greater degree of control of their memories, their bodies and their language.

Most crucially, the notion of affect makes us conscious of the vulnerability of others. Judith Butler tells us that we need to critically evaluate and oppose such conditions that make some lives more vulnerable and more grievable than others: “From where might a principle emerge by which we vow to protect others from the kinds of violence we have suffered, if not from an apprehension of a common human vulnerability?”\(^{121}\) We must acknowledge, however, what a mammoth task it is to recognize this “common human vulnerability” to which Butler refers – to ask individuals who have been pushed to the limits of humanity themselves to see the vulnerability of those who have pushed them.

If we give due consideration to the workings of affect, we begin to realize that it could take quite some time for individuals’ experiences of violence and injustice to be lived through in transitioning contexts. After all, affect continually flows between the private and the public realm as well across generations. People in contexts such as Argentina and Sri Lanka must deal with societal trauma as a result of the violence witnessed or experienced by their children, who will find ways to recuperate the unspoken suffering and secret histories of their disappeared and deceased parents. In this way, their trauma both solidifies and blurs generational differences.

Affective memories assume a powerful presence and can prevent individuals from envisioning a future for themselves in which their individual

\(^{121}\) J. Butler, above note 1, p. 30.
and their nation’s past is safely left behind, contained and fixed in the past. These are the sorts of memories that defy closure – or indeed any type of certainty. Despite the ongoing broader debates over whether to remember or forget a country’s traumatic past, this article has aimed to show how individual and collective memories of trauma and disappearance prevail in Argentina and will prevail in Sri Lanka regardless should the historical legacies of violence not be addressed, acting as a potent cultural force, challenging the “reconciliation paradigm” and recasting, in the most subtle of ways, public conversations about Sri Lanka’s past and present. Affective memories challenge and shed light onto historically silenced versions of remembering and reveal in the process just how impoverished the narratives of “transition”, “reconciliation” and “healing” can be for capturing the complexities of everyday life in the aftermath of violence and disappearance. For this very reason, the role of affective memories in creating antagonism or solidarity between communities within transitional democracies needs to be given due attention, as these memories provide a fuller picture of that which will otherwise remain unseen and un-narrated, yet will reanimate and alter individuals’ understanding of the past, well into the future.
Perspectives on memory, forgiveness and reconciliation in Cambodia’s post-Khmer Rouge society

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Abstract
Transitional justice is a conspicuous feature of responses to mass atrocities. Rooted in accountability and redress for victims, transitional justice mechanisms influence and are influenced by collective memory of conflicts. This article looks at the dynamics between memory, trauma and forgiveness in Cambodia. Thirty years after the Khmer Rouge regime, Cambodians expressed limited knowledge of the past, a strong desire for the truth, and lingering feelings of hatred. The Extraordinary Chambers in the Courts of Cambodia (ECCC) created or renewed demand for
truth, along with some desire for harm to come to the wrongdoers. Although the ECCC was set up several decades after the mass atrocities, the data suggest that the ECCC and the civil society movement associated with it may have had positive outcomes on addressing the legacy of the violence.

Keywords: memory, Cambodia, Khmer Rouge, forgiveness, reconciliation.

Introduction

Several decades after the end of the Khmer Rouge (KR) regime, some Cambodians are still struggling with its aftermaths. Memories of the regime, feelings of hatred towards the perpetrators, and an inability to forgive still affect those who lived under the KR and some of the next generation. The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in 2006 to address the violence of the KR. Its mandate is to bring to justice those who were responsible for human rights abuses committed during the regime. For the government of Cambodia and Cambodians, the ECCC is also intended as a means to pursue national reconciliation.1

Promoting reconciliation is a common goal of transitional justice processes, as stated in the mandates of truth commissions, reparation programmes and trials in multiple countries. Reconciliation is generally accepted as both a goal that post-conflict societies strive to meet and a process they must undergo in order to prevent the recurrence of violence.2 Despite much discussion, however, there is a large degree of variation in how reconciliation is understood in measurable and operational terms.3

Reducing feelings of hatred and vengefulness toward other groups is seen by individuals and communities as an important aspect of violence prevention.4 Forgiveness as part of reconciliation is commonly seen as antithetical to revenge, and leaders have frequently attempted to foster forgiveness after atrocities. In

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4 D. Bloomfield, T. Barnes and L. Huyse, above note 2.
1998, following amnesty deals and massive defections of KR guerrillas, Cambodian premier Hun Sen invited Nuon Chea and Khieu Samphan, top KR leaders, to the Cambodian capital, Phnom Penh. During a press conference, Khieu Samphan stated that people should “let bygones be bygones” and “forget the past”, while Hun Sen said “the KR leaders should not be welcomed with guns, bullets, prison or handcuffs, but a bunch of flowers for the spirit of national reconciliation”. Hun Sen further stated: “We should dig a hole and bury the past and look ahead to the 21st century with a clean slate.” Efforts to promote forgiveness have been criticized, however, for pressuring victims to suppress their natural feelings of anger, with potentially harmful psychological consequences and the broader effect of downplaying the violence itself. Arguably, such efforts have also been unsuccessful. Cambodia has not seen a return to mass violence, but as discussed in greater detail further in this paper, suppressing the past has prevented affected individuals and communities from processing and understanding what happened under the KR in order to achieve reconciliation. By the late 1990s, the movement for an international tribunal to try senior KR leaders was growing, culminating in the opening of the ECCC in 2006.

In addition to their potential role in reconciliation, trial processes such as the ECCC are said to play an important role in shaping memory in post-conflict societies. Law and legal processes have an implicit level of authority because they are empowered to differentiate between victims and perpetrators. At the same time they have inevitable limits, leaving out what has been described as a “counter-archive”, which contains the unwritten stories and events that never come to light. Truth-telling processes have been praised for their role in illuminating past abuses and for uncovering the fate of people who went through the violence. Yet they too have been described as producing “amnesia”, a loss of

5 Nuon Chea, known as “Brother Number 2”, was second-in-command to Khmer Rouge leader Pol Pot. Khieu Samphan was head of State during the KR’s reign.
partial or total memory, due to having limited mandates that can lead them to formalize a particular version of the truth.13

The way in which the memory of the past emerges is critical and influences individual and national narratives. At the individual level, memories after war or violence are inherently connected to trauma and personal stories.14 Memory, knowledge of the past and the sharing of stories are inextricably linked. Knowledge can refer to absolute truth or facts (content knowledge), or can be defined as an “individual’s personal stock of information, skills, experiences, beliefs and memories”.15 Memory is central to both understandings of knowledge: it encompasses both what a person knows and what they believe to be true.16 Through the sharing of stories, individual memories lead to the creation of collective memory and the emergence of “memory narratives”.17 While collective memory can emerge organically, historical narratives are often produced, or controlled, as a means to record a particular viewpoint on war or violence during a political transition.18 A new government might support a certain narrative as a way to de-legitimize the previous regime or the opposing warring parties, and narratives that are politicized and consciously promoted can become “hegemonic”, dominant and exclusionary of alternative experiences of the violence.19

During the KR regime, harsh policies applied across the country, but their implementation varied among regions20 and among groups.21 With the creation of the ECCC, non-governmental organizations and the Court held outreach sessions to talk about the past and explain the ECCC’s role and developments related to it. During those sessions, participants often described harm and suffering that they experienced during the KR regime. Despite people’s diverse experiences, it seems there was little space for participants to express a different narrative. To conform and to be accepted, everyone had to have experienced hunger, suffering and harm.22

16 Ibid.
21 The society was in fact divided into three groups: new people, candidates and base people. People from the cities were almost de facto labelled as new people and were submitted to the harshest conditions. Subsistence farmers and KR devotees became the elite, with full rights and enforcement power. See Michael Vickery, Cambodiá 1975–1982, South End Press, Boston, MA, 1984, pp. 81–82.
22 Authors’ observations from attending several outreach sessions in 2006–12.
This article examines the role and importance of the ECCC in shaping the dynamics of memory and knowledge, hatred and revenge, and forgiveness among Cambodians. It begins by presenting the Cambodian context and the methodology; then, using both quantitative and qualitative data gathered by the authors between 2008 and 2014, it addresses the possible effects of the ECCC, firstly on the relative silence surrounding the KR regime, and secondly on the lingering desire for revenge and on attitudes about forgiveness.23 In exploring these questions in the context of Cambodia, the authors identify ways in which the memory of the past affects the present-day reality of communities that were affected by war.

The authors hope that this research will contribute to the understanding of how memory and narratives are created after mass violence, how transitional justice mechanisms affect these processes, and how memory interacts with other factors to influence the possibility of reconciliation. Responses to these questions are critical to sustaining peace in countries that are emerging from violent conflicts and engaging in transitional justice efforts.

Memory of the Khmer Rouge regime

For almost four decades, Cambodian society has struggled with the government’s efforts to frame an unforgettable past under Democratic Kampuchea, also known as the KR regime, between 1975 and 1979. The regime saw approximately one quarter of its population killed (2 million out of a total population of 7.5 million) and the systematic persecution of elites, minority ethnic groups and eventually party members.24

After the KR were removed from power, the newly established government sought first to create its own narrative and then to bury the past, in part because of its own links to the KR.25 The efforts to impose a collective memory narrative

23 The data presented throughout the article draw on the research previously conducted by the authors. For more information, see Phuong N. Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean and Eric Stover, So We Will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia, Human Rights Center, University of California, Berkeley, CA, 2009, available at: www.peacebuildingdata.org/sites/m/pdf/Cambodia_2009_So_We_Will_Never_Forget.pdf; P. N. Pham et al., above note 1; Phuong N. Pham, Patrick Vinck, Mychelle Balthazard, Judith Strasser and Chariya Om, “Victim Participation in the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia”, Journal of Human Rights Practice, Vol. 3, No. 3, 2011; Nadine Kirchenbauer, Mychelle Balthazard, Latt Ky, Patrick Vinck and Phuong N. Pham, Victims Participation before the Extraordinary Chambers in the Courts of Cambodia, Cambodian Human Rights and Development Association (Association pour les Droits de l’Homme et le Développement au Cambodge, ADHOC) and Harvard Humanitarian Initiative, 2013, available at: www.eccc.gov.kh/sites/default/files/Victims-participation-before-ECCC-Baseline-Study-Jan-2013.pdf.


Some memorial sites have acquired international renown, such as the prison facility at Tuol Sleng, also known as S-21, and the nearby killing fields of Choeung Ek, where several thousands prisoners from S-21 were executed and buried. These sites exist within a broader landscape including dams, bridges and roads where people died during the KR and that still function today. Further, people frequently told their stories within their families or communities, but the official record of the history of that period still overlooks many experiences of violence at the time.

Accounts of the creation and functioning of collective memory in Cambodia since the fall of the KR are in many ways emblematic of the dynamics of memory after violence. After the fall of the KR in 1979, the new government of the People’s Republic of Kampuchea (PRK) prioritized building a certain narrative of the KR period that aimed to legitimize its own standing as the force that liberated Cambodia from a genocidal regime. In 1979, the government organized the People’s Revolutionary Tribunal, resulting in the condemnation of the KR regime and death sentences in absentia for Pol Pot and Ieng Sary. The government arrested and executed thousands, with few ever appearing in court in judicial processes against former KR cadres. At the same time, the government urged local communities across the country to discuss the KR experience and promoted memorials and ceremonies to honour the dead. Those initiatives helped to pacify the country, but many activists and scholars have questioned the due process of the trials and the impact of the different non-judicial initiatives. Observers noted that these processes provided only very limited information about the past to the population and failed to encourage real dialogue among Cambodians.

The KR violence was pervasive, and many Cambodians were forced to commit violations to save themselves. People could be simultaneously victims, perpetrators and bystanders. Some could be members of the KR, but not perpetrators of violence. The lack of official acknowledgement and exploration of these multiple roles is said to have hindered reconciliation on many levels:

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29 E. Gottesman, above note 25, pp. 7–11, 60–66.
30 Revolutionary People’s Tribunal, Judgment A/34/491, August 1979, available at: https://tinyurl.com/y24woa2r.
33 J. D. Ciorciari and S.-K. Ly, above note 31.
victims may be unwilling to accept former KR members in their communities, and former KR members may be perceived as perpetrators regardless of the level of responsibility they had for the violence.34

The KR continued to be an opposition political and military force in Cambodia until 1999, when the last armed forces surrendered. They were weakened, in part, by the granting of amnesties for acts they had committed during 1975–79, including for high-level KR officials. The movement for an international tribunal to try senior KR leaders was growing. After almost a decade of negotiations, the ECCC was finally established in 2006.35 Some have questioned whether the ECCC itself promoted a narrow narrative of justice and reconciliation, being confined by its temporal mandate, which covers only the period of KR rule, and by its singular focus on senior leaders and those most responsible for violations.36 It is commonly accepted, however, that the tribunal and the civil society movement which surrounded it maintained a level of public dialogue about the era—an initiative that was not always supported by the country’s political leadership.37 Generally, individuals in Cambodia have memories of the KR years either from their own experience or from stories told by others.

Cambodia has not seen a return to mass violence, but feelings of anger and revenge persist, hindering national reconciliation.38 In a 2011 study, Laura McGrew found that Cambodians had reached a state of “shallow coexistence”, but they remain far from the trust and interdependence that characterize a cohesive society.39 Among the victims McGrew interviewed, some had begun to accept perpetrators into the community, but those seen as responsible for the more serious violations were less likely to be accepted.40 Those seen as committing violations to save themselves, or out of ignorance, were accepted more compared to those who had not shown remorse or atoned in any way.41 In cases where perpetrators continued to hold political power, victims reported living in a state of continued fear.42 Burca Munyas’ study found that among families that discuss the KR period openly, young people reported feelings of anger, vengeance and fear that a similar era could recur.43

35 D. P. Chandler, above note 10.
38 E. Bockers, N. Stammel and C. Knaevelsrud, above note 9; C. Etcheson, above note 9.
39 L. McGrew, above note 34.
40 Ibid.
41 Ibid.
42 Ibid.
The context of Cambodia, where a court was set up three decades after the events that it focuses on, is particularly appropriate for examining the effects of trials on memories and forgiveness as it avoids some of the tumultuous time in the direct aftermath of the conflict.44

Methods and data sources

This article uses multiple datasets from surveys and mixed-methods research conducted by the authors between 2008 and 2014 with the general population (nationwide surveys), as well as interviews conducted with civil parties (CPs) engaged in legal proceedings against KR leaders at the ECCC.45

The goal of the population studies was to assess the population’s knowledge, perceptions and attitudes toward the ECCC and social reconstruction, as well as to examine changes in those key factors over a two-year period. Interviews were conducted in 2008 and 2010, and each survey was answered by a total of 1,000 randomly selected adult Cambodians. As a sampling frame, the team used the Cambodia General Population Census 2008’s database, prepared by the National Institute of Statistics at the Ministry of Planning. Thereafter, a four-stage cluster sampling strategy46 was then designed to ensure that results would be representative of this population. Interviewers used a structured questionnaire that was similar for both surveys. The two surveys included nine topics: (1) demographics; (2) needs and priorities; (3) justice and the rule of law; (4) the KR regime; (5) the ECCC’s outreach efforts; (6) knowledge and perceptions of, and attitudes towards, the ECCC; (7) establishment of a historical record, truth-telling and reparations; (8) exposure to violence; and (9) mental health. The survey included several sets of questions aimed at understanding how much knowledge of the period of violence respondents had, particularly young people who did not experience it themselves, and how that knowledge was transmitted between people and across generations.47 In 2010, questions related to the first case at the ECCC and the participation of victims in the legal

44 In the aftermath of the conflict, outside countries and institutions supported factions with different ideologies. The Soviet Union allied with the Vietnamese; China, the United States and the Association of South-East Asia supported the resistance movement; and the United Nations recognized Democratic Kampuchea (Khmer Rouge) as the representative of Cambodia. The country was isolated for at least ten years. It is only at the beginning of the 1990s that the United Nations got involved in Cambodia facilitating the 1993 elections. See John D. Ciorciari, “History and Politics: Behind the Khmer Rouge Trials”, in J. D. Ciorciari and A. Heindel (eds), above note 31, Chap. 1; C. Etcheson, above note 9, pp. 17–30; E. Gottesman, above note 25, pp 42–45.

45 See note 23 above.

46 During the first stage, researchers randomly selected 125 out of 1,621 communes using systematic random sampling proportionate to size. During the second stage, researchers randomly selected two villages from each of the selected communes using simple random sampling. Within each village, four households were randomly selected using linear systematic sampling with equal probability of selection. Finally, during the fourth stage, within each household, a Kish grid was used to select one household member at random for an interview.

47 In the questions, the definition of knowledge and how they talk about the events was left up to the interviewee.
proceedings as a CP were also added. The instrument was first developed in English, and then translated into Khmer. Consultations with local experts and pre-testing with sixty-seven randomly selected respondents in non-study sites ensured that the instrument was easily understandable to respondents.

In addition, the authors conducted three waves of interviews with civil parties to cases before the ECCC. The objectives of those studies were to monitor and assess the CPs’ participation process at the ECCC and in the programme led by the Cambodian Human Rights and Development Association (Association pour les Droits de l’Homme et le Développement au Cambodge, ADHOC), which assisted nearly half of the CPs accepted in Case 002 before the ECCC. The studies also gathered CPs’ opinions of the broader transitional justice efforts in the country. Table 1 shows the amount of CPs interviewed by the authors in Cases 001 and 002 before the ECCC.

The first wave of interviews was conducted around December 2010 at the conclusion of the trial of Kaing Guek Eav, alias Duch (Case 001). The second wave was carried out in 2011, prior to the substantive trial of Nuon Chea and Khieu Samphan in Case 002, and the third wave was conducted in January 2014 following the substantive trial and before the judgment in Case 002/01.

The structured questionnaires for the CP studies were similar to those of the population-based surveys, with emphasis on the participation process at the ECCC, including but not limited to the CP application process, legal representation, participation in the trial, and specific questions related to the ADHOC scheme where applicable.

While the studies were conducted as rigorously as possible, some limitations must be acknowledged. First, the instruments contained questions related to events that took place over thirty years previously. For respondents, the passage of time could have resulted in recall errors or created certain biases.

48 The Cambodian legal system is based on civil law, which allows victims to participate in legal proceedings. Following Cambodian law, the ECCC also allows victims to participate in its proceedings as CPs or complainants. See ECCC, Internal Rules, Rev. 8, as revised on 3 August 2011, Rule 23(1), available at: https://tinyurl.com/y4ys9myo.
49 Prior to its use in the study, the instrument was back-translated into English to ensure comparability.
50 The ECCC has had four main cases. Case 001 was the first case and as such was a landmark in the pursuit of justice, according to international standards, for the crimes committed during the KR regime. The defendant, Kaing Guek Eav alias Duch, was the chairman of the notorious central Tuol Sleng prison and its branches in Phnom Penh. During the KR regime, he oversaw the imprisonment, torture and execution of more than 12,000 people. Duch, found guilty of crimes against humanity and war crimes, was convicted to life imprisonment. Case 002 involved two KR leaders, Nuon Chea and Khieu Samphan. This case covers several sites across country, and diverse charges including genocide against the Cham and the Vietnamese, and forced marriage. The ECCC handed down a judgment in Case 002/02 in November 2018, and Cases 003 and 004 are still in progress. See ECCC, “Case Load”, available at: www.eccc.gov.kh/en/case-load. See also P. N. Pham et al., “Victim Participation in the Trial of Duch”, above note 23; N. Kirchenbauer et al., above note 23.
52 To speed up proceedings, and considering the advanced age of the accused, the Trial Chamber ordered the severance of Case 002 into several sub-trials. See ECCC, “Severance Order Pursuant to Internal Rule 89ter”, 22 September 2011, paras 1, 5, available at: www.eccc.gov.kh/en/document/court/severance-order-pursuant-internal-rule-89ter.
Moreover, because views and attitudes are influenced by local and contemporaneous events, the data are only a snapshot of views as they were at the time of the survey. Several survey questions were designed to test the validity of responses. Finally, while the questions were finalized following piloting, respondents were free to interpret them according to their own understandings of the terms used. Careful choice of phrasing and translation and in-depth consultations with local experts about terminology reduced the risk of misinterpretation of the questions.

Some of the most notable results relate to people’s knowledge of the KR, their willingness to talk about the KR era, their interest in knowing the truth about the period, and their feelings about the possibility of reconciliation. To explore these results further, the authors undertook a new literature review to identify some of the key issues surrounding memory and transitional justice globally, and new analyses to identify insights on how memory intersects with reconciliation after violence. The new analyses focused on a set of variables related to memory and reconciliation, in order to understand the relationships between them.

### Breaking the silence?

Transitional justice mechanisms may, arguably, contribute to breaking the silence that surrounds serious crimes and abuses committed during conflicts. This silence surrounding often critical events obviously hinders the emergence of a complete narrative and collective memory. A legitimate question, however, is how much of that silence really exists— in other words, was there a silence to break in Cambodia?53

According to the 2008 and 2010 surveys, self-reported knowledge of the KR era (see Table 2) was particularly low among younger respondents who did not live

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Table 2. Knowledge about the Khmer Rouge regime*

<table>
<thead>
<tr>
<th>Knowledge of the KR</th>
<th>Did not live under KR</th>
<th>Lived under KR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
<td>2010</td>
</tr>
<tr>
<td>Poor/very poor</td>
<td>81%</td>
<td>80%</td>
</tr>
<tr>
<td>Own experience</td>
<td>N/A</td>
<td>1%</td>
</tr>
<tr>
<td>Family and friends</td>
<td>84%</td>
<td>88%</td>
</tr>
<tr>
<td>School</td>
<td>6%</td>
<td>2%</td>
</tr>
<tr>
<td>Media</td>
<td>9%</td>
<td>8%</td>
</tr>
</tbody>
</table>

* This question was not asked to the CPs since the focus in their case was solely on their experience as CPs.

under the KR. Around 80% of them, as well as one third of those who lived under the KR, described their knowledge of that period as poor or very poor in both 2008 and 2010. This might seem surprising, but it can be explained by the regime’s secrecy at the time and by people having little contact with their wider surroundings outside their immediate environment.

The main source of information about the KR period for about 80% of the people who lived under the KR was their own experience, while family and friends were the main source for more than 80% of younger respondents. Very few respondents said they heard about the KR era in school or from the media, although both school and media were slightly more common sources for the younger generation. These results are not surprising – the media covered stories of the KR era at the time of the ECCC, but rarely before that. Furthermore, information through the media was often difficult to access or even unavailable for people with low literacy or living in rural areas. The school system was almost non-existent during the 1980s, as schools were being rebuilt and teachers trained, and the rudimentary history of the KR era introduced in the 1980s was eliminated from the school curriculum in 1993 and reintroduced only in 2010.
Along with lack of knowledge, there is some reluctance to speak about the era (see Table 3). About 40% of those who experienced the KR first-hand rarely or never speak about it; among those who did not live under the KR, this figure rises to around three out of four. This may be part of a broader tendency to avoid speaking about, and hence remembering, past violence. In psychology, avoidance of painful memories is a common coping and survival mechanism. In surveys conducted by the Transcultural Psychosocial Organization Cambodia (TPO Cambodia) in 2015 and 2016, young people said that their parents do not talk about the KR because it is too painful, because it reminds them what happened to family members, or because they do not want to say what they themselves did during that time. Based on interviews with youth, Munyas described many inconsistencies in the stories told by Cambodians who lived under the KR to their children. Some parents were too traumatized or too focused on their day-to-day struggles to discuss old traumas. Former KR members may also have hidden their true identities or their involvement during the regime once the regime fell, fearing they could be brought before the ECCC or ostracized by their community.

Both surveys also indicate strongly that respondents’ priorities were the economy, jobs and poverty reduction (83% and 98% in 2008 and 2010 respectively); infrastructure (48% and 50% in 2008 and 2010 respectively); and services such as health and food. It is understandable that people with these priorities might not take the time to speak or inquire much about an era that is thirty years in the past. Previous studies found that, faced with poverty, displaced Cambodians prioritized daily tasks and survival over dealing with the past. It is worth noting that CPs and civil party representatives (CPRs) were far more likely to talk often about the KR – as CPs, they were regularly involved in activities and receiving information related to the ECCC process.

This does not mean, however, that the general population in Cambodia lacks interest in the KR period: among those who did not live under the KR, 85% in both 2008 and 2010 wanted to know more, as did a large majority of those who lived under the KR (74% in 2008 and 67% in 2010). Given the lack of knowledge and tendency not to speak about the KR era, particularly among the younger generation, the authors will now look at attitudes toward truth-telling and historical exploration of the period of violence. This is particularly relevant since Cambodia’s official policies promoted a narrow narrative about the regime, and there may still be a need to foster a broader dialogue.

59 TPO Cambodia, Truth, Reconciliation and Healing in Cambodia: Baseline Survey Report, July 2015; TPO Cambodia, Midterm Survey Report, March 2016. Both reports were produced for review by the United States Agency for International Development. On file with authors.
60 B. Munyas above note 43.
61 Ibid.
63 N. Kirchenbauer et al., above note 23.
<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2010</th>
<th>2011</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPs</td>
<td>69%</td>
<td>40%</td>
<td>41%</td>
<td>CPRs 7%</td>
</tr>
<tr>
<td>CPRs</td>
<td>76%</td>
<td>40%</td>
<td>16%</td>
<td>CPs 20%</td>
</tr>
</tbody>
</table>

**Table 3. Talking about the Khmer Rouge**

- Did not live under KR
- Lived under KR CPs and CPRs
- Rarely/never talk about the KR
The survey data show clearly that attitudes toward truth and memory changed considerably from 2008 to 2010 (see Table 4), the period when the ECCC trials started and were accompanied by extensive civil society work. The changes from the first to the second survey are notable when considering attitudes toward pursuing the truth. In 2010, almost 10% more respondents believed in the necessity of finding out the truth. The proportion of respondents who believed that people cannot reconcile without knowing the truth increased from 64% in 2008 to 81% in 2010. Moreover, far more respondents in 2010 believed that people cannot feel better if they do not know what happened to their loved ones: 83% compared to 64% in 2008. This suggests that during the period when the first ECCC trial took place, Cambodians felt a change in their environment toward a greater possibility of openness. At the most basic level, the trial yielded details about the KR period that were previously unknown to many people. By giving a platform to at least some victims, the trial may have kindled a sense that it is possible to speak about the past and that this can be done safely. The increased coverage of the KR period in the media and more attention to it through civil society activities likely added to the effect. More than half (61%) of respondents in the 2008 survey had been forcibly separated from family members, so it is likely that for many Cambodians, the pursuit of truth is about acquiring more information on the fate of their loved ones as much as it is about creating a historical record.

Participation in the trial proceedings as a CP, as well as NGO activities, might have triggered greater interest in knowing the truth. In 2011 and 2014, nearly 100% of CPs and CPRs in Case 002 stated that it was important to find the truth, with the clear majority stating that people could not reconcile without the truth or that people could not feel better if they do not know what happened to their loved ones.

These respondents’ status as CPs could explain the difference between their responses and those of the general population. Because of their status and the support provided to help them with the proceedings, CPs had more opportunities than the general population to learn about the KR. They were supported by several NGOs, had legal representation and were in contact with the Victims Support Section responsible for facilitating victims’ participation at the ECCC. CPs had opportunities to meet as a group, to ask questions about the ECCC, and to talk about and reflect on their experience during the regime. Additionally, through the ADHOC scheme, CPRs received several trainings and were key actors in providing information to the CPs. CPRs and CPs had a favourable environment for talking about the ECCC and the KR regime.

64 In the 2010 survey, 47% of respondents had seen TV programmes about the ECCC; among those, 46% said they had specifically seen Duch on Trial, which in part talked about events during the KR regime. More than 31,000 people attended hearings during the Duch trial, and several thousand watched the trial on television. ECCC Public Affairs Section, “Outreach Work”, presentation at the ICTJ Workshop on Outreach, Phnom Penh, Cambodia, 3–5 March 2010; Brendan Brady, “Lights, Camera, Genocide!”, Public Radio International, 2009, available at: www.genocidewatch.org/images/Cambodia_09_11_20_Lights_camera_genocide.doc.

65 N. Kirchenbauer et al., above note 23.
Indeed, the discourse around the KR regime’s atrocities has profoundly changed since the ECCC was established. The education system is starting to integrate the history of the KR in its curriculum: in 2017, eight focus groups at four universities in Phnom Penh indicated that family remained the main source of information about the KR, but schools now follow closely.66 The ECCC has growing archives describing what happened during the regime and has implemented several projects that provide more detailed information about the KR.67 Civil society continues to lead the way with projects informing and fostering dialogue about the KR era, or providing avenues to understand the

<table>
<thead>
<tr>
<th>Perspective</th>
<th>General population*</th>
<th>CPs CPs CPRs</th>
<th>CPRs</th>
<th>CPRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is necessary to find the truth about what happened during the Khmer Rouge regime (% agree)</td>
<td>85%</td>
<td>93%</td>
<td>95%</td>
<td>98%</td>
</tr>
<tr>
<td>People cannot reconcile without knowing the truth of what happened during the Khmer Rouge regime (% agree)</td>
<td>64%</td>
<td>81%</td>
<td>84%</td>
<td>82%</td>
</tr>
<tr>
<td>People cannot feel better if they do not know what happened to their loved ones (% agree)</td>
<td>64%</td>
<td>83%</td>
<td>84%</td>
<td>84%</td>
</tr>
</tbody>
</table>

* Responses among those members of the general population who lived under the KR and those who did not were similar on these questions, and this distinction is therefore not presented in the table.

Indeed, the discourse around the KR regime’s atrocities has profoundly changed since the ECCC was established. The education system is starting to integrate the history of the KR in its curriculum: in 2017, eight focus groups at four universities in Phnom Penh indicated that family remained the main source of information about the KR, but schools now follow closely.66 The ECCC has growing archives describing what happened during the regime and has implemented several projects that provide more detailed information about the KR.67 Civil society continues to lead the way with projects informing and fostering dialogue about the KR era, or providing avenues to understand the


67 These projects include the institution of a National Remembrance Day, a Public Memorials Initiative, construction of a memorial in Phnom Penh to honour victims of forced evacuations, testimonial therapy, self-help groups, permanent exhibitions in five provinces to educate the public about the KR, and several educational projects. Open Society Justice Initiative, above note 37, p. 24.
past. These efforts aim to fulfil the victims’ and their families’ desire to understand what happened during the KR regime, and offer an opportunity to process it through public and interpersonal conversations.

Revenge or forgiveness?

Reconciliation is a key objective of the ECCC: it is explicitly mentioned in the United Nations–Cambodia Agreement on the creation of the tribunal and in the ECCC’s Internal Rules. However, the value of trials and collective memory for reconciliation is debated. David Rieff, for example, argues for the value of forgetting rather than engaging in mechanisms to establish the truth and/or collective memories. Reconciliation, however, is a complex process that evolves over time and operates at several levels. Among the Cambodian adult population, the definition of reconciliation has evolved. In the 2008 survey, a majority of the population defined reconciliation as the absence of violence and conflict (56%). In the 2010 survey, Cambodians characterized it as unity and living together (54%), communicating and understanding each other (38%), and gentleness (compassion) (27%). About 8% defined reconciliation as forgiveness and about 5% defined it as “no revenge”. Only 15% mentioned reconciliation as the absence of violence and conflict, indicating a more positive conception of reconciliation. During the same period, however, respondents reported very little change in the level of comfort they felt interacting with former KR members in various social settings. The authors therefore examined variables related to various aspects of reconciliation, notably feelings of hatred and desire for revenge. At the time of the surveys, feelings of hatred were still strongly present among Cambodians (see Table 5), reflecting in part the successive governments’ own narrative of hatred toward the KR regime. More than 80% of respondents in both population surveys reported that they still felt hatred towards those responsible for KR violence. Slightly more than one third expressed a desire for revenge, and the majority would wish to see those responsible hurt or miserable. There are small differences between the 2008 and 2010 surveys. Among those who did not live under the KR, the proportion of respondents who wished they could take

68 Through the years, several NGOs and individuals have provided information on the KR regime through radio programmes, mobile exhibits, and films about or visits to the ECCC or memorials. See, for example, ibid., pp. 74–77; ECCC, “Victims Support Section”, available at: www.eccc.gov.kh/en/organs/victims-support-section. In 2019–21, DC-Cam will continue to promote memory, justice and reconciliation through different projects. See, for example, DC-Cam, “Responding to the Cambodian Genocide in a Global Context: Strategic Plan 2019–2021”, available at: http://d.dccam.org/Abouts/Annual/pdf/DC-Cam_Strategic_Vision_2019-2021_panel.pdf.
69 Open Society Justice Initiative, above note 37, p. 90.
70 ECCC Agreement and ECCC Internal Rules, above note 1.
71 David Rieff, In Praise of Forgetting: Historical Memory and Its Ironies, Yale University Press, New Haven, CT, 2016, p. 160. See also David Rieff’s article in this issue of the Review.
73 P. N. Pham et al., above note 1, p. 33.
revenge on those responsible for what happened during the KR regime slightly increased (40% in 2010 compared to 34% in 2008). On the other hand, the proportion of respondents who wanted to see those responsible hurt or miserable reduced slightly. This trend is true for both groups, among those who did not live during the regime (67% in 2010 compared to 71% in 2008) and those who experienced the regime (68% in 2010 compared to 72% in 2008).

CPs and CPRs expressed hatred and desire for revenge at similar rates, with a notable increase from 2011 to 2014 in the proportion of CPs and CPRs wanting to seek revenge and wishing to see those responsible hurt or miserable. It is possible that the ECCC trials might have triggered memories and increased knowledge of what happened during the regime, therefore increasing desire for revenge. This would also explain why the effect is more pronounced among CPs and CPRs than in the general population, as they were more invested in the trials. In addition, the survey questions did not distinguish between perpetrators with different levels of responsibility. It is possible that the trials may have highlighted these distinctions and caused more feelings of vengeance toward those with more responsibility.

In both 2008 and 2010, 40% to 50% of respondents said they were uncomfortable with a range of social situations involving former KR members (living in the same community, living as household members, having a child marry a former KR member, living as a close neighbour, etc). Notably, only half of respondents would be willing to talk openly in a public setting such as a court or a public hearing about what they or their family had experienced. This may be indicative of the overall reluctance to speak about the KR period and may also point to deeper fears about speaking out, given the prevalence of feelings of hatred and interest in revenge.

To more closely analyze the complex dynamics mediating memory, hatred, revenge and forgiveness, the authors conducted a logistic regression analysis for a range of variables that were hypothesized as influencing one outcome variable: having forgiven former members of the KR or not. Although the ECCC’s primary purpose was to try senior leaders of the KR, forgiveness was widely cited by respondents to the surveys as a desirable outcome of holding the trials, and as a component of reconciliation. Approximately one third of the total respondents in both general population surveys said they had forgiven the former KR. This analysis sheds light on the dynamics of forgiveness by showing which factors contribute to it. The final regression yielded the odds ratio for the association of twelve separate variables with having forgiven the KR for the

74 To be accepted as CPs, applicants had to demonstrate a direct link between being harmed and at least one of the crimes alleged against the charged person. See ECCC Internal Rules, Rev. 8, above note 48, Rule 23 bis.
75 P. N. Pham et al., above note 1.
76 Logistic regression is similar to linear regression except that the outcome variable is a binary categorical variable. In this particular analysis the outcome variable is whether the KR regime is forgiven (yes) or not (no). One of the results calculated from logistic regression is odds ratios for statistically significant predictors (i.e., variables that are associated with or predict whether someone has forgiven the KR regime or not).
Table 5. *Feelings of hatred and revenge*

<table>
<thead>
<tr>
<th></th>
<th>Did not live under the KR</th>
<th>Lived under the KR</th>
<th>CPs</th>
<th>CPs</th>
<th>CPRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feelings of hatred towards KR members responsible for violence? (% yes)</td>
<td>79%</td>
<td>75%</td>
<td>85%</td>
<td>83%</td>
<td>89%</td>
</tr>
<tr>
<td>Wish you could take revenge on those responsible? (% yes)</td>
<td>34%</td>
<td>40%</td>
<td>38%</td>
<td>39%</td>
<td>45%</td>
</tr>
<tr>
<td>Wish to see those responsible hurt or miserable? (% yes)</td>
<td>71%</td>
<td>67%</td>
<td>72%</td>
<td>68%</td>
<td>76%</td>
</tr>
</tbody>
</table>
One of the twelve variables was composed of different forms of accountability that respondents mentioned as being most suitable for dealing with the KR era: truth-telling and reparations, which are categorized as “restorative”, and trials and other forms of punishment (including killing) which are categorized as “retributive”. The combined variable is referred to as “restorative versus retributive” in the model shown in Table 6. The authors also included several variables that point to respondents’ economic status: satisfaction with standard of living and opportunity to find work, monthly income, and education level. These were included to understand how economic factors influence individuals’ ability to feel conciliatory toward past abusers. Levels of knowledge about the KR and about the ECCC were included to assess the influence of memory (manifested by knowledge) and exposure to the main transitional justice mechanism of the time. Knowledge of the KR was highly correlated with living under the regime and thus was not included in the final regression. Three variables were included as indicative of reconciliation at the individual level: continued presence of post-traumatic stress disorder (PTSD) symptoms, having feelings of hatred toward the KR, and wanting to see them hurt or miserable.

Table 6 presents the results with odds ratios, which demonstrate the likelihood (in terms of odds) that someone has forgiven the KR regime for each predictor variable. An odds ratio greater than 1 means increased likelihood of forgiveness given the status of the predictor variable, and an odds ratio of less than 1 means a decreased likelihood of forgiveness. For example, respondents who are in favour of restorative justice are 1.8 times more likely to have forgiven former KR members than those who preferred retributive justice. Overall, Table 6 tells us that four of the variables were associated with a greater tendency toward forgiveness. Those variables are: (1) did not live under the KR regime, (2) satisfaction with standard of living, (3) satisfaction with opportunity to find work, and (4) preference for restorative justice measures.

Respondents who did not live under the KR were more likely to report that they have forgiven the KR. This is to some degree intuitive – the younger generations forgive more easily because they did not experience the regime directly, and their knowledge and memory of the regime were indirectly acquired through their family, school or environment. Munyas’ study on understandings of the KR era among Cambodian youth found that there has been some inter-generational transmission of trauma, anger and vengefulness, but that some youth either disbelieve their parents’ stories or are more concerned with their daily priorities and challenges.77

In addition, those who were generally satisfied with their economic status – as indicated by their standard of living and ability to find work – were also more likely to have forgiven. However, those with higher monthly incomes were less willing to forgive. This shows a difference between actual economic status (as measured by wealth) and satisfaction, which may be influenced by a perceived improvement in economic conditions. The results point toward a need for more

77 B. Munyas, above note 43.
holistic or transformative transitional justice processes, as proposed by Hamber and others, which address not only the “justice” aspect of the transition but also people’s socioeconomic environments. Examples of more holistic approaches are rare in practice, as most transitional countries implement some accountability measures without a comprehensive process and without concrete links to the country’s broader economic development. Implementing a more transformative approach to transitional justice is also complicated because it involves addressing not only the impact of the conflict but also the structural context that enabled the conflict to occur.

The analysis also shows that higher education levels and more knowledge of the ECCC are less associated with tending to forgive. As previously noted, CPs and CPRs, who had more interaction with the ECCC, also had more feelings of hatred and revenge. This suggests that people who knew more about the ECCC as a justice mechanism were less willing to accept and forgive the abuses. CPs and CPRs are excluded from the regression model, but less than 10% of them said they had forgiven the KR’s “top” leaders. The process to become a CP meant that the CPs were more likely to be invested in the trials and had more access to information

Table 6. Logistic regression of variables associated with having forgiven former KR members*

<table>
<thead>
<tr>
<th>Dependent variable: Have you forgiven former KR members?</th>
<th>Odds ratio</th>
<th>95% CI for EXP(B)</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restorative versus retributive</td>
<td>1.824</td>
<td>1.229 2.708</td>
<td>0.003</td>
</tr>
<tr>
<td>Did not live under KR regime</td>
<td>1.416</td>
<td>1.002 1.999</td>
<td>0.048</td>
</tr>
<tr>
<td>Satisfaction with standard of living</td>
<td>1.371</td>
<td>1.086 1.732</td>
<td>0.008</td>
</tr>
<tr>
<td>Satisfaction with opportunity to find work</td>
<td>1.309</td>
<td>1.105 1.549</td>
<td>0.002</td>
</tr>
<tr>
<td>Confident in the government performance</td>
<td>1.028</td>
<td>1.002 1.053</td>
<td>0.032</td>
</tr>
<tr>
<td>Monthly income</td>
<td>0.871</td>
<td>0.773 0.982</td>
<td>0.024</td>
</tr>
<tr>
<td>Educational level</td>
<td>0.852</td>
<td>0.782 0.927</td>
<td>0.001</td>
</tr>
<tr>
<td>Level of knowledge about ECCC</td>
<td>0.733</td>
<td>0.593 0.907</td>
<td>0.004</td>
</tr>
<tr>
<td>Symptoms of PTSD (PCL-C &gt; 44)</td>
<td>0.458</td>
<td>0.283 0.741</td>
<td>0.001</td>
</tr>
<tr>
<td>Feeling of hatred toward KR</td>
<td>0.432</td>
<td>0.287 0.649</td>
<td>0.001</td>
</tr>
<tr>
<td>Wish KR to be hurt and miserable</td>
<td>0.29</td>
<td>0.202 0.415</td>
<td>0.001</td>
</tr>
</tbody>
</table>

* This table presents an advanced analysis of survey data gathered in 2008 and published in 2009. See P. N. Pham et al., So We Will Never Forget, above note 23.

78 B. Hamber, above note 11, p. 5.
on the ECCC. It is possible that other members of the population who experienced direct harm, notably people with higher education who were especially targeted by the KR,79 were also more motivated to seek information about the ECCC. Based on other research on victims of mass violence, including in Cambodia, one of the strongest demands from victims is to know what happened and why.80 Victims may have seen the ECCC as an important way to gain information and insights on the past.

In terms of the intersection between memory, justice and reconciliation, perhaps the most notable result is that those who expressed a preference for restorative measures – reparations and truth-seeking – were almost twice as likely to have forgiven the KR than those with a preference for retributive measures. The association of a preference for reparations and truth-seeking with forgiveness in many ways corroborates theories of forgiveness in the Cambodian context. Thirty years after the KR regime, those who experienced less violence, who had less contact with perpetrators or who still tended to support the KR on some level may have more easily come to terms with their experiences. They might view reparations and truth-seeking as more appropriate responses to events thirty years in the past. Cambodian culture and Buddhist beliefs also have a role: in Cambodian Buddhism, forgiveness can coexist with a desire for revenge or an understanding of justice that involves misfortune either in this life or the next befalling those who commit wrongful acts. Respondents may have forgiven while at the same time believing that justice will be done for the perpetrators, just not necessarily through the mechanism of trials.81 Further analysis supports this view. Among those who reported having forgiven the KR, two thirds also reported still harbouring feelings of hatred (67%), and almost half wished to see the KR hurt and miserable (49%), but only a small number (15%) said they would seek revenge if they could.

What distinguishes trials from other forms of accountability is that they will single out individual perpetrators to potentially be punished if found guilty. The analysis shows that the respondents who supported the possibility of individual punishment were less likely to have forgiven the KR. Looking at the variables that were associated with less willingness to forgive provides further insight on this result. Those who were most likely to have feelings of hatred and wishing to see the KR hurt or miserable were the least likely to have forgiven the KR. Again, this may be explained either by the intensity of their exposure to violence under the regime or aspects of their lives since the KR was in power, such as poverty, ill

79 Pin Yathay, “A Brief Description of the Society under DK”, in Khmer Rouge History & Authors: From Stalin to Pol Pot – Towards a Description of the Pol Pot Regime, ADHOC and Center for Social Development, Phnom Penh, January 2007; M. Vickery, above note 21, pp. 81–82.
health or ongoing interaction with perpetrators. This interpretation is supported by the finding that those with higher symptoms of PTSD were considerably less likely to have forgiven the KR.

**Conclusion**

This article has sought to shed light on the dynamics of memory, transitional justice and reconciliation in Cambodia thirty years after the end of the KR era. Memories of violence are inherently personal and individual. They are the legacy of individual experiences of and responses to trauma, but they are also moulded by prevailing policy environments which seek to shape communal memory and produce narratives that serve political purposes, and are influenced by the socioeconomic and environmental contexts which survivors inhabit. The results of the studies illustrate how the ECCC, as the major development in transitional justice in Cambodia in recent decades, has changed the environment surrounding memory. The data suggest that the ECCC created or brought back demand for truth – respondents felt strongly about the need for truth, that the truth will help people reconcile and that finding out the truth about their loved ones would help people to feel better. This may be driven by the large numbers of those who lost loved ones during that period and never learned of their fate, but it also reflects the lack of public education in school curricula and the officially promoted lack of transparency about the KR period that prevailed until recently.

At the time of the second survey in 2010, the possibility of greater demand for truth did not seem to have translated into more willingness to talk about the regime, especially among the older generation. This may point to an element of fear, anxiety or lack of interest in speaking out, which are important aspects of creating communal memory. For example, in a two-year TPO Cambodia project aiming at improving relationships between former KR members and victims, those identified as former KR were reluctant to talk or reveal their past, expressing concerns associated with safety and security.82 This has practical consequences for efforts to shape communal memory and establish historical records as it necessitates special protections for victims who testify publicly. On the other hand, participating in a process, whether a legal one such as the ECCC, or one supported by NGOs, can provide a “safe” environment and the necessary platform so that people feel free to express themselves and to shape a different narrative.83

Another notable change was that the desire for revenge increased from 2008 to 2010, particularly among CPs – those most closely involved in the trials. Through its legal processes and other activities that it inspired, the ECCC

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82 See above note 59.
provided new details about the violence which may have caused feelings of vengeance. The authors’ analysis suggests that, at least in Cambodia, a preference for restorative justice through reparations and truth-seeking is strongly associated with forgiveness. This could be due to the passage of time since the violence took place or due to the different roles people played and their exposure to the violence. Religious beliefs that forgiveness can coexist with feelings of hatred and wishing harm to come to the wrongdoers are also relevant. Respondents with higher levels of PTSD are notably less likely to forgive, suggesting that their stronger, more traumatizing memories, or perhaps their ongoing experiences of violence, fear or deprivation in their everyday lives, are inhibiting their ability to accept coexistence with former KR members. Those satisfied with their economic status are more likely to forgive. The elements presented above point to the interrelation between individual survivors and the environment in which they live: conditions of daily life play a vital role in healing and should be an integral part of any transitional process.

In practical terms, the data suggest that the ECCC and the civil society movement associated with it may have had some positive outcomes in addressing the legacies of mass atrocities caused by the KR in Cambodia, even several decades later. The ECCC created a possibility of open dialogue where very little existed before. It also established a criminal justice mechanism to administer some form of punishment, which was the preferred way of achieving justice for those who had not forgiven the KR. These include people showing symptoms of PTSD and other mental health issues, those with higher incomes and education levels, and those who still hold stronger feelings of hatred. While forgiveness might be desirable as an indication that society is moving toward reconciliation, it cannot be forced on those whose residual trauma or anger have not been addressed through other means, such as trials and psychological counselling.84

This analysis also points to the need to address underlying tensions in a post-conflict society caused by lasting memories of a conflict or a period of violence. A population can be pressured to accept a particular collective narrative by its government, but sentiments of hatred and anger at the individual level are not so easily erased. Overall, the results point to the importance of truth-seeking efforts and more open, transparent dialogue about the past that welcomes multiple viewpoints. Civil society has greatly contributed to these efforts, and the ECCC has created an opportunity, if not a momentum, for such a dialogue. In recent years, for example, Women’s Hearings related to gender-based violence during the KR regime have been held, and the Documentation Centre of Cambodia (DC-Cam) has released a history textbook entitled A History of Democratic Kampuchea (1975–1979) which is now used in schools to educate pupils about the KR regime.85 These developments cannot be directly attributed to the ECCC, but the existence of the Court may have shaped an environment favourable to their initiation.

84 For further discussion on the limits of forgiveness as a transitional justice goal, see R. Saunders, above note 8.
85 K. Dy, above note 57.
As the ECCC draws closer to its end, many organizations have continued to work with Cambodians across the country. These projects target young people and the elderly in both urban and rural settings, aiming to promote healing through education, memorialization, mental well-being or empowerment. Addressing similar themes, in its judgment in Case 002/01 against Nuon Chea and Khieu Samphan, the Trial Chamber endorsed twelve of the fourteen projects requested by the co-lead lawyers representing the CPs at trial.86 Those projects, some already implemented, also work toward fostering the healing process in Cambodia. Mental health support projects such as testimonial therapy and self-help groups might be especially important for decreasing PTSD among survivors.

Opening dialogue about the past is not easy. Cambodians’ reluctance to speak about the past, especially publicly, means that ways to operate around such reluctance must be found, for example by relying on private rather than public testimonies or by creating a safe environment for people to speak. Despite the strong support for learning the truth, the authors are not aware of any official, governmental truth-seeking effort in Cambodia since the time the surveys were conducted. Official acknowledgement remains important in both practical and symbolic ways. It is essential that the government provide support for steps such as rendering public the information gathered through the ECCC after its closing. Greater transparency and more commitment to an accurate historical record would provide victims with a sense of recognition and acknowledgement that has to date been absent.

On 16 November 2018, the ECCC’s Trial Chambers convicted and sentenced Nuon Chea and Khieu Samphan to life in prison for war crimes, crimes against humanity and genocide against the Vietnamese (both accused) and the Chams (Nuon Chea).87 Although appeals are likely, the judgment is the culmination of the last of the cases of former KR leaders at the ECCC.88 It is also the first time a leader has been officially found guilty of the crime of genocide, even though genocide as a descriptor has long been part of the Cambodian narrative of the violence.89 For some, the judgment was considered “historic”.90 For others, it changed nothing: as one victim said, “I won’t ever have peace”.91 People interviewed in the media expressed varying degrees of satisfaction, with no

86 See above note 67.
89 See, for example, DC-Cam, above note 67.
indication as yet of how the decision will advance forgiveness or reconciliation, if at all.92

In closing, this article points to several lessons that can be learned from the Cambodian transitional justice case by researchers and practitioners. Firstly, judicial measures like the ECCC create an opportunity to open a broader dialogue about past violations. Secondly, transitional justice measures such as truth-telling, trials and memorial projects need to provide an accessible and safe environment for people to speak openly about their experiences. Lastly, analyses of the role of forgiveness in transitional justice need to take a more nuanced perspective of how the concept operates among individuals and communities differently impacted by violence. These data suggest that forgiveness is neither synonymous with nor a precondition to reconciliation. It is a personal process. The anticipated end of the work of the ECCC and the fifty-year anniversary of the end of the brutal Khmer Rouge regime will bring another opportunity for Cambodians to reflect and provide the young population with lessons learned from the past. As this research shows, that is still very much needed.

Declining ethnic relations in post-war Liberia: The transmission of violent memories

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Abstract

More than ten years after the Liberia Truth and Reconciliation Commission (TRC) released its Final Report, there has been no implementation of the recommendations proffered. This article focuses on post-conflict memorialization, the TRC’s strategy to engender collective remembering, and a set of State-led actions designed to teach future generations about the past violence with a view to preventing relapse into violent conflict. Both the constructive and destructive patterns of remembering that have evolved in the wake of the government’s silence since the release of the recommendations will be analyzed.

Keywords: violent memories, transmission, ethnonationalism, ethnonationalist.
Introduction

On 30 March 2018, the United Nations (UN) Mission in Liberia ended nearly fifteen years of peacekeeping operations in Liberia, undoubtedly one of the longest international peacekeeping efforts in recent history. In retrospect, the UN peacekeeping efforts have amounted to something of a success story, from managing the transition from war to peace, to supervising and facilitating three democratic elections in Liberia, including the elections of Africa’s first female president, Ellen Johnson Sirleaf, in 2006, and George Weah, Africa’s legendary soccer icon, in 2018. However, this success story is not unblemished: it is soiled by the failure to facilitate acceptable levels of national healing and reconciliation after the Liberian Civil War, which fragmented society and in which an estimated 250,000 people were killed.

In the country’s search to address the unprecedented scale of violence, efforts to uncover the truth culminated in the release of Liberia’s Truth and Reconciliation Commission (TRC) Final Report.1 The TRC Final Report determined that the violence was pervasive and that all Liberians, whether directly or indirectly, were victimized by the conflict.2 It holds Liberia’s political elites (past and present) responsible for planning and orchestrating the violence.3 Since its release, the Final Report has been perceived as stigmatizing the elites through naming and shaming and seeking to prosecute those most responsible for organizing the violence and providing financial support.4 In the ranks of Liberia’s elite and their sympathizers, the TRC Final Report is rejected and considered a forbidden text that should be purged.5 Historically, silence and collective amnesia has followed abuses and unspeakable horrors.6 Express public support of the TRC is frowned upon, and

2 Ibid., Vol. 2, pp. 213–256. On the number of victims and violations per county, see ibid., Vol. 2, pp. 257–259.
3 Ibid.
4 In the TRC Final Report (ibid., Vol. 2, p. 361), the TRC recommends forty-nine individuals, most of them senior officials of government (past and present), for public sanction. Initial investigation into the list of these forty-nine prominent Liberians revealed that some allegedly provided military assistance while others provided direct financial support to warring factions. Those included on the list include former president Ellen Johnson Sirleaf; Kabinah Ja’neh, former associate justice of Liberia’s Supreme Court (Constitutional Court); and Isaac Nyenabo, former president of the Senate and now Liberia’s ambassador to the European Union.
6 See all of Liberia’s 13 peace agreements, 1990–96; see also League of Nations, International Commission of Inquiry on Liberia, Commission’s Report, Geneva, 15 December 1930. For example, the Nete Sie Brownell Commission’s 1979 report on the 14 April 1979 Rice Riot, an incident that foreshadowed the violent military takeover of 12 April 1980, was never released to the public. Constructive discourse on what happened and who was responsible was not encouraged. Likewise, the 1930 League of Nations Commission of Inquiry over allegations of slavery and forced labour practices was handled in a similar
the narrative that suggests perpetrators should be judged not by their past but by their present, and by their promise to do better, is preferred. The appropriation of this narrative in a country where the government is the biggest employer has brought about a new form of patronage. Some civil servants, including senior officials of government who support implementation of the TRC but are aware of the political elites’ hostility towards it, have since learned to avoid the subject, especially in government circles. Yet, in instances where some are pushed to offer a pro-government opinion about the Report, the TRC is criticized or vague ideas about reconciliation are advanced. Conversely, those who express public support for the TRC are often scorned and referred to as vindictive, lazy people who are incapable of “reconciling”. The undercurrent to this discourse is a form of post-TRC revisionism in which political elites and their sympathizers favour a script of collective amnesia that carries the capability of dismantling the official narrative. In a context where the TRC Final Report stands as the official narrative to which there is no other accepted version of history that is embraced by the majority of Liberians, the legitimacy of the report is contested by a powerful minority. Memoirs and books providing alternative viewpoints have been written, and unstructured oral accounts of the conflict are being purveyed as alternative truth.

The TRC Final Report provides a framework for remembering the Liberian Civil War – a strategy that enables those who lived through the war, and successive generations, to remember the violence in a context that is controlled, constructive and pedagogical. The failure to implement the report is allowing other tendencies to manifest, robbing the nation of an opportunity for collective remembrance. Unless the State directs the process of post-war memorialization advanced by the TRC, unfiltered memories of the war will be passed down to successive generations and consequently, residual ethnic cleavages will be ignited, thereby creating reduced levels of cooperation across ethnic groups.

The 2016 Social Cohesion and Reconciliation Index (SCORE) nationwide survey, conducted by Search for Common Ground and the Centre for Sustainable fashion. In the case of the League of Nations, a certain level of participation of ordinary citizens was allowed and the inquiry report was eventually released to the League of Nations and the Liberian public.

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8 Ibid.

9 This comes from the author’s observations of attitudes and behaviours of civil society, victims’ groups and other relevant actors informing perception around the TRC Final Report. For more, see ibid.

10 See ibid.

11 The Liberia TRC process collected more than 20,000 statements, conducted 800 public hearings and gathered hundreds of declassified materials. In 2009, when the Final Report was released, Liberians celebrated the Report and its findings. In a recent Social Cohesion and Reconciliation Index (SCORE) survey, more than 80% of respondents interviewed supported the implementation of the Report. See: www.scoreforpeace.org/en/liberia.

Peace and Democratic Development (SeeD), reveals negative inter-group attitudes which tend to challenge the perception of social cohesion by sizable proportions of the population. For example, the study revealed that ethnic Krahns in Grand Gedeh, Mandingos (a dispersed ethnic group located in several counties), and Gios in Nimba County are thought to be violent. In terms of acceptance of intermarriage among different groups, the study showed that intermarriage is rejected in most cases when it comes to Muslims (39%), Mandingos (45%) and Gios (30%). The survey also demonstrates that civil society organizations and non-State institutions receive the highest level of trust from people, whereas local authorities and governmental bodies such as the Legislature, the Supreme Court, Magisterial Courts and police are mistrusted to some degree by over 50% of the population. The organs of the State are perceived to be comprised of political elites and their sympathizers. The sample size interviewed for this study was 2,213 people (against an estimated 4 million total population), and the percentages cited above reflect the views of Liberians nationwide.

The attitudes captured in this study are inextricably linked to how the conflict is being remembered and affects inter-group relations. Ethnonationalists manipulate the truth about the Civil War to enable them to exact political power, while ethnic-based households with insecurities from the war and residual ethnic cleavages are engaged in a daily transmission of the same wartime memories. Studies reveal that transmission of violent memories carries the “lived experience of parents which becomes the existential reality of the succeeding generation”. Therefore, unresolved trauma and the weight of the moral burden to act are passed along in the transmission of these memories. The rise of ethnonationalist moods in post-war Liberia has happened at the expense of improving inter-group cooperation, repairing damaged ethnic relations and engendering the long-term process of nation-building.

This article draws on the author’s fourteen-year-long research activities on transitional justice in Liberia and the truth and reconciliation process more specifically. The results presented below were obtained through research conducted during the author’s work with victims’ communities while at Search

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13 SCORE Index for Liberia, 2016, available at: http://scoreforpeace.org/en/liberia/2016-General%20population-1. SCORE is a robust diagnostic and predictive tool used to examine inter-group relations and measure social distance across ethnic groups. The indicators mentioned can be found under “Other Indicators”, labelled “Confidence in …”.


18 Ibid.
for Common Ground, as well as interactions with victims’ groups and two years’ work at the Governance Commission developing the Strategic Roadmap for National Healing, Peacebuilding and Reconciliation. The author has also made systematic observations of victims’ response to wartime memories. Key informant interviews were conducted and were followed by communication with a number of community members. The author endeavoured to observe national attitudes and responses to transitional justice and to the TRC Final Report more specifically.

Memory discourse: A comparative review

Studies of memory and violent conflict tend to discuss victimization in the ideological context. The ways in which memory is constructed in such a context reveal a struggle over the past and show how memory is represented in the present. In Mozambique, for example, the struggle over the ideological and political legitimacy of the “short-lived” socialist revolution remains a continued battle between the Front for the Liberation of Mozambique and the Mozambican National Resistance, even long after the armed conflict. Even though there is an official silence about the past, memory is used as a weapon to deny the ideological legitimacy of the armed struggle, and in parliament both sides have accused one another of committing atrocities – therefore, neither of them seems to have a moral claim to legitimacy. In Rwanda, the Rwandan Patriotic Front-backed government maintains a strong grip on how memories of the genocide are interpreted. This has led to the construction of a new ethnic identity, and only this single identity is permitted. While there are other nuances to remembering the genocide, the popular account acknowledges that ethnic Hutus organized and perpetrated the genocide against ethnic Tutsis and moderate Hutus, while ethnic Tutsis won the war. Nonetheless, the memorials in Rwanda have been criticized for oversimplifying the narrative through the dynamics of manipulated and enforced memories. A reconstructed single ethnic identity, Banyarwanda, as the new post-genocidal

22 Ibid.
identity of Rwanda suggests a predominant role of the State in how the violence is being remembered.24 Despite the complicated process of memory formation, the State’s actions have led to a process of remembering, ensuring that the preventative value of “never again” is not lost.

In Sierra Leone, the Revolutionary United Front (RUF) – a class of lumpen proletariats who started a peasant revolution – lost its unity of purpose to a barbarous reign of maiming, torture and extra-judicial killings. In the standard academic texts on Sierra Leone, there are mixed views about the RUF. On the one hand, its armed struggle is viewed as a “rational rebellion against a failed and bankrupt patrimonial state by a group of ‘embittered pedagogues’ … who aimed to replace that state with a ‘revolutionary egalitarian’ one”.25 On the other hand, it is also viewed as “a case of organised mass delinquency … mainly aimed at criminal appropriation, not social protest”.26 In contrast to the RUF, the Civil Defence Forces (CDF) resistance is viewed as the “militarization of a social network”27 appropriated to defend local communities against the RUF. In the collective memory of Sierra Leoneans, the CDF enjoys greater ideological legitimacy than the RUF. While the government has yet to advance an official memorial policy, the conflict is remembered through the outcomes of the Truth and Reconciliation Commission and Special Court for Sierra Leone. In 2013, the Court successfully completed its mandate and was able to bring to trial ten persons, nine of which were sentenced to 15–52 years in prison.28 Today, a Peace Museum stands outside the Special Court. The Museum serves as a repository of the Special Court files as well as materials from the Truth and Reconciliation Commission.

Unlike the three cases above, the Liberian conflict was not ideological and does not enjoy any level of political legitimacy. Prior to the Accra Comprehensive Peace Agreement, Liberia had thirteen peace agreements. All of these agreements were committed to a power-sharing arrangement in which warlords granted themselves amnesty. The notion that the war’s aim was to restore democracy and prevent atrocities based on ethnic origin was a pretext to acquiring power and wealth. The fact that the war was organized by the elites and not the lumpen class renders the resolution of the conflict problematic because the TRC identified the elites in power as those responsible, but they happen to be the same fraction of society that is supposed to implement the TRC Final Report.

26 L. Gberie, above note 25, p. 8.
28 For more information about the Sierra Leone Peace Museum, see: www.rscsl.org.
The scale of violence during the Liberian Civil War

The TRC Final Report documented an estimated 203 sites of massacres and mass graves across the country.\(^{29}\) This number revealed an unprecedented level of staggering and widespread violence touching every single county or region of the country. The Final Report demonstrates that on average there are thirteen sites of massacres or mass graves in each county of Liberia, though the impact is much higher in some regions or counties than others.\(^{30}\) In Lofa County (northern Liberia), for example, there are thirty-two sites of massacres; in Rivercess (southeastern Liberia), thirty; in Grand Cape Mount (western Liberia), twenty-four; in Gbarpolu (western Liberia), eighteen; in Maryland (southeastern Liberia), eleven; and in Grand Gedeh (southeastern Liberia), twelve. Sites of massacres and mass graves are scattered across the country in such proximity that every village or town is either a host of a massacre site or is located close to one. In this context, proximity looms large, as it becomes virtually impossible for a child born many years after the conflict to be raised outside of such violent memory. This geography of violence suggests that every child is naturally subjected to a form of everyday storytelling while growing up. What is more important is how the memory is passed down and what is being learned or taught.

Flirting with the present: The life of younger generations after the conflict

According to Liberia’s Housing and Population Census, in 2008 65% of the population was comprised of those aged 35 or below.\(^{31}\) Further disaggregation of this figure reveals that more than 50% of those were born between 1990 and 2003. This faction of the population does not have an independent view of the conflict, for they were too young to understand and process what was happening around them. Also, the unprocessed narrative and unresolved trauma that is being bequeathed to them is not only placing a moral burden on them, but also imposing a sense of dual reality. A young motorbike rider helped this author to see the destructive pattern of the transmission of violent memory on the younger generation. In August 2017, the author had an encounter with Boima, a 22-year-old motorbike taxi driver. The author had known Boima for some time prior to this encounter, and he always seemed to be cheerful and energetic. On this occasion, however, after the author had hired Boima for a ride home, for the first few minutes he was quiet and appeared to be distressed. It turned out that Boima’s father had been killed, and that the man who killed him had been relocated to Boima’s community.

\(^{30}\) Ibid.  
Boima’s story is not unique. Nearly every Liberian of his generation is likely to be living proof of the country’s post-war contradiction: both young and old pretend to be living in the present, but they only flirt with the present because much of their existential being is domiciled in the past. Flirtation with the present is constantly disrupted by the memoriescape and what it invokes. Boima’s daily routine was disrupted when he learned about the sudden reappearance of his father’s murderer, but had that not happened, he would have appeared to be the same lively lad the author has always known. The ability of the past to resurface tends to subject people to a duality that is perhaps not so much like schizophrenia, but a dichotomy that allows the existence of two realities, the past and the present, simultaneously.32 On some occasions, the past can be demonstrably more dominant and can hold sway over the present. Locked in such conflict between present and past, Boima will be thinking constantly about where his life would have been had his father still been alive, and whether there is any course of action he should take to “put things right”. Boima’s story provides a critical insight into the reality of children born during the Civil War and memories that are being passed down to them. This situation draws attention to two critical developments. Firstly, the history of the conflict is not taught in primary schools, but the transmission of violent memories of the war has become a ritual in Liberian households. Secondly, the silence and failure of the State to direct what to learn, and how to learn it, is enabling destructive memories to thrive.

Memorialization in Liberia

Recommendations of the TRC

The TRC Final Report on memorialization is detailed and comprehensive. It is prescriptive in so far as what the role of the State in memorialization ought to be. The recommendations cover national measures to account for individual and collective memory, but there is also space for the State to remember West African nationals, as well as other “foreign nations”, that came to Liberia’s aid during the war.33 The TRC recommends public apologies to foreign governments who lost their citizens in the conflict as the appropriate form of action.34

The Final Report recommends that death certificates “adorned with national colors” be issued to the surviving heirs of all those who lost their lives during the

32 Observations here are based on conversations between the author and Peterson Sonyah, chairman of the Liberia Massacre Survivors Association (LIMASA), who is himself a survivor of the St Peter's Lutheran Church Massacre of 29–30 July 1990, one of Liberia’s most destructive massacres. These conversations spanned several months. To understand Boima’s dilemma, the author also shared Boima’s story with Sonyah, with the aim of assessing Sonyah’s personal experience of trauma and how Boima’s story may be similar to those of others in the survivor community. In response, Sonyah talked about how he has become incapable of living a “regular life”, how the past has become the new present, and how the present is a borrowed reality.

34 Ibid., Vol. 2, pp. 380–381.
violence in Liberia from 1979 to 2003.\textsuperscript{35} Regarding missing persons, it is recommended that those who have not maintained contact with relatives or friends for seven years should be declared dead and issued a death certificate. The Report maintains that wartime memorials should be erected in the capital city of each county and on the site of each mass grave or massacre. For atonement and cleansing, the Report recommends cultural ceremonies in order to lay the spirit of the dead to rest. It also recommends that government provide direct assistance to rebuild sacred places that were desecrated. In addition, the Report suggests having a national holiday to commemorate victims of hostilities by changing National Unification Day to National Unification and Memorial Day. It is also maintained that the State should issue public apologies to the nation and that befitting graves be erected to honour the memory and tragic deaths of two of Liberia’s presidents, William Tolbert and Samuel Doe. Both Tolbert and Doe were not properly buried as there are no markers over where their remains are interred.

There have been some attempts to erect memorials on sites of massacres and mass graves, but these leave much to be desired. None of the recommendations outlined above have been implemented to date. The recommendations have, however, raised huge expectations among victims and survivors across ethnic regions of the country.

Alternative influential narratives

Some unofficial narratives of the war were written prior to the release of the TRC Final Report, and more have been written since. These accounts, whether complementary or contradictory, coexist with the official narrative of the TRC Final Report. In a context where the past is being subjected to new forms of story-telling and reinterpretation of the violence, the views expressed in these accounts should not be seen as passive, but as ones that could appeal to ethnic stereotypes or sensibilities, and invoke emotions, anger or memories of the war. Some of the notable books reflecting such narratives are The House at Sugar Beach by Helen Cooper, The Land of My Father’s Birth by Nvasekie Konneh, Scary Dreams by Lekpele Nyamalon, and This Child Will Be Great by Ellen Johnson Sirleaf.\textsuperscript{36}

In Cooper’s book, the author retraces her steps as a privileged child born of Americo-Liberian ancestry. While her memoirs present an innocent picture of a teenager, her privileged life serves as a grim reminder of some of the underlying causes that led to political violence and ultimately to the war.

Konneh’s book asserts that the persecution of Mandingos happened as a result of national conspiracy.\textsuperscript{37} In retaliation, ethnic Mandingo elites organized a

\footnotesize{\textsuperscript{35} Ibid.  
\textsuperscript{36} H. Cooper, above note 12; N. N. Konneh, above note 12; L. M. Nyamalon, above note 12; Ellen Johnson Sirleaf, This Child Will Be Great: Memoir of a Remarkable Life by Africa’s First Woman President, Recorded Books, Prince Frederick, MD, 2010.  
\textsuperscript{37} Mandingos are a critical part of Liberia’s ethnic linguistic groups and were systematically targeted and executed during the course of the Liberian conflict.}
warring faction that committed systematic violations across the country. Konneh’s work leans more on victims’ memory of Mandingos rather than examining both perpetrators’ and victims’ memories.

Nyamalon’s book is an anthology of poems. Though the author was only six years old when the war started, the book provides a vivid recollection of memories in poetry. The author’s work captures the trauma endured by a six-year-old boy, and represents a victim’s account of the Civil War.

Ellen Johnson Sirleaf’s work deals extensively with her childhood and victimization as a woman during Samuel Doe’s administration. She provides deep insight into her experience as a public servant; in particular, she recalls her role in the Commission on National Reconstruction (CNR) that was headed by Nete Sie Brownell. The CNR was organized to investigate the mass killings of Liberians that resulted from a protest over the price of rice, dubbed the Rice Riot, in 1979. Sirleaf served as one of the thirty-one commissioners appointed by former president Tolbert. In her memoir, she reflects:

What is tragic, I believe, is that had Tolbert instead implemented the major report recommendations of the Commission on National Reconstruction, things might well have turned out different. Had the Government seized the opportunity to make major changes, it could have turned the whole thing around and avoided all the bloodshed to come.

For a moment, Sirleaf’s reflection on the CNR renewed hope that the TRC’s recommendations would be implemented. Her failure to follow through on the TRC Final Report reinforced the perception that social amnesia is a deeply entrenched tradition among Liberia’s elites.

For the most part, the narratives portrayed in these books have come to shape the attitudes of many groups in society, especially the intelligentsia.

Use of destructive patterns of remembering: Division along ethnic lines

The formation of Liberia over the years has predominantly followed the path of State-building alone, rather than both State- and nation-building, where the establishment of legitimacy would play an important role. The social glue that holds countries together in terms of national identity is far less cohesive in Liberia. Hence, Liberia’s sense of nationhood is fragmented, and ethnic identity appears to be much stronger than any cohesive national identity. In the Civil War and immediate post-war years, group memories became more prominent

38 TRC Final Report, above note 1.
39 E. Johnson Sirleaf, above note 36, p. 90.
40 Liberia is predominantly an illiterate society, and the books described in this section were therefore used mostly by Liberia’s intelligentsia and not the uneducated masses. For more information, see: https://countryeconomy.com/demography/literacy-rate/liberia.
and had the capacity to undermine the collective search for justice and accountability. Hence, there is a correlation between the scale of violence that occurred and the influential narratives existing today. The proximity of mass graves and casual exposure to fresh memory makes it impossible to forget the past. It also makes conditions of trauma and transmission of such memory a particularly vicious circle. Individual victims and survivors are left with a strong feeling of neglect and abandonment, while reality reflects a constant mood swing which essentially condemns them to living a life that is locked in the past.  

In 2005, during Liberia’s first post-war elections, politicians used the memory of war in their campaigns. Prior to the successful 2003 Accra Comprehensive Peace Agreement, all thirteen peace agreements had failed to maintain peace or bring stability to Liberia. Several alleged perpetrators, many of whom are mentioned in the TRC Final Report, declared their intention to run in the elections. To strengthen their chances, candidates exploited sensitivities around the widespread awareness of the failed peace agreements in Liberia, and announced that unless they won the elections, they could not guarantee the protection of their respective ethnic populations in the event of a return to violent conflict. Nearly every alleged perpetrator who campaigned with this message of war and insecurity consequently won in the elections. In the 2011 election campaign, though the TRC had released its Final Report two years earlier, the politicians again exploited the ethnic biases of their compatriots. Some indicated that the TRC itself was biased and was only targeting certain individuals because of their ethnic status. In an environment where group identity is much stronger than national identity, this rhetoric held sway, and perpetrators were once again elected through the exploitation of ethnonationalist sentiment. The dynamics between ethnic groups and the ways in which the memory of conflicts is used for political gain are explored below through the example of the Kru and Sarpo groups.

**Dynamics between the Kru and Sarpo ethnic groups**

“The Kru take all the positions and during the elections, they elect their sons.” So said one member of the Sarpo ethnic group in a focus group held in January 2018. The Sarpo and the Grebo have the overall perception that the Kru have all the privileges when it comes to the election of representatives and senators (in the Legislature), given their large number. People vote along ethnic lines, and as

42 Interview with Peterson Sonyah, Chairman, LIMASA, March 2018, May 2018 and June 2018, at the Search for Common Ground Offices in Monrovia.
44 See A. Weah, above note 16.
45 A. Sawyer, above note 16.
46 Ibid.; see also A. Weah, above note 16.
47 Focus Group Discussion on Reconciliation, Women’s Center, Greenville, Sinoe County, 15 January 2018; the meeting was organized by Search for Common Ground and SeeD.
the Kru represent the majority, they have a stronger chance of winning elections. The Kru then appoint members of their families or their ethnic group to hold offices.\(^{49}\)

The Kru, Sarpo and Grebo are three ethnic groups based in Sinoe County, located in southeastern Liberia. The Krus and Sarpos have a long history of disputes. While the actual origin of the conflict is difficult to trace, much of it appears to stem from the State-building process that led to the formation of the county.\(^{50}\) Internal dynamics put the Krus and their settler compatriots at the centre of the county’s formation. In the county’s popular history, the Krus and settlers are regarded as the moral guarantors of the county.\(^{51}\) In return, Sarpos have regarded ethnic Krus as being arrogant and as pretending to be more civilized and educated.\(^{52}\) For much of the county’s existence, the perception that Sarpos are less important to the well-being and strategic development of the county and that Krus pretend to be more civilized has promoted negative stereotypes on both sides, deepening inter-tribal feuds and further undermining the potential for cooperation. The fragility of this inter-group relationship fully displayed itself during the Liberian Civil War when the Pratt Farm Massacre occurred. According to the TRC Final Report, Charles Taylor’s National Patriotic Front of Liberia committed the massacre\(^{53}\) and forty-two persons believed to be ethnic Sarpos were slaughtered. The massacre is believed by some to have been aided and abetted by Krus, who took the opportunity to retaliate against their old tribal rival.\(^{54}\) The story of this massacre and other acts of aggression forms a significant part of the Sarpos’ collective memory about the Liberian conflict.\(^{55}\)

Due to the lack of trust on both sides, every election year, ethnic Krus vote systematically for Kru representatives and senators while the Sarpos vote for representatives of their own ethnic group. In the 2014 mid-term senatorial elections, ethnic Sarpos lost to their Kru compatriots. For the Sarpos, this defeat meant a lack of representation in the Legislature.\(^{56}\) In response, some prominent members of the Sarpo community initiated calls for the division of the county.

\(^{48}\) Ibid.

\(^{49}\) Ibid.

\(^{50}\) There is a dearth of literature on the origin of counties in Liberia; much of what is available are oral sources. The oral history of Sinoe County suggest a hegemonic history that privileged the ethnic Krus and the earlier settlers over their Sarpo and Grebo compatriots. A county conflict history for Sinoe County was undertaken to explore a more inclusive narrative, with the view to demolishing what appears to be a divisive hegemonic oral history. Information about the tribal feud between the two groups was obtained from a Search for Common Ground six-month reconciliation dialogue in Sinoe County, September 2017 to January 2018. The outcome of this dialogue has led to the design of a five-year county Reconciliation Plan. These plans are affixed as annexes to the Strategic Road Map for National Reconciliation and Healing. On 12 December 2012, the Liberia National Vision was promulgated at the Gbarnga, Bong County National Vision Conference and the Road Map was conceived as an outgrowth of Liberia’s long-term strategy document.

\(^{51}\) The ethnic nations of Krus comprise the total of forty-eight sections while Sarpos comprise only six sections of the country.

\(^{52}\) Focus Group Discussion, above note 47.


\(^{54}\) Interview with Stephen Norman, Royal Hotel, Monrovia, 19 April 2019. On file with author.

\(^{55}\) Focus Group Discussion, above note 47.

The ethnic feuds between the two groups are reinforced by the establishment of a
distinct ethnic Kru Association and Sarpo Association. Due to feuds between Krus
and Sarpos, today the identity of both groups is grounded in violent memories
and negative stereotypes against each other. Both the Sarpos and Krus have tribal
associations whose survival is based on the mutual stereotyping of the other.
Demolition of these tribal associations is critical to repairing the damaged
relations. As noted by one “prominent citizen” of Sinoe, the county should move
away from loyalty to tribal hierarchies and the traditional way of life and instead
espouse democratic governance structure and values. Also, Sinoe needs to
envision a more inclusive culture that celebrates the diversity of the country.
Otherwise, as one focus group member put it, “when elections come, division
comes”. The dynamics between ethnic Sarpos and Krus are not unique and
resemble those between Gios and Manos, and between ethnic Mandingos and Krahn.

Building “never again”? Liberia’s memorials

The TRC has recommended that a memorial be erected at each site of a massacre or
mass grave. While the recommendation may be ambitious, the intention is to promote
learning and reflection over what happened. The primary objective of learning about
violent conflict is to deter future acts of aggression. It is also intended to put distance
between future generations and the generation of victims by knowing what happened,
the underlying causes and why it is important to avoid recurrence. This learning
process carries a preventative value of “never again”. In Liberia, there are few such
places that provide the opportunity to reflect on the war and learn from the
mistakes of the past. This section will endeavour to analyze both controversial and
constructive memorialization efforts in Liberia.

Controversial memorialization? The example of Prince Johnson’s monument

In Nimba County, Prince Yormie Johnson’s towering monument in the town of
Granta, on the stretch of road to Sacleapea (see Fig. 1), looms large in everyday
life as it does in the country’s post-war ethnic politics. The monument, entitled
“Touch of Freedom”, has the following engraved on a marble stone:

Here stands the lasting memory of the Revolutionary Hero of Nimba County,
General Prince Yormie Johnson, a statesman, politician and evangelist of the
Gospel of Jesus Christ who freed the people of Nimba County and Liberia.

The monument stands in defiance of the TRC Final Report, which declared Johnson
one of the most notorious perpetrators of the Civil War. According to the TRC, the

57 T. Saye Goinleh, “Sinoe Citizen Stresses Reconciliation in Caucus”, New Republic Liberia, 12 July 2018,
59 Focus Group Discussion, above note 47.
Independent National Patriotic Front of Liberia (INPFL) created by Johnson accounts for 2% of all violations, which amounts to 2,588 violations in total.\textsuperscript{60} The story of Prince Johnson and how he rose to prominence began after the 1980 military takeover. Sharing a brief history of the evolution of ethnic groups is critical for understanding the background of ethnic relations in Nimba and the controversy of the monument.

\textsuperscript{60} TRC Final Report, above note 1, Vol. 2, p. 264.
In the fourteenth and fifteenth centuries, the Gios and Manos that formed part of the Mande ethno-linguistic group migrated to Liberia after the collapse of the Sudan empire. The Mandingos, who are also a part of Mande group, are believed to have migrated to Liberia about the same time as the Gios and Manos, but their life of trade and commerce rendered them economic nomads. In the nineteenth century the Mandingos are reported to have migrated to Nimba in pursuit of commercial opportunities.61

Mandingo, Gio and Mano integration flourished primarily around trade and commerce. Mandingos tended to demonstrate acumen for business, while Gios and Manos were agriculturalists tilling the land. Naturally, the connections between Gios and Mano on the one hand and Mandingos on the other transformed into a symbiotic relationship.

Socially, Mandingo men married into Gio and Mano households. However, Gio and Mano men were not permitted to marry into Mandingo households because of a restriction posed by Islam: non-Muslims could not marry into Islamic households. Children born unto Gio and Mano women in Mandingo households would be raised primarily in the Mandingo patrilineal system, in which the Gio and Mano culture was often not acknowledged except in a few isolated cases. This has often been the cause of friction in the social interactions between these ethnic groups.62

In light of the history of integration and intermarriage, the Gios and Manos felt betrayed by the Mandingos: there was a feeling that they were not only bystanders in the ethnic purge against Gios and Manos but were part of the system. However, like ethnic Krahns, Mandingos were at the same time targeted and eliminated by INPFL forces. Samuel Doe, an ethnic Krahn who favoured Mandingos, was captured, tortured and executed by the INPFL (led by Prince Johnson) in 1990, and ethnic Mandingos were hunted down and killed in Nimba and elsewhere.63

It’s on the violent memories between these ethnic groups that Prince Johnson has built his political career. His rhetoric has maintained that Mandingos are foreigners and should not own land, and that Gios and Manos are free today because his forces executed Samuel Doe.64

In stark contrast to the memorials described below, Prince Johnson’s monument is an example of memorialization which does not necessarily have the aim of reconciling society over contentious issues. One can therefore sense a thin line between the variety of aims underlying memorialization efforts in a given context.

63 See A. Sleh, S. Toe and A. Weah, above note 62.
64 Author’s observations. See also Yomi Johnson, The Rise and Fall of President Samuel Doe: A Time to Heal and Rebuild Liberia, Soma Associates, Lagos, 2003.
Some constructive patterns of memorialization

The Liberian National Museum

The Liberian National Museum (see Fig. 2) was established by an act of the Legislature in 1958 during the administration of President William Tubman. Beyond the National Museum, located in central Monrovia, there is no other museum in the country. The primary goal of the National Museum was to obtain, collect and preserve cultural artefacts and other historical elements which depict the country’s heritage. During the Civil War, the National Museum was deeply affected and some artefacts were looted and sold. Despite this, the Museum was recovered and is now operational again. Unlike other war museums, especially in countries emerging from violent conflict or authoritarian regimes, the Liberian National Museum’s collection on the war is limited and doesn’t devote much space to discussion of the past; instead, the collection is mixed and focuses on a variety of themes. Importantly, it provides a space for viewing, reflection and learning. Nonetheless, some observers have placed the Museum’s collection in a context of subtle revisionism which tends to avoid controversial materials that could raise questions and trigger debates about the
past. Its focus on the past is selective: it determines what specifically needs to be remembered, with some details of political significance being left out.65

**The Lutheran Church**

On 29 and 30 July 1990, about 600 Liberians were massacred at St Peter’s Lutheran Church in Sinkor, Monrovia.66 All victims of the massacre were quickly buried in two mass graves in the church compound. In commemoration of this tragedy, the Lutheran Church observes a one-day annual requiem mass for the victims and survivors. This has become one of the few moments of mourning and reflection in Liberia.

**The Duport Road memorial**

The Duport Road community was among the worst affected during the Liberian conflict. It was the scene of two horrific massacres and is the site of several mass graves. In 1990, the Charles Taylor-led National Patriotic Front of Liberia (NPFL) allegedly arrested, tortured and summarily executed many people who were perceived to belong to the Krahn and Mandingo ethnic groups.67 Most of the killings were carried out at the end of Duport Road known as the Waterside; some of those killed were first arrested at the notorious checkpoint known as the God Bless You Gate. Four years later, the community was attacked again.68 In December 1994, more than forty-four people were massacred, allegedly by forces of the NPFL, on the part of Duport Road known as the Cow Field69. The victims included men, women, children and the elderly. At the edge of the Waterside area, a signpost was erected in memory of those killed in the first of these massacres. The signpost was made out of a corrugated metal barrel. It featured a plain flat surface, approximately two feet high, painted with a white background. Printed in black against the white background in bold letters were these commemorative words: “Innocent victims of the Liberian Civil War, 1990, killed because of the tribe they belong to.” Due to neglect, the signpost fell into disrepair in 2009.

In 2017, the Independent National Human Rights Commission of Liberia erected a new memorial on Duport Road (see Fig. 3). In 2008, the local community had engaged in an extensive consultative memorial process and

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65 Interview with Augustine Konneh PhD, African Methodist Episcopal University, Camp Johnson Road, 5 February 2018. On file with author.
68 Ibid.
fundraising exercise; on the question of what type of memorial to erect, the community decided on a memorial with a particular architectural design and features. The Commission’s work ignored the suggestions of the community. As a result, the efforts to build a memorial were poorly received, as the community was not fully involved in the decision-making process; community engagement in erecting memorials is considered standard practice to ensure inclusive participation and engagement. Nonetheless, the monument serves as a powerful reminder of the atrocities committed on Duport Road, and its erection should be seen as part of a wider campaign to remember the conflict in ways that prevent relapse.

The Samay memorial

Samay is a remote village in central Liberia that lost about thirty-seven members of its community to violence in 1993 and later organized and erected a memorial. Today the memorial is used as an important site for learning about war and violence more broadly. The site is managed by a school teacher who typically takes his students there, quizzes them about key events in the Liberian conflict, and discusses why it is important to learn about it. The villagers also gather around the memorial during Decoration Day, Liberia’s day of the dead. A few

[Notes]
70 For a description of the architectural design of the community’s preferred memorial, see A. Weah, above note 67.
72 International Center for Transitional Justice, Memo to the Liberia Truth and Reconciliation Commission, Monrovia, April 2009.
73 For more details, see A. Weah, above note 67.
years after the memorial was built, the community acquired further resources to expand the existing structure. For example, a library was built to collect materials about the Liberian war and the Samay memorial more specifically. Reverend William R. Tolbert, Liberia’s peace ambassador, makes regular visits there.

There are few opportunities to learn about the war and violence in Liberia from an objective perspective. Though memorial sites like Duport Road are examples of constructive patterns of remembering, Samay village demonstrates a much stronger and more innovative approach toward teaching the younger generation and transmitting positive memories.

The pattern of memorials demonstrated above does not reveal much in terms of systematic community learning. Instead, it tries to treat individual memories of the war as collective ones. In communities with a strong sense of ethnonationalism such as Nimba, the Samay memorial, located in Bong County, Central Liberia, provides a blueprint for how to move away from destructive remembering as it tends to open up a space for broader and more inclusive debate about the past and those who are listed as perpetrators in the TRC Final Report.

**Conclusion**

Liberia has been locked in a vortex of deadly conflicts for much of its existence, and attempts to systematically address them have yielded little or no results.74 The Accra Comprehensive Peace Agreement, which called for the establishment of the TRC, emerged as the latest strategy to address the underlying causes of Liberia’s perennial conflict.75 Earlier events such as the Fernando Po slave labour scandal of the 1930s and the Rice Riot of 1979 were investigated, as a result of which a report was released to Liberia’s governing elite but was never implemented. In turn, the State has been responding with either official silence or rhetoric of “reconciliation”. The recommendations of the 1930 League of Nations report76 demonstrating Liberia’s complicity in conditions analogous to slavery and forced labour, which essentially focused on reorganizing the State and addressing deep ethnic cleavages between native and settler Liberians, were never implemented. Consequently, violent memories of that period festered and impacted ethnic Krus and Grebos, the groups that were affected the most. Charles Johnson, an academic and one of the three commissioners appointed by the League of Nations, wrote a compelling account which was a repudiation of that era, outlining the settlers’ failed mission of establishing a black republic. In particular, Johnson accused the settlers of “crushing the native spirit” of creativity and entrepreneurship. In his book, *Bitter Canaan*, he published the lyrics of a victim’s

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75 League of Nations, above note 6.
76 Ibid.
song: “Allen Yancy, where are our sons, husbands and fathers?” He lamented that the sad song was a “fresh and pertinent legend”. Johnson’s work highlights the fact that grievances prior to the Civil War were never addressed and that the transmission of violent memories has become more complicated due to layers of memories across different temporalities.

The TRC Final Report was released a decade ago. The commemoration of this date will once again reveal many missed opportunities and serve as another reminder that the Final Report’s recommendations have not been implemented. Even though the Report proffered more than 200 recommendations, its implementation has been overshadowed by measures of criminal accountability. In addition to the recommendations regarding criminal accountability or establishing a war crimes court, there are other measures designed to support community rehabilitation, improve inter-group relations and restore victims’ dignity. For example, recommendations on the issuance of public apologies are designed to enable the government to acknowledge the complicity of the Liberian State in the destruction of lives and properties. Commemorating an official holiday is another critical recommendation advanced by the TRC. This recommendation is intended to undo Decoration Day’s public holiday, which is observed every second Wednesday of March. The tradition around Decoration Day allows every Liberian to visit the grave site of loved ones, mourn, share a meal or drink with the dead, and clean up the site. But the majority of Liberians killed during the conflict don’t have grave sites. Since the end of the war, Liberians from different walks of life have complained that the holiday is insensitive to those who were summarily executed and dumped in mass graves. From the list of 203 sites of massacres and mass graves, one can imagine that nearly everyone killed was not properly buried. Hence, establishing an official public commemoration holiday and erecting country-wide memorials will undoubtedly provide an inclusive space for mourning, as it would raise important existential questions about what happened, who committed the atrocities and how the government facilitates closure. If implemented, such country-wide memorial activity is likely to counter opportunistic ethnonationalist manipulations of collective memory.

Recent efforts to rewrite a general and comprehensive history of Liberia by some of Liberia’s leading academics have failed to materialize. The Organizing Conference of May 2013 was aimed at discussing issues of periodization, themes and scholars to undertake the writing assignment. There was one central


78 Organizing Conference, *Proposal for the Establishment of a Liberian National History Project (Conference Report)*, Governance Commission, Republic of Liberia, 13–16 May 2013. The author served as the note-taker for this event. The Liberia TRC recommended writing an inclusive and general history of Liberia to facilitate genuine reconciliation. Following the launch of the Liberia National Vision 2030 and Reconciliation Road Map as post-TRC instruments, the Governance Commission spearheaded the Organizing Conference as the first step to writing Liberia’s general and comprehensive history.
question that delegates to the conference had to grapple with: what kind of history would Liberia need? In a two-sided debate, one side, largely comprising Liberian academics and historians, maintained that it is critical to have a history-writing process that focuses on the evidence. The other side argued that a revisionist history was more desirable because evidence-based history is likely to uncover new truths which would challenge people’s notions about reconciliation. Finally, it was agreed that a five-volume history would be written over a period of five years. This author has later learned why the productive outcome of the Conference was never taken forward. Augustine Konneh, one of Liberia’s foremost historians and the head of the Expert Panel of Historians, informed the author that the administration at the time was more interested in a revisionist history-writing exercise than an evidence-based approach. Konneh’s assessment of the failed history-writing process is consistent with the desire of Liberia’s elites for reinvention rather than a deliberate and substantive process of reconciliation and accountability.

event brought together historians, anthropologists, journalists, political scientists and development scholars, among others, to discuss the priority of writing Liberia’s history and technical modalities. The four-day conference agreed on periodization, themes and that the history writing process should commence from 500 years before 1822, the date of arrival of the settlers. The history would be written over a period of five years.

79 Ibid.
80 Ibid.
81 Interview with Augustine Konneh, above note 65. Augustine Konneh is one of Liberia’s leading historians and head of the panel of experts that was in charge of Liberia History Project. At the time of the history conference, the author worked for the Governance Commission, the leading entity tasked with organizing the event.
The role of freedom of expression in the construction of historical memory

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Abstract

The construction of historical memory is closely linked to the guarantees provided by the right to freedom of expression. This right ensures that victims and society in general are able to speak about the past, narrate their own stories, and call for and influence social discussion and institutional reform. Mechanisms such as access to State archives, participation in the media, journalistic coverage of armed conflicts and the free flow of stories, artistic endeavours, criticisms and condemnations empower victims and the rest of society in the construction of alternative narratives and independent memories. This article examines case law of the Inter-American System of Human Rights that elaborates on freedom of expression, and considers its importance for the construction of historical memory. It also touches upon some decisions taken by the Colombian high courts, relevant to a context in which mechanisms of transitional justice have recently been implemented.

Keywords: historical memory, freedom of expression, State archives, journalistic coverage, media, armed conflict.

* The views expressed in this article are those of the author and do not necessarily reflect the position of the International Committee of the Red Cross.
Introduction

To designate a hell is not, of course, to tell us anything about how to extract people from that hell, how to moderate hell’s flames.

Susan Sontag

We live in a time when the horrors of war are widely broadcast in a constant stream of images. The media and social networks daily provide a graphic insight into the destructive effects of armed conflict on civilians, the main victims of war. Every day we are bombarded with live broadcasts of military operations, multitudes of people on the move in search of refuge and asylum, the dead and injured, and the destruction of cities, hospitals and cultural property. In the midst of this barrage of images of war, which turns pain and suffering into a media spectacle, a form of entertainment, the voices and experiences of the victims are seldom heard. This demonstrates the truth of the words of Susan Sontag, who cautions that just because “news about war is now disseminated worldwide does not mean that the capacity to think about the suffering of people far away is significantly larger.”

Representation of victims in this sea of information is poor. Additionally, their participation in legal proceedings and other mechanisms for establishing criminal responsibility and discovering the fate and whereabouts of family members might be afforded by the legislation, but it is not fully implemented in practice. In Latin American countries struck by protracted armed conflicts and generalized violence, attempts have been made to prosecute and punish the perpetrators of human rights and international humanitarian law (IHL) violations, although challenges for guaranteeing effective participation of the victims still persist. In the international scene, the creation of the International Criminal Court provided a major role for victims, affording them both participation and reparation rights. The Court has a limited capacity to handle huge numbers of victims, however, and has to balance the opposing interests of the accused, the prosecution, the public and the victims; at times this may not

2 Mario Morales, “Los medios, en deuda”, El Espectador, 21 November 2015, available at: www.elespectador.com/noticias/politica/los-medios-deuda-articulo-600588. According to this research, media coverage of the peace negotiations between the government of Colombia and the guerrilla Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (FARC-EP) by national media channels mainly focused on official statements emphasizing war, whereas victims, civil society and academia were seldom considered as relevant sources. Victims appeared as a source in 2% and as a subject in 4% of the coverage; in contrast, the government was a source in 23% of coverage and a subject in 19.7%.
3 S. Sontag, above note 1, p. 115.
5 Diana Guzmán, Nelson Sánchez and Rodrigo Uprimny, “Colombia”, in Fundación para el Debido Proceso Legal, above note 4, p. 113. These authors affirm that barriers for victims’ participation in judicial investigations and prosecution against paramilitary groups in Colombia under Law 975 of 2005 included lack of economic resources to attend the hearings, lack of information, lack of psychological support and lack of legal representation before the courts.
allow victims to participate in the proceedings to the greatest extent possible. At the
domestic level, lack of capacity or resources in some States to effectively investigate
and prosecute massive human rights and IHL violations leads to a sense of
frustration, and victims, witnesses and members of the judiciary are put at risk,
facing threats to their lives and safety.

Although endeavours to construct and legitimize historical memory in the
judicial arena are important, initiatives led by victims and civil society organizations
outside this framework could play a significant role in the construction of historical
memory. The spectrum of creative and participatory possibilities finds fertile ground
in the interaction between historical memory and freedom of expression. Artistic
creations including audiovisual and written works, statements, critiques, opinions
and research conducted by victims, activists or journalists might complement,
challenge or contradict the official narrative, which in turn may reopen debates
and trigger social conflicts.

The protection of this kind of speech is particularly important, bearing in mind the dynamic, political nature of historical memory
and the fact that certain memories could have been silenced, hidden or excluded
in the construction of national narratives.


8 Elizabeth Jelin, “Las luchas políticas por la memoria”, in *Los trabajos de la memoria*, Siglo Veintiuno

9 E. Jelin, above note 8, p. 50. Jelin highlights that activists and what she calls memory promoters, militants
or entrepreneurs might attempt to change or influence the sense and content of official history and its
hegemony in order to eliminate distortions or to make public and legitimize versions that had been in the “catacombs”, concealed, censored or silenced (author’s translation). Also, on how perceptions of heroism might ignore, silence or avoid shameful episodes of past history, leading to their validation and repetition, see Centro de Memoria Histórica, *Recordar y narrar el conflicto: Herramientas para reconstruir memoria histórica*, Colombia, 2009, p. 36, available at: www.centrodememorialhistorica.gov.co/descargas/informes2009/cajadeherramientas/presentacionbaja.pdf.
In such contexts, access to State records, the creation of and participation in alternative media outlets, and media reporting on conflicts are some of the measures that can contribute to amplifying the voices of victims, leading to social discussion and public participation.

Approaching historical memory in the light of freedom of expression is complementary to its characterization in terms of the right to the truth embedded in the State’s obligation to respect human rights. Certainly, freedom of expression allows people to create and develop ideas and thoughts and share them widely. However, it should be noted that in the construction of memories, the expressions and interests of victims may not concur with those of other victims, perpetrators, and other individuals or groups. Also, it is possible that such different expressions will not be equally promoted, guaranteed or protected.

When it comes to communication, not all individuals and groups may have the same opportunities to express their opinions or participate in the debates that forge public opinion. For example, the needs of victims and other marginalized groups might not be taken into account in the allocation of radio and television broadcasting licences, and criminal law can be used to censor victims, journalists or human rights defenders when they criticize or make allegations against public officials. The Inter-American Commission on Human Rights (IACHR) has noted in relation to the Americas that:

the so-called “contempt laws” and criminal offenses of libel, slander, and defamation continue to be used to criminalize and punish critical statements

10 IACtHR, Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, Series C, No. 287, Preliminary Objections, Merits, Reparations and Costs, Judgment, 14 November 2014, p. 511, available at: www.corteidh.or.cr/docs/casos/articulos/seriec_287_ing.pdf. In this case, the Court held that the right to know the truth derives from the State’s obligation to respect rights, the right to a fair trial, the right to judicial protection, and the freedom of thought and expression. The Court affirms that the right to know the truth is subsumed basically in the right of the victims or their family members to obtain from the competent organs of the State the clarification of the acts that violated human rights and their corresponding responsibilities, via the investigation and prosecution procedures established by Articles 8 and 25 of the American Convention on Human Rights.

11 American Convention on Human Rights (ACHR), San José, Costa Rica, 22 November 1969. The ACHR enshrines in its Article 13.1 on freedom of though and expression that “[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

12 Inter-American Commission on Human Rights (IACHR), Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Vol. 2, 15 March 2017, p. 575, available at: www.oas.org/en/iachr/expression/docs/reports/annual/AnnualReport2016RELE.pdf. In this context, the Special Rapporteur has recommended that the States of the region should “[l]egislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the ‘Joint Declaration on Diversity in Broadcasting’.”

concerning public officials and on issues of public interest, which has disproportionately affected the work of human rights defenders.\textsuperscript{14}

In contexts previously affected by armed conflict and other situations of violence, the duty of the State to respect and guarantee freedom of expression takes on special significance. This article aims to show how freedom of expression enhances, protects and guarantees the creation and dissemination of historical memories by victims and other social groups in the Inter-American System of Human Rights. This author will not address aspects such as safeguards and participation of victims in the judicial sphere, truth-seeking mechanisms in transitional contexts or different forms of reparations.\textsuperscript{15} Likewise, the present analysis will not touch upon other aspects closely linked to freedom of expression such as the right to privacy of victims related to media coverage of the circumstances around their victimization.\textsuperscript{16}

This article takes specific note of the Inter-American Court of Human Rights’ (IACtHR) interpretation of the right to freedom of speech. Additionally, it focuses on the Colombian case because although armed conflicts still persist in that country,\textsuperscript{17} there are efforts, legal frameworks and transitional justice institutions for producing and preserving memory in the midst of hostilities, such as the National Center for Historical Memory.\textsuperscript{18} The Americas, and Colombia in particular, have accumulated good and best practices as well as lessons for promoting and guaranteeing freedom of expression on behalf of victims of armed conflicts and other situations of violence.

As further discussed below, freedom of expression has a strong potential to promote and support victims in the construction of collective memories. This article will first address the interaction between freedom of expression and historical memories, as well as the different conflicts that may arise between various groups and individuals as they create and disseminate their own versions of the past. The article will then focus on the guarantees of freedom of expression provided by the State. In particular, it will concentrate on access by victims to media outlets, State archives and protection measures for those facing threats to their lives and integrity. These conditions are key to supporting victims’ own initiatives to bring public attention not only to their suffering, but also to their interpretation of the past, their interests, their needs and their proposals for institutional and social change.

\textsuperscript{14} Ibid.
\textsuperscript{15} M. Galvis, above note 4.
Historical memory and freedom of expression

There is a wide variety of activities that allow victims of armed conflicts and other situations of violence to express and disseminate their feelings and ideas, with a bearing on the construction of historical memory. For instance, in Colombia different groups of people affected by the armed conflict and other situations of violence find healing through art, oftentimes conveying messages against impunity and demanding institutional reforms. The women of Manpuján create tapestries onto which they inscribe their stories as victims of displacement and sexual violence perpetrated by armed groups. Mothers of victims of executions and disappearances also weave tapestries to share their experiences, and further spread their stories by visiting children and young people at schools. Young people who have experienced urban violence gather in the community to grow plants, perform symbolic burials, talk about their memories, and compose and interpret hip-hop and rap music with their messages. Community leaders and social communicators train the inhabitants of areas once struck by paramilitary violence to create community radio stations, and help them to improve or acquire skills for creating and broadcasting audiovisual materials.

These expressions of victims not only narrate the past but may reunite the community and rebuild social networks. In that manner, the expressions transcend the individual or group orbit to a wider audience, to the rest of society. These two conditions are two sides of the same coin, the right to freedom of expression, that has an individual and collective dimension. Article 13.1 of the American Convention on Human Rights (ACHR) provides that:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

This provision highlights that freedom of expression includes both an individual dimension, allowing people to express their ideas and opinions, and a collective one, guaranteeing their dissemination and giving society in general the right to receive them. These two dimensions have also been recognized as an integral

23 ACHR, Art. 13.
part of the right to the truth and play a significant role in the construction of historical memory. In other words, victims have the right not only to seek and receive information about their loved ones, but also to publicly express and broadcast their feelings, stories and opinions. In this way, society as a whole is involved: memories no longer belong exclusively to the victims but enter the realm of public discussion and encourage the adoption of commitments to ensure that the atrocities of the past are not repeated.

The right to the truth and the duty to preserve memory have not been expressly recognized in human rights treaties in the inter-American context. However, Issues related to the reconstruction of memory and the realization of victims’ rights have been significantly developed by human rights bodies’ reports and resolutions as well as the jurisprudence. The IACtHR, for example, has recognized the right to the truth in a number of cases of enforced disappearance, based on an analysis of the victims’ right to access to justice. For the Court, this right is a guarantee against impunity and materializes when victims are informed of the fate and whereabouts of their relatives. In other words, access to justice means that the victims are entitled to have those facts investigated and that those responsible are prosecuted and punished. The IACtHR has also stated that the right to the truth is related to the right to personal integrity, given the anxiety and uncertainty caused by not knowing the fate and whereabouts of missing relatives as well as the impossibility of burying the bodily remains. The right to the truth has also been linked to the issue of

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The IACtHR has recognized the notion of historical memory in the case of *Gomes Lund et al. v. Brazil*, which examined incidents involving torture, enforced disappearances and extrajudicial executions taking place during military operations carried out between 1972 and 1975 with the aim of wiping out the Araguaia guerrilla movement. In this case, the Court recognized the relationship between the right to the truth and freedom of expression and concluded that the State violated these rights in denying the families and the courts access to military records.

Importantly, the IACtHR has underlined that historical memory is a means of determining the truth, which is something that cannot be done solely and exclusively through the judiciary or extrajudicial mechanisms in transitional processes. In the *Gomes Lund* case, the Court underlined that the construction of historical memory in less formal settings does not release the State from its duty to establish the facts and circumstances of human rights violations and hold those responsible to account. It also stressed that historical memory is determined by the context in which it is constructed, which means that it is relative, dynamic and changing.

Independently of the discussion on whether the right to the truth is an autonomous right or one deriving from other rights, linking the processes of truth-seeking and construction of historical memory to freedom of expression opens up a whole range of possibilities and opportunities for victims, groups and communities to create their own narratives about their past and future and communicate their ideas to society. It also allows for the promotion of collective memories which do not necessarily converge on one historical and official version of the past, but refer more to multiple and diverse interpretations of the past by taking into account victims’ present experiences.

The wide dissemination of the expressions of victims and other social groups traditionally excluded from social and political participation dignifies them as agents of their own reparation, recognizing their capacities and talents.

33 *Ibid.*, paras 2, 88, 121–125. Guerrilha do Araguaia was the name of the resistance movement formed by members of the Brazilian Communist Party that opposed the military regime.
36 *Ibid*.
37 *Ibid*.
39 On the distinction between historical memory and collective memory, see Maurice Halbwachs, *Memoria colectiva y memoria histórica*, 1995, pp. 209–219, available at: http://ih-vm-cisreis.c.mad.interhost.com/REIS/PDF/REIS_069_12.pdf. This author indicates that if by historical memory one understands a list of events preserved by national history, those frameworks do not represent what collective memory is all about. Also see the mission of the Colombian Center for Historical Memory, which promotes “plural memories” of armed conflict by including views of different individuals and groups: see CNMH, above note 18.
However, it is possible that as victims and their messages gain visibility, their engagement in social debate creates disagreement due to the existence of opposed versions of the past, justifications for acts of victimization, and the different interests of the actors involved. The next section will demonstrate that an adequate balance between the rights of the victims and the rights of other social groups must be struck.

Competing narratives in the construction of historical memories and efforts to ensure the protection of victims’ dignity

The memories of victims may be contradicted or challenged by the versions of other victims, perpetrators or different social groups. In countries where transition processes have taken place (for example, transition to democracy, peace negotiations, demobilization of armed actors, granting of amnesties and pardons, reintegration into public and political life, and reparations for victims), tensions and conflicts may arise between erstwhile victims and perpetrators.40

In democratic societies, debates and discussions about issues of interest to victims may feature differing views and visions. As victims engage or are encouraged to participate in scenarios of debate, they may be exposed to confrontation on their ideas and opinions, which is unavoidable once they participate in public and political life. Also, it can be challenging for victims when their construction of memory is opposed to versions held by alleged, investigated or convicted perpetrators of human rights and IHL violations, or by other victims, State authorities, or individuals. When those actors justify crimes or stigmatize victims, it can be painful, reopen wounds or even prevent healing.41

For victims, it is crucial to eradicate the stereotypes and stigma often attached to them as a result of armed conflicts or other situations of violence. It

40 On the transition in Spain after the civil war, Elizabeth Jelin observes that “times of political change, periods of transition, create a scenario of confrontation among actors with different, generally opposing, political experiences and expectations. And each of these positions involves a vision of the past and an agenda (in many cases implicit) for coming to terms with that past in the new era that is regarded as a break with all that has gone before” (author’s translation). See E. Jelin, above note 8, p. 45. Guzmán, Sánchez and Uprimny, above note 5, pp. 115–117, explain that victims could not challenge or debate the confessions and declarations of demobilized members of paramilitary groups before the courts in Colombia under Law 975 of 2005. Besides the lack of access on the part of the media, the versions of the perpetrators justifying their acts were given more attention, leaving the victims with restricted opportunities to contradict them, cross-examine them and restore the honour and reputation of their relatives. Also, see the judicial ban imposed on a march within the Carnaval of São Paulo, Brazil, that intended to honour military figures during the period of the dictatorship (1964–85). Different NGOs mobilized against the tributes, while the promoters of the march claimed that their right to freedom of expression was violated by the ban. See “Justiça de SP proíbe bloco carnavalesco que homenageia a ditadura militar”, CBN Globo Radio, 9 February 2018, available at: https://cbn.globoradio.globo.com/media/audio/159161/justica-de-sp-proibe-bloco-carnavalesco-que-homena.htm.

41 Verónica Coral Rojas, “The Construction of Perpetrators in Enrique Buenaventura: A Reflection around the Construction of the Perpetrator in the Colombian Historical Memory”, Revista Cultura Investigativa, No. 6, June 2013, p. 51, available at: https://revistaci.weebly.com/uploads/1/5/6/0/15607460/05._enrique_buenaventura.pdf. Here the author explains that perpetrators are linked to the society that produce or enables them, and in that sense perpetrators should be understood as societal products; this does not justify their deeds, but can help to explain them.
is possible that victims of violence will be portrayed as responsible for their own deaths, as terrorists, criminals, members or supporters of armed groups, etc. It is also possible that those labels will be used to justify the perpetration of human rights violations.\textsuperscript{42} The expression of victims is then key to affirming the reputation of their loved ones and having a say in how they should be remembered.

The Colombian Constitutional Court regards memory as part of a family’s heritage and links it to certain rights such as the right to protect one’s good name and honour.\textsuperscript{43} In this regard, the Court has established that families have the right, even when their loved one is no longer alive, to some form of reparation from those who committed abuses against them or tarnished their reputation.\textsuperscript{44} Both the Constitutional Court and the Council of State of Colombia have emphasized that public acts to honour the memory of victims are measures of reparation and contribute to increasing recognition and awareness about victim’s lives, projects and legacies.\textsuperscript{45}

In Europe there are several domestic legislations against Holocaust denial, and the European Court of Human Rights has ruled against such speech, affirming its defence of democratic values and tolerance.\textsuperscript{46} Similarly, the Inter-American System of Human Rights has established a framework that outlaws speech which promotes war and hatred linked to the incitement of violence. In this regard, Article 13.5 of the ACHR provides that:

\begin{quote}
Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.\textsuperscript{47}
\end{quote}

Clearly, the ACHR prohibits utterances that promote hate, hostility, discrimination and resort to violence.\textsuperscript{48} If there is no incitement to resort to violence, such
statements might still constitute an affront to the honour, dignity and reputation of victims and their families.

In cases involving the death of civilians as a result of the armed conflict, the Colombian Council of State has determined that condoning acts which constitute human rights violations creates stigma and stereotypes, resulting in double victimization and a violation of the right to memory.

It is important to keep in mind that certain types of speech may influence not only the construction of historical memory, but also the future dynamics in a specific context. For example, in the prosecution of crimes committed by members of paramilitary groups in Colombia, a district high court ruled that the dissemination of offensive, violent or dehumanizing messages by people in public office or politics can influence developments in a conflict and perpetuate confrontations between historically opposed groups.

Since such expressions may not necessarily be prohibited by the ACHR if in principle they do not incite violence, States should provide additional measures to protect the memories and the honour of victims. A mechanism that could contribute to that is the right to reply or correction. This remedy is available to those who wish to make a stand against discourse perceived as offensive. Article 14 of the ACHR provides that anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

The State and the media must therefore ensure that victims are able to request that corrections be made and to participate in debates where they can exercise their right to reply. This guarantee only refers to statements that are both inaccurate and offensive, and not to opinions, because they cannot be subjected to rectification or correction.

Colombia’s legislation establishes, for instance, that it is the duty of the State to support the construction of official narratives or truths by ensuring that the principles of pluralism, participation, solidarity and freedom of expression and thought are upheld. Similarly, in relation to violations of international human rights law, the updated UN Economic and Social Council Set of Principles for the Protection and Promotion of Human Rights through Action to Combat dissemination of hate speech unless it has been shown that the perpetrator had the intention to incite discrimination, hostility or violence.


50 Ibid.

51 Bogotá District High Court, Justice and Peace Chamber, Judgment No. 11001600253200680008 N.I. 1821, 31 October 2014, paras 296, 298.

52 ACHR, Art. 13.5.


Impunity establishes the duty to preserve memory. The Principles recommend that States adopt measures to prevent the extinction of collective memory and the development of revisionist and negationist arguments.

Access by victims to spaces for communication may increase the diversity of voices and prevent versions that deny or offend the rights of victims from gaining wider currency and crystallizing into the “only and absolute truth”. Equitable participation of victims in judicial and extrajudicial mechanisms, as well as spaces for debate and discussion, can counter the effects of negationist or justifying speech as it enables victims to put forward their ideas and opinions and make known their objections and responses.

In sum, when promoting and ensuring processes of constructing memory, States should play an active role in relation to expressions that justify atrocities or bring stigma to victims, by at the very least prohibiting statements that incite to violence and ensuring the right to reply. As shown above, the existing standards might not be sufficient, and other guarantees should be implemented to enable victims to raise their voices, to react to narratives that affect their honour and reputation, and most importantly to share their memories with society.

Guarantees derived from freedom of expression linked to the construction of historical memory

According to Article 1.1 of the ACHR, States must respect and guarantee human rights, including freedom of expression. The duty to respect human rights requires agents of the State to refrain from doing anything that could directly or indirectly deny or curtail freedom of expression. The IACtHR observes that freedom of expression can be restricted by means of prosecution, administrative action, de facto requirements and acts and omissions of public officials or private individuals, increasing the vulnerability of those exercising, or attempting to exercise, freedom of expression.

The duty to guarantee human rights includes creating conditions and social practices that provide an enabling environment for the exercise of the right to freedom of expression and preventing violations and abuses by public officials and private individuals. In this context, there are freedom of expression guarantees that have a bearing on the construction of historical memory, such as the opportunity to access radio and media outlets and consult

55 ECOSOC, above note 25.
56 Ibid., Principle 3.
58 ACHR, Art. 1.1.
60 Ibid., para. 107.
61 Ibid.
62 Ibid., para. 109.
State archives, the protection of journalistic coverage of armed conflicts, and the protection of criticism against public officials and others.

Drawing on the reports of the IACHR and IACtHR case law, certain guarantees of freedom of expression are analyzed below. Some of the judgments cited concern the conduct of members of the armed forces, providing insights into historical memory guarantees in the context of armed conflicts and other situations of violence.

The voice of victims and its social echo: Creating opportunities to share memories

Media outlets such as radio stations and television channels may allow people to share facts, ideas and opinions and capture the attention of a wide audience. For that reason, the State must adopt measures to ensure victims’ access to public debate and the media, by eliminating arbitrary restrictions over newsprint and broadcasting channels and equipment that prevent communication and circulation of expression.

According to the IACHR, democracies must ensure that multiple and diverse voices are given weight in wider society. Groups such as indigenous peoples, communities of African descent, rural and neighbourhood communities, women and persons with disabilities are often excluded and ignored. As noted by the Commission, their participation in the media enables them to decisively influence the debates that can help reverse processes of exclusion and discrimination.

For the IACHR, a plurality and diversity of voices is an essential feature of a democratic society. In keeping with these principles, the Commission points out that the way in which the radio frequency spectrum is assigned has an impact on freedom of expression, highlighting the importance of legislating to prevent the creation of media monopolies and oligopolies. It further notes that the State

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must take into account democratic criteria in assigning radio frequencies, with a view to ensuring that everyone has equal opportunities for access.\textsuperscript{73}

In its Freedom of Expression Standards for Free and Inclusive Broadcasting published in 2010, the IACHR recommended that States ensure that broadcasting regulations include special rules to guarantee access to groups traditionally marginalized from mass communication.\textsuperscript{74} To this end, it urged States to reserve part of the frequency spectrum for community media and establish fair licensing conditions that take into account the distinct nature of private non-commercial media.\textsuperscript{75} The standards also highlight the importance of establishing special licensing procedures for these social groups,\textsuperscript{76} providing support for adapting to the digital era,\textsuperscript{77} and providing sources of funding to ensure the sustainability of their communication projects.\textsuperscript{78}

In addition to guaranteeing access to the media, the State must also ensure that victims are able to create and share their messages and the stories of their own and their families’ lives by any means of written, oral or visual communication. In the case of Manuel Cepeda Vargas v. Colombia concerning the killing of a congressman, who was also a journalist, by members of the armed forces and paramilitary groups, the IACtHR ruled that an audiovisual documentary should be made portraying the victim’s life and career as a politician and journalist as a form of reparation.\textsuperscript{79} The Court established a similar measure of reparation in the case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia concerning extrajudicial executions and enforced disappearances committed by members of the armed forces and police.\textsuperscript{80} On this occasion, the Court ruled that the documentary should focus on the facts of the case, the victims and the search for justice undertaken by their families.\textsuperscript{81}

These two documentaries were seen as a way of recovering and restoring historical memory for the victims and their families.\textsuperscript{82} The IACtHR ordered the State to bear the cost of producing, distributing and showing the documentary, to involve the victims in the creative process and to take their opinions into account.\textsuperscript{83} It also ordered the State to broadcast the documentary on national

\textsuperscript{73} Ibid.
\textsuperscript{74} IACHR, above note 66, para. 29.
\textsuperscript{75} Ibid., paras 68–97, 109–113.
\textsuperscript{76} Ibid., para. 37.
\textsuperscript{77} Ibid., para. 81.
\textsuperscript{78} Ibid., para. 132.
\textsuperscript{80} IACtHR, Rodríguez Vera, above note 10.
\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid.
\textsuperscript{83} Ibid. Similarly, in a case concerning the killing of a human rights activist, the Colombian Council of State ordered a documentary to be produced on his life. The victims were to be involved in its production, the editing of the script and other aspects of the production process. See Council of State of Colombia, Chamber 3, Judgment No. 50001-23-31-000-1998-01262-01 (26029), 26 June 2014, para. 61.
television and distribute videotapes of it to the victims, their representatives, civil society organizations and the country’s main universities.84

Access to State archives

In the Inter-American System of Human Rights, access to public information and the principle of maximum disclosure have been interpreted in relation to the right to freedom of expression, because “anyone who gains access to State-held information has, in turn, the right to disseminate the information so that it circulates in society, so that society can become familiar with it, have access to it, and evaluate it”.85 As explained in this section, the right to access information is closely linked with freedom of expression, for example when victims use public information for their research and creative expressions in the construction of memory.86

For victims of armed conflicts and other situations of violence, access to information is crucial. Information is needed to know the fate and whereabouts of the missing and to establish the truth about the circumstances surrounding violations of rights and any acts and/or omissions committed. It may be that the information sought is in the possession of the State’s armed forces87 or non-State armed groups.88 As these sources may contain information that is vital for establishing the facts or determining accountability, it is essential to put in place institutional policies and practices to prevent concealment, removal, destruction or falsification of such information.89

84 IACtHR, Manuel Cepeda Vargas, above note 79.
85 IACHR, Office of the Special Rapporteur for Freedom of Expression, The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks, 30 December 2011, p. 31, paras 99, 102, available at: https://tinyurl.com/y528zsvt. Here the Commission states that “the right of access to information shares the individual and social dimensions of the right to freedom of expression, both of which must be guaranteed simultaneously by the State”.
87 The IACHR Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, above note 25, defines the word “archives” as “collections of documents pertaining to violations of human rights and humanitarian law from sources including (a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; (b) local agencies, such as police stations, that were involved in human rights violations; (c) State agencies, including the office of the prosecutor and the judiciary, that are involved in the protection of human rights; and (d) materials collected by truth commissions and other investigative bodies”.
88 See Ana M. Ramírez, María P. Ángel, Mauricio Albarracín, Rodrigo Uprimny and Vivian Newman, Acceso a los archivos de inteligencia y contrainteligencia en el marco del posacuerdo, Documentos 31, Dejusticia, Bogotá, 2017, pp. 43, 46. This publication notes that the agreement between the Colombian government and the guerrilla FARC-EP for the creation of a truth commission did not provide for access to archives in possession of the guerrillas. However, the FARC-EP committed to sharing information related to the missing persons with the International Committee of the Red Cross. See Comunicado Conjunto No. 62, “Agreement on Missing Persons”, Havana, 18 October 2015, available at: www.accioncontraminas.gov.co/prensa/2015/Paginas/151018-Acuerdo-sobre-personas-desaparecidas.aspx.
89 IACHR, above note 25, Principle 14.
When victims and their representatives are guaranteed access to State archives, these “reservoirs of memory”\(^{90}\) can play an active role in their projects, their search for the truth, and the construction and reconstruction of their memories. The use of archives can also contribute to the work of the courts and non-judicial mechanisms, such as truth commissions and other formal and informal spaces for victim participation.\(^{91}\)

The legal basis for access to information is the definition of the right to freedom of expression contained in Article 13.1 of the ACHR, which provides that people have the right to seek and receive information of all kinds.\(^{92}\) The IACtHR maintains that in principle all the information in the possession of the State is presumed to be accessible, subject to a restricted system of exceptions.\(^{93}\) The State therefore has the duty to ensure maximum disclosure and facilitate access and consultation of information by all people.\(^{94}\) In the opinion of the Court, such guarantees are crucial to the functioning of a democratic society based on transparency and good governance.

Other bodies, such as Colombia’s Constitutional Court in the case of a massacre of members of the community of San José de Apartadó, and the Council of State on a case related to the incineration of archives by a military authority, have indicated that access to archives containing public documents contributes to the reconstruction of historical memory and is related to the right to request information held by public authorities, due process in administrative law and access to justice.\(^{95}\) Both bodies have also stated that the reconstruction of historical memory is affected when the State disregards the importance of archives of this kind and allows them to disappear.\(^{96}\)

In spite of the existence of this legal framework, in countries like Chile and Colombia victims or their representatives are still denied access to military archives because the information they contain is classified as secret or confidential.\(^{97}\) In this

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90 Elizabeth Jelin, “¿De qué hablamos cuando hablamos de memorias?”, in Los trabajos de la memoria, Siglo Veintiuno Editores, Madrid, 2001, p. 22.
91 IACHR, above note 25, Principles 14–16.
92 ACHR, Art. 13.1
93 IACtHR, Gomes Lund, above note 30, para. 199.
94 Ibid.
96 See above note 95.
97 See IACHR, above note 12, paras 1213–1231, on restrictions in Chilean legislation to accessing archives in custody by the National Commission on Political Imprisonment and Torture (Valech Commission I) created in 2003 in order to determine who was imprisoned and tortured for political reasons during the military dictatorship. See A. M. Ramirez et al., above note 88, p. 58, which shows that in Colombia under the mechanisms created under the peace accords between the government of Colombia and the FARC-EP, the classification of documents for national security reasons is not binding to the tribunal created to judge crimes committed during the armed conflict. In relation to the Truth Commission and the Unit for the Search of Missing Persons, the classification is binding except in cases of human rights violations. However, society in general cannot have access to intelligence and contra-intelligence archives before the classification term of thirty years. Also see the public commitment by Ministry of Defence of Colombia to share military archives with the Truth Commission, in “Fuerzas armadas le
respect, it should be noted that under the case law of the Inter-American System of Human Rights, States’ freedom to classify military information or impede access to documents or files of such nature is restricted. The IACtHR emphasizes that limitations on access to information must be regulated and established as exceptional measures, and highlights that in cases of violations of human rights, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or pending procedures.

According to Article 13.2 of the ACHR, there are three cumulative requirements for restrictions on access to information to be compatible with human rights: (1) the restriction must be stipulated by law; (2) the purpose of the restriction must be to protect the rights and reputation of others, national security or public order, health or morals; and (3) the restriction must be necessary and proportional—that is, it must interfere as little as possible with access to information. The application of these criteria prevents the arbitrary or discretionary treatment of requests for information.

The Colombian Constitutional Court has established additional conditions for exceptional restrictions on access to information. For example, it considers that information should only be classified temporarily and that there should be measures in place to ensure the proper custody and preservation of information so that it can be made public at a later date. The Court also makes it clear that access to classified information by bodies responsible for overseeing, supervising and investigating public institutions cannot be restricted.

In the Gomes Lund case, the IACtHR established that when judicial or administrative authorities require information to be provided, governments may not refuse access to State archives on the grounds that the information is classified or for reasons of public interest or national security. In its judgment, the Court established the obligation to supply information held by military institutions in the following manner:

[W]hen it comes to the investigation of punishable facts, the decision to qualify the information as secretive or to refuse to hand it over cannot stem solely from


98 IACtHR, \textit{Gomes Lund}, above note 30, paras 230, 231.
100 ACHR, Art. 13.2.
101 Constitutional Court of Colombia, Judgment T-1025, above note 95, para. 6.
102 \textit{Ibid.}
103 \textit{Ibid.}
a State organ whose members are charged with committing the wrongful acts.  

Similarly, the Colombian Constitutional Court has determined that the State may not deny access to information of a military nature on the grounds that it is classified, unless so provided by law, or for the purpose of protecting agents of the State from being investigated and prosecuted. For example, in the case of the massacre of members of the community of San José de Apartadó, the Court held that names, codes and ranks of military personnel and police officers present in an area where violations were committed were not classified. Also, the Court ruled that due process or the presumption of innocence of those under investigation cannot be evoked as a basis not to share this kind of information. On this subject, the Court stresses that

regardless of whether the military personnel or police officers whose names have been requested are innocent or not, the victims have the right to seek to ascertain the circumstances surrounding the violations and the alleged perpetrators, and this means that they should be supplied with the names of the people they believe could be involved.

In the view of the Colombian Constitutional Court, the information requested by the community did not concern personal matters or aspects of the private lives of military or police personnel, which indeed have greater restrictions for access. The Court also established in this case that access to information cannot be denied on the grounds that its disclosure could pose risks or life and integrity threats against State agents or their families. In this sense, the Court indicated that it is expected that public officials have special protective measures against such threats.

The IACtHR has stressed that in order to ensure access to information, States must establish procedures for receiving and processing requests for information, set time limits for replying and delivering the information requested, and have officials adequately trained to carry out these tasks. The Court also emphasized that decisions to refuse to provide the information requested must be based on reasoned and substantiated arguments and that there must be a simple, prompt and effective legal procedure in place to challenge such decisions.

106 Constitutional Court of Colombia, Judgment T-1025, above note 95, paras 10–12.
107 Ibid., para. 18.
108 Ibid., para. 12.
109 Ibid.
110 Ibid., para. 17.
111 Ibid.
113 Ibid.
114 Ibid.
It is also worth noting in this regard that international law establishes the duty to ensure that the information contained in archives is accessible and adapted to the needs of those who may wish to consult it, taking into account accessible formats for persons with disabilities.115

In relation to their cultural value, the Council of State of Colombia has ruled that archives related to the armed conflict can be considered cultural property under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.116 According to the Court, military archives are also fundamental elements for the building of the nation, constructing a national narrative, and discovering the past or historical memory considered as a political and cultural heritage of peoples.117 As a consequence, the Council of State emphasizes that the State has the duty to diligently store and preserve archives, to impose disciplinary and criminal sanctions on those who destroy them, and to make efforts to reconstruct damaged or destroyed archives and their evidentiary content.118

Protection of journalists and victims in the dissemination of historical memory

The protection of journalists and victims is predominantly the duty of States, while the media also plays an important role in creating and implementing security protocols to protect its employees, such as those who are deployed to cover armed conflicts and hostilities.119 In the eyes of the IACtHR and IACHR, killing and attacking journalists is a form of censorship which breeds fear and potentially deters other journalists from undertaking or continuing similar work.120 According to

117 Council of State of Colombia, above note 95, para. 32.7.
118 Ibid., para. 7.
119 CNMH, El caso de la Asamblea del Valle: Tragedia y reconciliación, Bogotá, 2018, p. 88–117 available at: www.centrodememoriahistorica.gov.co/microrositorios/diputados-del-valle/assets/pdf/el-caso-de-la-asamblea-del-valle tragedia-y-reconciliacion.pdf. This report reconstructs the memories of two journalists who were killed while covering confrontations between the armed forces and a non-State armed group. The armed forces were ordered to economically redress the families of the journalists; also, the court ruling on this case underlined that journalists and their teams had not been responsible for those deaths because armed conflicts imply taking risks and personal commitment to provide coverage in areas with hostilities. According to the report, this case impacted some media channels to the point of creating careful protocols and procedures for their teams.
121 Ibid.
the IACtHR, this type of violence, along with kidnappings of journalists and the confiscation or destruction of their equipment, materials and recordings, is an infringement of the right to freedom of expression.  

Victims and journalists engage in the investigation, narration and dissemination of events that occur during armed conflicts, and this can expose them to certain risks and threats. Threatening or killing victims and journalists for what they say is a form of censorship and leads to gaps in historical memory. The Inter-American System of Human Rights draws attention to the fact that it is the duty of the State to protect journalists. Certainly, this obligation also extends to victims who might face risks when reconstructing and spreading memories of their experiences in such contexts.

In Vélez Restrepo and Family v. Colombia, the IACtHR examined the case of a journalist who was physically assaulted by members of the armed forces while he was filming a demonstration, and whose camera was destroyed to prevent him from recording the events. The Court maintained that such an action cannot be considered as a legitimate security measure in controlling a protest or demonstration. It also concluded that this type of conduct violates freedom of expression, as media coverage of the events enables people “to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force”.

The risks faced by journalists can persist even after they have finished covering an armed conflict or some other situation of tension or violence. When criticisms or allegations are made about the conduct of agents of the State, journalists and their families may be subjected to threats and harassment. This can cause them great distress and psychological problems and may even force them to move to another part of the country or abroad. On this subject, the IACtHR stated that “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment”.

The IACtHR has established that there are a number of factors that exacerbate the risks faced by journalists, such as the type of events they cover, the public interest value of the information they report, the areas where they carry out their assignments and the subject of their reporting. Accordingly, both

122 IACtHR, Vélez Restrepo, above note 64, para. 142.
124 Ibid., pp. 17–18, 72 ff; IACtHR, Vélez Restrepo, above note 64, paras 211–215. See CNMH, La palabra y el silencio: La violencia contra periodistas en Colombia (1977–2015), 2 December 2015, available at: www.centrodememorialhistorica.gov.co/informes/publicaciones-por-ano/2015/la-palabra-y-el-silencio. This report indicates that from 1977 to August 2015, 152 journalists have been killed for doing their work. Most of them were workers for community radio stations and regional newspapers, committed to investigating and reporting on corruption and the armed conflict (ibid., p. 60).
125 IACtHR, Vélez Restrepo, above note 64.
126 Ibid., para. 144.
127 Ibid., para. 145.
128 Ibid., para. 209.
Journalists and victims may risk life and personal integrity when they speak about the past, condemn human rights violations or call for investigations and sanctions.\(^{129}\) States therefore have the duty to promptly assess risks related to the requests of victims and journalists\(^ {130}\) and to adopt protective measures required to prevent any threat to their lives and safety.\(^ {131}\) Special attention should be given to the risks faced by journalists and victims living in rural areas and in zones highly affected by armed conflict and other situations of violence, to enable them to continue their work.\(^ {132}\)

**Protection of speech criticizing acts of public authorities**

As a result of their work to investigate, denounce and condemn violations, journalists as well as others may face prosecution on charges of slander, libel or defamation. On this subject, in the case of *Kimel v. Argentina*, the IACtHR held that public officials have the right to protect their honour and good name and that freedom of expression is not an absolute right.\(^{133}\) However, the Court also stated that public officials are subject to greater public scrutiny and that the fact that they perform their duties in the public interest requires them to be more tolerant of criticism.\(^ {134}\)

In the same case, the IACtHR indicated that all democratic societies should be based on the principles of pluralism, tolerance and a spirit of openness.\(^ {135}\) The Court therefore maintained that freedom of expression is valid not only for “information or ideas that are favourably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population”.\(^ {136}\)

On this issue, the IACHR Declaration of Principles on Freedom of Expression states that the “protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest”.\(^ {137}\) Although such sanctions may affect journalistic reporting, they are less harmful than criminal prosecution. The Commission furthermore specifies that even in such civil liability cases it must be proven that the news was disseminated with specific malicious intent to inflict harm, with full awareness that it was false or with complete disregard for the truth.\(^ {138}\)


\(^{130}\) *Ibid.*, paras 201–205.

\(^{131}\) *Ibid*.

\(^{132}\) IACHR, above note 120, pp. 19–21.

\(^{133}\) IACtHR, *Kimel*, above note 8, paras 54–57, 71.


\(^{135}\) *Ibid*.

\(^{136}\) *Ibid*.

\(^{137}\) IACHR, above note 71, Principle 10.

\(^{138}\) *Ibid*.
In this regard, the IACtHR has indicated that criminal prosecution is the harshest way of protecting the honour of public officials and that it can discourage journalistic work.\(^{139}\) The threat of facing criminal prosecution can deter journalists and victims from looking into matters with important social implications, one of them being human rights violations.\(^{140}\) For the IACtHR, the use of criminal law to protect the honour of public officials is excessive, taking into account the consequences a conviction can have, including imprisonment, stigma, a criminal record and the negative impact on the person’s family and professional life.\(^{141}\)

In short, the State must guarantee the right of victims to voice their opinions or speak out against public institutions or officials. Such narratives may be delivered not only in judicial and non-judicial settings but also in informal and independent spaces where victims re-create their memories both individually and as a community. Furthermore, victims must be allowed to criticize the way the public authorities act, with a view to bringing about changes in practices and behaviour to ensure that there is no repetition of the violation of their rights.

**Conclusion**

Case law of the IACtHR and its robust interpretation of freedom of expression provide a valuable contribution to the construction and dissemination of victims’ memories. The Colombian experience is also an example of efforts and challenges for supporting the construction of victims’ memories during ongoing armed conflicts and other situations of violence. From the discussion above it can be ascertained that it is not sufficient to allow victims to express their feelings, ideas, opinions and narratives. It is also important to guarantee access to information and implement affirmative action to guarantee access to public and political debate.

Freedom of expression grants victims and marginalized social groups the right to articulate their ideas and opinions and to disseminate information and creative endeavours using any means they choose. Freedom of expression is a fundamental safeguard as it acknowledges the multiplicity of victims and the diversity of their experiences and memories. In this way, it prevails over discourses that homogenize victims and mute their interests and priorities.\(^{142}\) It also gives victims the chance to decide for themselves when and to what extent

\(^{139}\) IACtHR, *Kimel*, above note 8, paras 76, 85. In Mexico, slander was decriminalized in 1985 and defamation in 2007, with sixteen of Mexico’s thirty-one States amending their criminal legislation to this effect. See Investigation and Analysis Department, Chamber of Deputies, *Calumnias, difamación e injurias: Estudio teórico conceptual, de antecedentes, de las reformas al Código Penal Federal, iniciativas presentadas y de derecho comparado*, Mexico, 2012. On Argentina’s decriminalization of libel and slander, see above note 8.


\(^{141}\) IACtHR, *Kimel*, above note 8, para. 85.

they give voice to and disseminate their stories, and at the same time ensures respect for their silence and their desire to forget when this is their wish.\textsuperscript{143}

Historical memories can take diverse forms, including literary or artistic creations, and can provide opportunities to question stereotypes associated with processes of victimization, violence and social exclusion. Furthermore, diverse expressions of memory by victims can contribute to rebuilding trust and community ties and alleviating grief and trauma. Such expressions also encourage ownership and reassertion of public spaces and the restoration and celebration of customs and rituals.

Expressions of memory by victims can also put an end to periods of silence and fear imposed by armed conflicts and other situations of violence.\textsuperscript{144} In such circumstances, access to the media and support for sustainable community communication projects serve as a means to amplify and disseminate the voice of victims by helping them to “recover their life projects, stand and claim for their rights, and identify themselves not as worthy of mercy but as entitled humans, beyond the society that victimized them”.\textsuperscript{145} Initiatives of this kind give voice to the stories of victims and other social groups and can influence public debate and discussion.

In accordance with the collective or social dimension of freedom of expression, historical memories concern not only victims but also the rest of society, who might be interested in knowing the circumstances around victimization and the experiences of its witnesses. As Elizabeth Jelin puts it, ensuring that victims’ expressions of memory are widely shared prevents them from becoming isolated and trapped in the repetition of rituals of grief.\textsuperscript{146} This aspect is associated with “mechanisms that extend social engagement through memory”, whereby the meaning of the experiences articulated can be reinterpreted by others.\textsuperscript{147}

The autonomous and independent management of community broadcast projects or radio stations and the production of audiovisual works can generate visibility and foster empathy and solidarity towards victims. Initiatives of this kind can provide alternatives that counteract arguments seeking to justify or excuse human rights and IHL violations. While memory-building is beset with a multiplicity of interests, conflicts and confrontations, freedom of expression establishes a limit, requiring authorities to publicly condemn incitement to hatred and violence as well as to prevent the latter.

\textsuperscript{143} Ibid., p. 18.
\textsuperscript{144} By way of illustration, see IACtHR, \textit{Gomes Lund}, above note 30, para. 90. In this case, the IACtHR recorded that, in connection with the disappearance of members of the Araguaia guerrilla movement, the government imposed “absolute silence regarding the events which occurred in Araguaia” and “prohibited the press from releasing news on the matter”.
\textsuperscript{145} G. Sanchez, above note 142, p. 21. In this text, the author uses the expression “democratizing memory”, emphasizing the importance of supporting victims who may not be able to write about their memories. For example, the author refers to ethnic communities and persons who are illiterate, who can be excluded from official narratives.
\textsuperscript{146} E. Jelin, above note 8, p. 62.
\textsuperscript{147} Ibid.
The preservation of archives and access to them are essential to the protection of historical memory and are key for identifying practices and conduct of both State agents and other social actors. Drawing on historical memory lessons for transforming harmful social practices requires the incorporation of memory into the public sphere in order to “build lessons from the past into principles for action in the present”. For example, lessons of the past can form the basis of training and instruction for the armed forces, police and other concerned authorities.

As part of freedom of expression safeguards, victims and journalists must be protected when they investigate, criticize and make allegations against public officials. Bringing the criticism made by victims into the public spotlight and generating lively discussion could counterbalance the speech of those who deny or justify human rights and IHL violations, and at the same time safeguard freedom of expression and the construction of historical memory. Another fundamental guarantee is the timely and effective adoption of measures to protect victims subjected to threats and risks as a result of their involvement in legal and non-judicial action and journalists who cover armed conflicts and other situations of violence.

In conclusion, an understanding of the construction of historical memory in the light of freedom of expression offers avenues of action for victims which are complementary to their participation in judicial and extrajudicial mechanisms. This approach allows victims to use multiple forms of expression and to avoid associations with trauma, grief and blame. It also engages the State and society as a whole as prominent actors in giving meaning to victims’ experiences, bringing about changes in practices and behaviour and mobilizing against indifference and erasure.

148 Ibid., p. 58.
149 IACtHR, Vélez Restrepo, above note 64, para. 277. In this case, the Colombian government affirmed that its training to the armed forces has a specific component on freedom of expression and protection of journalists.
The role of experience and the place of history in the writings of ICRC presidents

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Abstract

Presidents of the International Committee of the Red Cross (ICRC) occupy a special position: they are not only direct witnesses to the march of history, but they also participate in it given their prominent role in the humanitarian sphere. This dual status becomes particularly salient when they write about the organization they run. By reviewing the published writings of ICRC presidents, this article analyzes how these individuals combine their personal experience with the organization’s history, and the role this history plays in their writing.

Keywords: history, memory, ICRC, Second World War, ICRC presidents.

* The views expressed in this article are those of the author and do not necessarily reflect the position of the International Committee of the Red Cross.
Introduction

History, memory, politics and power have always been closely interlinked. The practice of attempting to suggest or establish a specific reading of history through one’s personal writing is undoubtedly as old as writing itself. Thousands of books and memoirs have been written to defend their authors’ achievements, offer up an interpretation of historical facts or impose a particular point of view. Some writers seek to amplify their successes, while others attempt to play down their failures; some defend political ideas with arguments drawn from the annals of history, while others reach opposite conclusions with the support of other historical episodes. This practice, far from being limited to the political sphere, is employed by everyone who aspires to safeguard their legacy. Henry Dunant himself, when he was old, poverty-stricken and largely forgotten, made a considerable effort to ensure that his role in the creation of the Red Cross and the first Geneva Convention would finally be duly recognized. He succeeded: he was awarded the first Nobel Peace Prize in 1901.1

This practice is also characteristic of the International Committee of the Red Cross (ICRC) and its leadership. The president of the ICRC – perhaps the most prestigious position to which a Swiss citizen can aspire – plays an eminently political role. ICRC presidents, thanks to their detailed knowledge of the ICRC’s operations, their diplomatic responsibilities and their numerous field visits, become true experts on the world around them. Their experience is unique. At the same time, they are required to pilot an organization that has acquired unparalleled historical depth. This raises a number of questions. Do ICRC presidents draw on this experience in their published writings? Do they ground their arguments in their own unique expertise? Does this expertise give them standing to go beyond their usual scope of work in order to write about the ICRC’s history in its wider context? How and why do ICRC presidents refer to the organization’s history? In this article, we will look at the writings of ICRC presidents in an attempt to understand how they draw on both their own experience and the organization’s history to make their arguments and promote the ICRC’s work.


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2 The years of the presidencies are shown in parentheses. This information was found on the website of the International Red Cross and Red Crescent Movement, available at: www.redcross.int/FR/HISTORY/not_pres_icrc.asp (all internet references were accessed in May 2019).
direct participants, and as chroniclers. ICRC presidents have published a wide variety of texts in their own names: speeches, circulars, monographs, memoirs, articles and prefaces for works of a more general nature, collections of articles, interviews and interview collections, and of course, articles for the *International Review of the Red Cross*.

ICRC presidents figure prominently in the *Review*, yet the bulk of their writings consists not of articles but rather of circulars, announcements and official documents that reflect the position of the entire Committee rather than that of one single man. The presidents’ actual contribution to these texts is therefore uncertain; the situation is particularly hazy when it comes to Gustave Moynier, given his dual role as ICRC president and editor of the *Bulletin International des Sociétés de Secours aux Militaires Blessés* (the *Review*’s predecessor). With this in mind, for the purposes of this article we focus on writings that were published outside the ICRC’s official channels, although at times we do refer to texts that appeared in the *Review*. This choice will allow us to explore our questions through texts that necessarily give the ICRC presidents greater leeway in expressing their own – rather than the organization’s official – views. The corpus of texts selected for this study is therefore, by definition, incomplete; we also strove to include writings from all periods of the ICRC’s history and from all of its presidents. The sample size for each president is unequal, as some presidents were much more prolific than others. Gustave Ador, Samuel Gonard, Marcel Naville and Eric Martin left behind few published traces of their tenures as president, especially if we only consider writings that bear their names. Others, however, wrote extensively during or after their presidency; Gustave Moynier, Max Huber and Cornelio Sommaruga fall within this cohort. This imbalance may preclude an exhaustive analysis, but we draw on enough sources to discern a number of common trends and practices.

In order to answer the questions set out above, we will begin by analyzing two features that are typical of the writings of ICRC presidents: a tendency to examine the present, and recurring references to the organization’s history. We will then focus more closely on the president’s unique role as practitioner and chronicler. This will be followed by a shorter section in which we analyze the strategies that ICRC presidents use to lend objectivity to their views on both the present and the past. In the final section of the article, we consider the relationship between the ICRC’s presidents and the history of the organization they run. The article concludes by speculating on how this relationship may change in the future.

**Examining the present**

In their published writings, ICRC presidents aim primarily to inform readers of the ICRC’s ongoing work and defend decisions taken during a given president’s term of

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3 For more on this, see Daniel Palmieri, “To inform or govern? 150 years of the International Review of the Red Cross”, *International Review of the Red Cross*, Vol. 100, No. 907, 908, 990.
office. By virtue of their position and, in many cases, their background, the presidents have an informed view of the contemporary world and of the role of the International Red Cross and Red Crescent Movement (the Movement) within it—and they do not hesitate to share their experiences. For example, Gustave Ador described Switzerland’s charitable work during the First World War,4 while Max Huber related the dark hours of the Second World War.5 Léopold Boissier chronicled the ICRC’s operations in Guatemala,6 and Alexandre Hay analyzed contemporary issues in his speech “The ICRC in Today’s World”.7 The ICRC’s current president, Peter Maurer, aired the ICRC’s views of the Israeli–Palestinian conflict at a conference before publishing them in an academic journal.8 The president most apt to cite examples from his time as president may have been Cornelio Sommaruga. He often and widely discussed a number of areas of particular interest for the ICRC, such as Somalia, the Gulf War, Bosnia-Herzegovina, and the effort to ban anti-personnel mines.

The presidents also bring in their own expertise to elucidate more specific topics of concern. For example, Gustave Moynier looked at philanthropy in armies, Léopold Boissier focused on the assistance provided to political detainees, Max Huber penned a series of articles on various aspects of the Red Cross, Cornelio Sommaruga analyzed peacekeeping operations, and Jakob Kellenberger wrote about internally displaced people. These topics evince these men’s personal interests and reflect key concerns of their time. Most ICRC presidents also publish articles on international humanitarian law (IHL). In some cases they do not write about—or only about—the Red Cross; in some of his writings, Moynier showed a proclivity for long philosophical digressions into charity and compassion.9 Many of the texts analyzed in the scope of this article are geared toward the present. They address contemporary issues and, in many cases, relate the ICRC and the Movement’s “news”.

Turning to history

The pages penned by ICRC presidents are not limited to current events—far from it. The ICRC is ever cognizant of the importance of its own history, and has published extensively on this topic on its website10 and in books,11 as well as in the Review,

11 See the various volumes of the History of the International Committee of the Red Cross: Pierre Boissier, From Solferino to Tsushima, Plon, Paris, 1963; André Durand, From Sarajevo to Hiroshima, Institut
whose archives are replete with historical articles. The ICRC often looks to its past. The ICRC’s presidents have spilled large amounts of ink on this topic. The past is ubiquitous in published texts of all sorts, where references to the Red Cross’s history and that of IHL amount to a *sine qua non*. Many IHL-related writings of the presidents contain a section looking back at the various Geneva Conventions. Most other pieces published by them include at least a mention of – and sometimes a discourse on – the history of the ICRC and of the Red Cross in general. The Red Cross cannot be considered in isolation from its past: “and that’s why we felt it necessary to examine it in its historical context”. Indeed, most ICRC presidents, at one time or another, have framed their discussion of their organization’s past in this way. The history discussed in their writing seems objective and self-evident – Gustave Moynier took a historian’s approach as he searched history for the origins of the Red Cross. We will return to this topic below.

Max Huber, who trained as a lawyer, traced the long legal history of “human and individual rights”. The Red Cross ideal rests on solid historical foundations that provide the Movement with an underlying framework: “We do not see the need or advantage, legal or otherwise, in undermining the Red Cross’s historical bases.” Ten years before becoming president of the ICRC, Léopold Boissier was a “witness” to the events of the Second World War and, in order to buttress his perspective on the world with historical knowledge, he “turned to the past before looking to the future”. Carl Burckhardt, who had studied history, may well have been interested in writing a history of the Red Cross. He would certainly have been the most qualified for this task, on paper at least, yet that did not happen – the focus of his writings lies elsewhere. One example, before he became president of the ICRC, is his report on his mission to Danzig for the High Commissioner on behalf of the League of Nations. Apart from that, Burckhardt wrote only one short monograph on the ICRC’s work during the Second World War. That piece was written shortly after he assumed the presidency, and it begins, as could be expected, with a section on the origins of the Red Cross ideal that adheres to the official history


13 Max Huber, “La Croix-Rouge et l’évolution du droit international”, in M. Huber, above note 5, p. 34 (Review’s translation).
16 Léopold Boissier, *Nouveaux regards vers la paix*, Ed. de la Baconnière, Neuchâtel, 1944, p. 3 (Review’s translation).
without offering any new insights. When he moved on to the Second World War, Burckhardt was clearly writing as the ICRC’s president rather than as a historian. This was an opportunity for him to describe the ICRC’s activities and to share some personal impressions, such as those gathered on a mission to London. Apart from that, despite his training, Burckhardt spent no time writing about the history of the Red Cross, preferring to train his historical lens on other objects of study.

Jakob Kellenberger sometimes touched on events related to his prior career in the Swiss diplomatic corps. In a book of interviews with a journalist from a television station in German-speaking Switzerland, an entire chapter is devoted to Switzerland’s relationship with the European Union, even though the title of the book presents Kellenberger as the president of the ICRC. In one excerpt dedicated to the ways in which he engages with interlocutors on delicate issues, the experience of the former diplomat commingles with the thoughts of the president. Kellenberger, a Swiss diplomat turned ICRC president, carried on a long tradition: the close links between the ICRC and Switzerland’s foreign policy establishment date back to the founding of the Red Cross and are embodied in the figure of the president. The most perfect example of this alignment is surely that of Ador, who, starting in 1917, was in charge of both the ICRC and Switzerland’s diplomatic corps.

The ICRC’s mythical origin

The ICRC presidents’ writings about the organization’s history often betrayed a similar structure and similar content: the founding of the ICRC, the first Geneva Convention, the early years and creation of the Movement, the expansion into field operations, the Central Tracing Agency in Basel during the Franco-Prussian War, and the impact of the First World War on the ICRC. As time passed, successive presidents would add to this list: the creation of the League of Red

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21 Ibid., p. 16.
24 Ibid., p. 88.
Cross Societies (now the International Federation of Red Cross and Red Crescent Societies), the extension of assistance to civilians, the Second World War, the Biafra War, and so on. History from the perspective of different ICRC presidents often consists of an ever-expanding series of watershed events.

More than one president has been inspired by Henry Dunant’s traumatic experience at the Battle of Solferino, the Red Cross’s founding moment. The narrative of the young businessman who, having been brought face to face with the horrors of war, dreams up a utopian project takes on a romantic and mythical allure. The founders, particularly General Guillaume-Henri Dufour and Henry Dunant, now sit on a pedestal, while Gustave Moynier has been largely forgotten. Max Huber, for one, appears to have been deeply affected by Dunant, whom he mentioned quite regularly. More broadly, ICRC presidents offer only positive comments on their predecessors’ tenure. This seems to be a reflection of a robust organization that enjoys operational and institutional continuity over time. Indeed, although the role of ICRC president can be likened to that of a political leader, given the power and tasks devolved upon the person, it is clearly distinct from the latter owing to a sense of continuity in which ICRC presidents seek to do their bit without denying or downplaying their predecessors’ work.

The Red Cross vocation transcends personal ambition.

Confronting errors of the past

ICRC presidents have always worked in the shadow of their predecessors. They respect and admire those who came before them, not least because they understand better than anyone the challenges that their predecessors ran up against and overcame. Cornelio Sommaruga acknowledges this willingly: “Quite honestly, I’m not so sure that I could now judge and criticize my predecessors.”

Passing judgement is a painful prospect when it comes to the Second World War and the ICRC’s failure to speak out against the horrors of the Nazi regime,


29 See the publications by Max Huber cited in note 27.

especially the Holocaust: “I don’t want to justify their silence, but since I’m living in the present I want to learn lessons so as to inform our work in the present.”31 It is indeed very difficult to properly analyze the ICRC’s failure through the lens of the period in which the events occurred without falling victim to anachronism and historical teleology. Yet ICRC presidents must acknowledge this failure without offering justification or excuses. The study of history thus raises awareness of past mistakes just as it provides guidelines on how to avoid these same errors in the future.

The ICRC and the Movement have had their share of missteps and challenging times. The failures have generally been acknowledged in the published writings of various ICRC presidents, but in many cases the authors consider these difficulties exogenous and not directly imputable to the ICRC: the laws are full of gaps and behind the times (a situation sometimes blamed on States for not acting on the ICRC’s innovative proposals), world wars have unforeseeable and disproportionate effects, and so on. However, in the texts analyzed for this study, only a few events have elicited clear criticism – or regret – from ICRC presidents. Examples include the Movement’s 1952 conference in Toronto, where Paul Ruegger criticized, at a later stage, the political declarations of several National Societies, without saying much more about the topic.32 Jakob Kellenberger mentions a number of events where his efforts did not lead to the desired outcome.33

The main area in which the ICRC’s failures cannot be ignored is the Second World War. No other president was forced to face up to the ICRC’s actions during this dark time as often as Cornelio Sommaruga.34

**ICRC presidents: Humanitarian practitioners and writers**

**The person or the organization?**

Two distinct approaches to describing the ICRC and its history have emerged. The first approach is one of restraint. According to this approach, the president is a member of a committee and defends an ideal; he plays down his own personality next to the importance of the Red Cross and its work. Max Huber clearly falls into this category in his writings. In the appropriately titled article “Au service du Comité international de la Croix-Rouge” (“Serving the International Committee of the Red Cross”),35 he strongly supported the idea of a collective effort towards an overarching goal. Interestingly, he generally used the subject pronoun “we” rather than “I”. When writing about the ICRC, he did it in a self-effacing way:

31 Ibid., p. 119 (Review’s translation).
32 P. Ruegger, above note 27, p. 405.
33 H. Erny, above note 23, p. 87.
34 For more specific examples, see notes 98 to 101.
“Without deluding ourselves about the paucity of our resources in the face of all the misfortune wrought by war, we do not have the right to lose heart, for the values defended by the Red Cross are infinitely grand.” And rather than taking credit for the Red Cross’s merits and victories, he preferred to highlight its work and those who serve it: “We are a community.” Huber plays an insignificant part in his own texts, with very few exceptions. This self-effacement is “required by the idea of the Red Cross, the idea of service in its purest form”.

When they wrote about the ICRC in their respective eras, Léopold Boissier, Paul Ruegger, Alexandre Hay and Jakob Kellenberger followed the same logic. They were expressing the views of the ICRC, and they saved the use of “I” mainly for their speeches. Yet even these presidents’ personal opinions give the impression of being overshadowed by those of the organization. For example, Kellenberger, who expressed his pride in being a part of the ICRC, commonly used phrases like “the ICRC thinks”, “the ICRC proposes” and “the ICRC does”, especially when the text was to be published by the ICRC.

The second approach to describing the ICRC’s history is one in which the writers feature more prominently in their own texts. Gustave Moynier is emblematic in this regard. Appointed “president for life” in 1904, Moynier experienced and helped shape the Red Cross for half a century, starting with its founding. Pivoting between his role as a practitioner and a historian, Moynier sometimes used “I” and sometimes adopted a more indirect style. For example, at times he wrote of the Committee in the third person: “Henceforth, it [the Committee] was always viewed as the natural guardian of the traditions of the Conference and the one body authorised to interpret its thinking.” He sometimes referred to himself in the third person as well: “This proposal was made by your president of the time; finding it recorded in a book that had just appeared, he felt he was doing the right thing by sharing it with you.” Yet he was not averse to using the first person and emphasizing his contribution to the Red Cross’s success: “I thought as much already in 1863, and … I went so far as to predict for them that the mission that they had just announced, but that only existed on paper, ‘would reverberate the world over’.” When discussing the 1863 conference at which the Committee was created, he wrote openly of boldness and wild hopes. He also claimed to be the source of the text that was submitted to the 1864 conference and became the first Geneva Convention. Although in his writing he

36 Ibid., p. 169 (Review’s translation).
37 Ibid., p. 171 (Review’s translation).
38 Ibid., p. 173 (Review’s translation).
39 J. Kellenberger, Humanitäre Tätigkeit in Konfliktsituationen, above note 22, p. 41.
43 G. Moynier, above note 9, p. 20 (Review’s translation).
44 G. Moynier, above note 42, p. 8.
often referred to his accomplishments, he did not mention other people for fear of overlooking some of them.\textsuperscript{46}

Moynier’s particular approach to writing the Red Cross story culminated in his memoirs, where he declared himself to be the founder of the Red Cross:

After confirming with the writer, Mr Henry Dunant, that he had no intention of filling that grave gap on which he had rightly focused attention, I resolved to take the initiative myself for this charitable campaign and to take on the role of founder, which as yet belonged to no one.\textsuperscript{47}

Moynier downplayed Dunant’s importance in the founding of the Red Cross. In his supplementary notes, he wrote of Dunant without ever citing him, and he even sought to destroy his image, accusing him of not having a “positive vocation” and of having been fired by a bank for incompetence.\textsuperscript{48} Worse yet, although Moynier acknowledged the merits of \textit{A Memory of Solferino}, he reckoned that the book was written by “a more practised writer” than Dunant.\textsuperscript{49} Going further, he implied that Dunant was brought into the Committee in order to assist Moynier – who was quickly disappointed by Dunant’s work. Moynier also justified Dunant’s removal from the Committee in the wake of his business failings. He considered Dunant a “pseudo philanthropist”\textsuperscript{50} and noted that even Geneva’s justice system felt Dunant was “someone who it was important to ensure could do no more harm”.\textsuperscript{51} In his memoirs, Moynier deliberately sought to discredit the man who came up with the idea behind the Red Cross, and he laid full claim to the merits of this charitable institution.

More surprisingly, given the recent changes in the ICRC’s communications approach, Cornelio Sommaruga also adopted the second approach and took full responsibility for his opinions and for his impact on the organization’s operations. In interviews, he said “I” and gave his opinion quite freely: “I would say”, “I think”, “I believe”, “myself”, “personally”, “in my opinion”, “for me” (one of his leitmotifs), “during my presidency”, “in my view”, and so on.\textsuperscript{52} He would go back and forth between personal statements and more formal ones.\textsuperscript{53} For Sommaruga, the president is the one who knows: “You may be interested to learn that …”.\textsuperscript{54} Of interest for this study is the fact that he not only had an insider’s take on the organization’s work, but was also deeply involved in that work and could therefore speak of the ICRC from a position of authority: “Having myself seen a great many ICRC delegates at work … I know well that

\textsuperscript{46} G. Moynier, above note 42, p. 75.
\textsuperscript{47} G. Moynier, above note 45, p. 35 (\textit{Review}’s translation).
\textsuperscript{48} “I only knew that he had no positive vocation, but that he held a pen in a bank, and that he was let go because he was unable to write letters in proper French.” \textit{Ibid.}, p. 53 (\textit{Review}’s translation).
\textsuperscript{49} \textit{Ibid.}, p. 55 (\textit{Review}’s translation).
\textsuperscript{50} \textit{Ibid.}, p. 62 (\textit{Review}’s translation).
\textsuperscript{51} \textit{Ibid.}, pp. 62–63 (\textit{Review}’s translation).
\textsuperscript{52} These examples are from Guy Bedouelle, \textit{“L’humanitaire et le politique, conversation avec Cornelio Sommaruga” Pierre d’Angle}, No. 2, April 1996; and M. Lorenzi, above note 30 (\textit{Review}’s translation).
\textsuperscript{53} M. Lorenzi, above note 30.
\textsuperscript{54} \textit{Ibid.}, p. 106 (\textit{Review}’s translation).
the possibilities for such credible action are boundless.” From this perspective, it was his experience as president that gave him the credibility needed to address certain topics. He also drew on his experience to reach certain conclusions: “What convinces me all the more of this, after ten years at the helm of an organization that pioneered humanitarian action, is my daily realization that …”.

The ICRC is a sizeable organization built on the commitment of large numbers of highly qualified employees – yet the president stands out. In a collection of interviews, Cornelio Sommaruga made that clear: “[D]uring my tenure an important event occurred in which I played a clear role that I consider positive …”. He was writing about being the first person to condemn the internment camps in Bosnia and Herzegovina. He noted that it was thanks to the ICRC and to his own efforts that people learned of the famine in Somalia in 1991, and he emphasized his own role in the success of the Ottawa Landmine Ban Convention: “Yes, it’s true, my colleagues and I played a key role in getting the convention ratified.” At the same time, he mentioned a number of decisions he took on his own, against the advice of some of his colleagues – for instance, when he first publicly stated that landmines should be banned: “I made this very important decision without running it by the normal decision-making bodies, in this case my colleagues on the Committee, because I did not have time before the press conference.” While Max Huber favoured the Red Cross community and self-effacement, Sommaruga emphasized his own authority and his own character: “It’s true, I stepped in where other presidents before me didn’t.”

Jakob Kellenberger, in a collection of interviews, also spoke of his experience. Although these were personal interviews, he went back and forth between “I think” and “we think”. The way the interviews were conducted encouraged him to open up more and to share his opinions and his thoughts. He did not hesitate to illustrate his comments with recollections; in such cases he was both witness and participant, reporting on what he saw and what he did. The text combined factual information, such as about the ICRC’s operations, and more personal impressions. Kellenberger also used numerous examples from his field visits and added a more human and personal touch by recounting his meetings with such figures as Pervez Musharraf, Kofi Annan, Vladimir Putin and

57 M. Lorenzi, above note 30, p. 201 (Review’s translation).
58 Ibid., pp. 22–23.
59 Ibid., p. 59.
62 M. Lorenzi, above note 30, p. 96 (Review’s translation).
63 H. Erny, above note 23, p. 15.
George W. Bush. In a speech after his presidency ended, Marcel Naville still spoke of the ICRC as an expert and cited his own experiences.

Creating a sense of objectivity

The style of writing employed by different presidents may vary from a very personal tone to a more distant and impersonal one, but it very often conveys a sense of objectivity and legitimacy. Apart from obviously personal writings, the only text analyzed as part of this study in which the writer asserts his subjectivity is Max Huber’s The Good Samaritan:

The pages in which this meditation is set down are of a purely personal nature, and in no way express the views of an institution. If the author’s thought was focused upon the Red Cross, it was simply because the position entrusted to him there has brought him the experiences, and placed him before the oppressive problems [about which he presents] conclusions in this essay, as he has had to do since the beginning of his Red Cross work and will have to do till the end of the chapter. Again, for himself, personally.

This passage illustrates how the author’s views as expressed in the book were influenced by his experience as ICRC president.

In various texts, certain phrases are used to explain and support the writer’s assertions. Gustave Moynier felt he was entitled to speak about the history of the Red Cross and even claimed to be doing a historian’s work. His writings display a real historical ambition: “I endeavoured to write in layman’s terms through my various essays …”. He reminded his readers on occasion that he was totally objective and factual: “I felt it appropriate to simply state the facts …”. He felt entitled to refer back to the Red Cross’s early years because he witnessed them up close: “The author of these pages, after helping give birth to the Red Cross and serving it for 33 years, believes he is doing something useful by recording his experience here.” His involvement and his experience attested to the truthfulness of his words: “Owing to my participation in the various conferences that addressed this topic, I am in a position to certify that …”. His very position as president and his direct involvement in the ICRC’s history gave him credibility:

It is in response to this legitimate desire that I will attempt to trace [the Red Cross’s] history and demonstrate the successful outcome. The active role I

64 Ibid.
67 G. Moynier, above note 9, p. 3 (Review’s translation).
69 G. Moynier, above note 41, p. 7 (our translation).
70 G. Moynier, above note 9, pp. 21–22 (Review’s translation).
played in this success allows me to do so, and I feel that, in so doing, I will to some extent be completing an unfinished civilizing mission, which will only truly be completed once it is understood and approved by everyone.\textsuperscript{71}

This was what authorized Moynier to “narrate” and “lay out” the facts surrounding the birth of the ICRC and of the Red Cross in general. He seemed to believe that his writings were excellent reading for anyone interested in learning about the Red Cross’s work: “I like to think that the many details I have just shared already give a rather clear idea of the activity of the relief committees during the 1870–71 war.”\textsuperscript{73} This self-assurance recurs: “The developments that I just described are sufficient to provide you with an exact account of the preparatory work required of our societies in times of peace.”\textsuperscript{74}

In general, ICRC presidents presented events as self-evident or as a result of common sense.\textsuperscript{75} In some cases, ICRC presidents took personal notes in anticipation of potential memory lapses. To our knowledge, Jakob Kellenberger was the only one to mention his private journal in his published writing: “I also like to note what I experienced and how I felt so that I can understand it more clearly and work on it, in a diary of sorts.”\textsuperscript{76} It is possible that other presidents did the same and used their personal notes to help them remember events, but they don’t mention it.

The ICRC presidents employed all these elements – their experience and authority, being a first-hand witness, and using an impersonal tone – to establish objectivity. They also drew on techniques of a more academic nature. They often referred to legal works, history books, university courses on the ICRC, and the organization’s own published texts. When Gustave Moynier, Max Huber and Paul Ruegger wrote about legal issues, they included extensive footnotes. This scholarly practice is most evident in essays unpacking detailed legal matters.\textsuperscript{77}

In some cases, particular historians are assigned certain attributions in the presidents’ writings. Paul des Gouttes, a former ICRC secretary and vice-president as well as a former Review editor-in-chief, was considered a “particularly qualified historian of the Red Cross”\textsuperscript{78} by Paul Ruegger. Ruegger also mentioned Frédérique Noailly, who wrote her thesis on the ICRC, as “a distinguished historian of the Red Cross”.\textsuperscript{79} Here again, referring to subject-matter experts lends objectivity to a text and undoubtedly makes it more credible.\textsuperscript{80}

\begin{thebibliography}{99}
\bibitem{71} Gustave Moynier, La neutralité des militaires blessés et du service de santé des armées, Impr. Toinon, Paris, 1867, p. 18.
\bibitem{72} G. Moynier, above note 45, p. 46 (Review’s translation); G. Moynier, above note 42, p. 3 (Review’s translation).
\bibitem{73} \textit{Ibid.}, p. 62 (Review’s translation).
\bibitem{74} \textit{Ibid.}, p. 36 (Review’s translation).
\bibitem{75} M. Lorenzi, above note 30, p. 20.
\bibitem{76} H. Erny, above note 23, p. 47 (Review’s translation).
\bibitem{78} P. Ruegger, above note 27, p. 390 (Review’s translation).
\bibitem{79} \textit{Ibid.}, p. 412 (Review’s translation).
\bibitem{80} If we were to analyze everything the presidents wrote, including their speeches, we would surely find various references to Red Cross historians, including some former delegates.
\end{thebibliography}
The use of history in ICRC presidents’ contributions

ICRC presidents do not just make history, they write it. But what role does their writing about history play in their arguments? Could it conflict with the research done by historians? The presidents have clearly not been bothered by this prospect. In fact, they have believed that the Red Cross’s work is so important that it should be properly studied: “The historical role of this work has become too important for us not to analyze the circumstances that gave rise to it.”81 There was no doubt that we could only understand this work “in its historical context”.82 These aspirations were already evident in the early years of the ICRC: Gustave Moynier already wanted his work to be completed, and he believed that Red Cross literature should “include documents meant for the general public, as these pages – whose virtue lies in a scrupulous faithfulness to historical truth – will have little appeal for that public”.83 This excerpt shows again that Moynier was sure of his objectivity. For Moynier, it seemed obvious that future historians would agree with him, since the “role of impartial history … is to ensure each person is duly credited”.84 However, Moynier’s attempts to lay claim to the main merits of the Red Cross mission ended in utter failure, if we are to judge by Henry Dunant’s current standing and the oblivion into which Moynier has fallen. All ICRC presidents have stated at least once their desire for a historical study on some topic or other – for example, Paul Ruegger hoped for “an in-depth legal and historical study”85 into the ICRC’s decision to accept its international mission, and he also mentioned another topic that would be worth “an in-depth monograph”.86 Such desires unmistakably illustrate the need for the ICRC to understand its past better from both a political and an operational perspective. The same is true for the history of IHL – the organization’s ability to face up to future challenges in the legal realm depends on it.87

When historical works are written about the ICRC, the organization’s president may be asked to write the preface.88 These writings extol the importance of historical study and of the Red Cross’s work, and they often cite the key role played by the ICRC in the development of IHL and of the humanitarian sphere. They are also used to underscore the ICRC’s continuity and its depth of experience: “Even today, ICRC delegates, whose task is to protect and assist millions of victims of some 30 conflicts around the world, are following in the footsteps of their predecessors in Spain from 1936 to 1939.”89

81 G. Moynier, above note 9, p. 4 (Review’s translation).
82 M. Huber, above note 13, p. 25 (Review’s translation).
84 G. Moynier, above note 71, p. 40 (Review’s translation).
85 P. Ruegger, above note 27, p. 385 (Review’s translation).
86 Ibid., p. 389 (Review’s translation).
87 J. Kellenberger, above note 27.
88 For example: I. V. Cardia, above note 25.
mentioned in prefaces often present the ICRC in a positive light: “The author also shows how the ICRC is able, thanks to the credibility of its work and the effectiveness of its diplomacy, … to resolve extremely complex situations …”. In addition, the preface writers tend to praise the historiographical contribution of the works they are introducing, which often address “a crucial period”,91 are “highly topical”,92 or are a “remarkable book”.93 In their prefaces, the presidents, while lauding the works’ critical autonomy, never fail to highlight the qualities and merits of the Red Cross.

This aspect illustrates one of the roles of history for the ICRC (and organizations like it): it recontextualizes modern-day events by showing the ways in which the ICRC is a major force in the humanitarian sphere and IHL. Furthermore, the ICRC’s historical depth strengthens its position and legitimizes it. Through their historical writings, the presidents have an opportunity to demonstrate the expertise and experience that the ICRC has accumulated over the years. While humanitarian challenges change with time, the fundamentals remain, and with its unrivalled track record, the ICRC is able to keep pace with these challenges. ICRC presidents can point to past successes – this “genealogy” of humanitarian work – when negotiating access or an assistance operation or when defending the organization’s credibility. The same is true of the organization’s legal track record. IHL arose alongside, thanks to, and in step with the ICRC, and it has become one of the most universally recognized bodies of law. It is thus in the president’s interest to promote and encourage historical research in order to better highlight this developing body of law. What’s more, an ICRC president informed by the past views the present differently. It is sometimes said that all history is contemporary, that the past is analyzed through today’s eyes. By learning about the past, ICRC presidents can find inspiration and come up with a new take on today’s challenges.

When referring to a work on the Spanish Civil War, Cornelio Sommaruga asserted that the ICRC learned a number of lessons from that conflict.94 Several times he mentioned the importance of drawing lessons from the past, particularly in the context of tragic events: “In this respect, our duty to keep history in mind plays a considerable role: the Holocaust and the genocide in Rwanda not only oblige us to examine past errors, they also make it impossible for us to remain inactive in similar circumstances now.”95 Another use of history now comes into focus. Its role is not simply to consolidate the ICRC’s position or to allow us to

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91 Ibid. (Review’s translation).
93 Ibid., p. xix.
94 C. Sommaruga, above note 89, p. 11.
see current events from a new perspective. A knowledge of history also lets us identify past mistakes and their consequences and, in some cases, come up with ideas for correcting them. ICRC presidents can learn and build on acquired knowledge and use it to address the challenges they face in their work, so that they can avoid repeating the same mistakes that some of their predecessors made. At times, ICRC presidents are forced by outside circumstances to confront past mistakes, but crisis can turn into opportunity – if the right lessons are learned.

When it comes to the Second World War, the ICRC should be given credit for commissioning a historian, Jean-Claude Favez, to shed light on the dark moments of that era. At a time when the ICRC Archives were not yet open to the public, this expert was able to freely consult all the documents required for his analysis. His monograph, published in 1988, was the starting point for an abundant literature on this topic. As requested by Professor Favez, the ICRC responded to his study. President Sommaruga wrote a short statement thanking the historian for his sizeable achievement, but also seeking to nuance some of his points. One of the president’s most interesting remarks concerns the limited amount of first-hand testimonies in the study:

This leads us to the observation that the method that consists of relying, almost exclusively, on written documents alone provides the International Committee with an image of itself that it barely recognizes. This image does not correspond to how the ICRC members and employees who worked for this organization during the Second World War perceived their experience and their commitment. … We find it regrettable that you did not complete this necessarily sterile and fragmentary image that emerges from written documents alone, by giving more weight to the words of staff members who are still alive.

Later in the statement, when addressing Favez’s reading of the ICRC’s intentions at the time, Sommaruga found that it was “not always convincing for those on the Committee who experienced these things themselves”. On the one hand, we can imagine that the president has a unique and informed take on the past thanks to his expertise and his special role as a humanitarian practitioner. On the other, the line between history and memory can become blurred, and personal experience can be given precedence over academically reconstructed historical knowledge.

99 Ibid., p. 378 (Review’s translation).
One may even wonder whether, to borrow Annette Becker’s words, Favez’s book does not also help the organization heal from the trauma caused by its failings during the Second World War.  

When public criticism of the ICRC’s history arises, it comes primarily from outside the organization. Favez’s study on the Second World War is a good example. It is clear that tasking someone outside the organization to conduct period-specific research guarantees the work’s independence and neutrality. It may also be a way of getting in front of the expected criticism in order to respond to it. In this regard, it would be interesting and surely instructive to look at a much larger corpus that includes documents written by other ICRC members and employees: Committee members, delegates, former delegates, and so on. There is a good chance that there are far fewer unfavourable studies (with evidentiary support) than purely informational texts or texts extolling the organization, and that those negative ones which do exist were written mainly by disgruntled former staff members. Here again, the president’s experience is significant, as it confers a certain authority on him when it comes to understanding his predecessors’ reasoning. But ICRC presidents do not generally dispute those historical analyses with which they disagree. What’s more, questions of prestige or history should never distract the ICRC from its responsibility towards its beneficiaries. Rather, the presidents hope that the organization actually absorbs the lessons gleaned from past failures: “At the ICRC, we learn a lot from history.” This assertion is undoubtedly true – the ICRC learns from its history and from its past mistakes. It really has no other choice. With its staff constantly turning over, the ICRC’s institutional memory is often short, if not entirely absent. The organization must study its history for the sake of its operational continuity and in order to move forward. The same imperative applies to the ICRC president.

**Conclusion**

ICRC presidents, employing a variety of practices, have all tended to publicly discuss their work as humanitarian practitioners and to get involved in writing and interpreting the organization’s recent and distant past. Some of the texts analyzed for this article, especially those written by Gustave Moynier, were used to impose their authors’ perspective on events. Moynier sought, unsuccessfully, to shape history to his advantage. Whenever they defend their track record, ICRC presidents obviously have a lead on historians and can help create a perception of the ICRC that will not be reworked until much later by historians. The desire to spread one’s own views and to present oneself – often unconsciously – in a favourable light is completely natural. The counterexample of Moynier shows, however, that humility is undoubtedly the most important virtue when it comes to leaving your mark for posterity.

101 M. Lorenzi, above note 30, p. 22.
102 H. Erny, above note 23, p. 70 (Review’s translation).
Presidents’ writings serve the institution’s purposes, but their attitude to the history of their organization goes far beyond simply glorifying a mythical past. The texts they write are a way of giving the ICRC a long-term historical grounding. Asked about the usefulness of history, French historian Raphaëlle Branche said this: “History frees us from fatalism and a sense of irreversibility. Its very nature is to be a force of freedom.”

The presidents, in the words they pen, can illustrate this conception of history. The ICRC needs history and uses it to legitimize its work and support its operations, potentially – and paradoxically – gaining more freedom in the process. The experience it has accumulated over its more than 150 years of existence gives it undeniable authority and attests to its expertise. The president too can make use of history in order to supplement his own analysis. As the ICRC has adapted and stood the test of time, its legitimacy has only increased. The organization has learned from its long experience, overcome various tribulations and avoided the trap of fatalism by seeking out new responses to humanitarian challenges. In other words, by emphasizing its long history, the ICRC is able to build on a unique heritage in the humanitarian sphere. It is thus no surprise that the organization, at times through its presidents, attempts to make the most of that history.

The ICRC’s official history is, of course, imperfect. In some cases it defers to memory rather than facts; it focuses on several major figures while overlooking the large majority of staff members; it trumpets its successes and sweeps aside its failings. But it is the task of historians to rework this official history. Through their written texts, ICRC presidents – acting as both humanitarian practitioners and writers – provide an ideal entry point to anyone interested in learning more about the organization. Their writings are essential to understanding a time period and the views of one man (and maybe someday one woman) who is deeply engaged with the world. This view can then be supplemented and refined by archival research, once time has calmed passions and provided welcome perspective.

Since its creation, the ICRC has documented its work through the Bulletin and then the Review, and through the ICRC Archives, which have expanded regularly over the years. The ICRC Archives were opened to the public around twenty years ago – a political gesture by a past president – which means that people can consult documents which date back to 1863 in order to study the history of the ICRC, the history of other organizations that left few traces, and the history of the regions in which the ICRC has operated. The Archives can also be used to take a new look at specific issues, such as war medicine, IHL, the fate of civilians, technological progress in weapon development, decolonization, detention in times of armed conflict, torture and humanitarian aid in general. Furthermore, here is a distinct humanitarian value in the Archives, which can help family members get back into contact with each other.

103 E. Laurentin, above note 100, p.84-85 (Review’s translation).
It is also instructive to note that the presidents’ writings are not contradicted by the organization and are often published by it, either in the Review itself or in an ad hoc manner. This fact points to the fundamental role played by the president for the ICRC and to the organization’s solidity and continuity over time. The Red Cross ideal and the soul of the organization itself permeate everything these men wrote. The Movement’s early history is as if set in stone and so old as to have become a sort of myth. While the task of historians is to deconstruct and add nuance, certain clichés recur and help to romanticize the ICRC’s history. None of that is the least bit surprising. The tendency to idealize founding myths can be found among other humanitarian organizations as well, such as the International Save the Children Union and Doctors Without Borders.105

During its first 150 years, the Review has helped disseminate the writings of ICRC presidents, and it will surely continue to do so. It also regularly publishes historical articles that add nuance to the ICRC’s official history and contribute to a deeper and more critical reading of the past. A growing number of historical articles have been published in recent years, and one can hope that this trend will continue. Critical research can help to improve the ICRC’s humanitarian response and strengthen the organization’s hand in an uncertain world. Intentionally or not, a history that is of service is not necessarily a servile history.

What will be the legacy of Peter Maurer, the ICRC’s current president? Will he carry on the “tradition” by which the president, informed by his personal experience, writes the first draft of the official history of his tenure? He could obviously be tempted to pen the history of the organization he runs as it unfurls, and to influence that history implicitly by telling it from his perspective. However, unlike many of his predecessors, and perhaps because he trained as a historian, he is aware that the official history will necessarily be reworked in the future:

I often wonder how history will record the period in which we now live. Will people judge the decisions and despair at the struggles? Or will they be bolstered by the possibility that even faced with the most intractable challenges, a line could be drawn between what is acceptable and what is unacceptable, and thus a legacy could be passed to the next generation?106

These questions transcend the office of the ICRC’s president. They remind us all that the wholly natural tendency to present oneself in the best possible light may one day be tested against the facts.

106 P. Maurer, above note 8, pp. 11–12.
A personal experience in Turkey, Iran and China: The need for the ICRC to adapt in a multipolar world

Pierre Ryter

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Abstract

This Opinion Note is a reflection on the challenges faced by the International Committee of the Red Cross (ICRC) in emerging countries that want to be heard in the humanitarian world without being major donors. The author underlines the importance of the feeling of humiliation that can be seen in the narratives of these countries. After listing some of the specific activities that can be developed in such contexts, he refers to the concept of strategic anchoring developed by the ICRC in order to work more effectively in a world that is becoming increasingly multipolar.

Keywords: historical narrative, humiliation, strategic anchoring, humanitarian diplomacy.

When the cold war came to an end, many in the West assumed they were the winners, the new Masters of the Universe. That’s why they are now so disoriented by a world that is turning out to be very different from the one they expected. …
All this high-minded Western universalism is well-meaning, but it is also arrogant, unrealistic, and paternalistic. It is a new form of *unrealpolitik* that is now running up against the reality of seemingly intractable divisions.

Hubert Védrine1

**Introduction**

How is the International Committee of the Red Cross (ICRC) – an organization founded in Europe in the nineteenth century and the promoter and guardian of universal humanitarian rules and principles – adapting to the new realities of a multipolar world in the making, as described in 2007 by former French foreign minister Hubert Védrine in his book *History Strikes Back?* To answer this question, I am going to describe the specific experiences of three emerging countries in which I have worked over the last ten years, namely Turkey (2006–09), Iran (2009–13) and China (2013–16). These are three countries that are finding their own voice on the international stage, including in the humanitarian arena.

Since the Cold War ended, the ICRC has mainly carried out its activities in countries receiving assistance (recipient countries) and has maintained structured dialogue with the countries financing this assistance (donor countries), which are for the most part Western nations. Like most of my colleagues, I cut my teeth as a delegate in operational contexts in which the authorities allow the ICRC to operate according to its established working procedures, including direct access to the beneficiaries of its protection and assistance activities. Dialogue is not always easy, but it is based on a shared understanding of the humanitarian issues of the day.

In Turkey, offers of services made by my predecessors in the late 1980s to assist people affected by the violence in the southeast of the country were rejected by the authorities. In Iran, following a strained dialogue in the 1980s on prisoners of war taken during the conflict with Iraq, the ICRC was asked to leave the country in 1992. In China, in spite of the dialogue maintained throughout the 1990s concerning access to people deprived of their liberty, the ICRC was not able to start visiting the country’s prisons.

In the 2000s, the ICRC was able to start (or restart) activities in these countries. In 2003, the invasion of Iraq by a US-led coalition signalled the start of the second Gulf War.2 In Turkey and Iran, temporary missions were established in Ankara and Tehran, with a view to contributing to efforts to coordinate humanitarian action in order to assist victims of this conflict.3 In China, an ICRC

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3 In Islamic Republic of Iran, activities were carried out from the end of 2001 in connection with the situation in Afghanistan, marked by military invention by the United States and its allies in the aftermath of the attacks of 11 September 2001. In Turkey, the ICRC did not succeed in prolonging its presence in Ankara beyond the withdrawal of US troops from Iraq in 2011.
regional delegation for East Asia was opened in Beijing in 2005, following the signing of a headquarters agreement with the Chinese authorities.

At the start of each of my missions in these three countries, I was able to gauge just how much the national narrative influences the way in which the ICRC carries out its activities. I will begin by recounting the “never again” stories of Turkey, Iran and China, and continue with a description of ICRC activities in these contexts. I will then provide some insights into the concept of strategic anchoring developed by the ICRC to pave the way for approaches adapted to the new realities of the newly multipolar world to which Hubert Védrine refers in the opening quote.

To each his own “never again” story

Through its presence in these countries, the ICRC has developed a better understanding of the way they see themselves and the way they see the world. It is general knowledge that Turkey, Iran and China have various things in common: an imperial past, a millenary culture and a strong will to make a comeback as major players on the world stage. Anyone living in these countries will quickly realize that they also share the perception that they have been humiliated by the West, which stripped them of their status as world powers in the nineteenth and twentieth centuries.

As observed by Hubert Védrine, with the Cold War at an end and a unipolar world emerging, many believed that a new world order was taking shape, one that drew its legitimacy from the United Nations Charter and the universal values it enshrines and had as its common narrative a “never again” story which had crystallized from the tragic experience of a Europe brought to its knees by two World Wars and a Holocaust in the first half of the twentieth century.

The experiences of Turkey, Iran and China, however, were completely different. The “never again” stories of these three countries had nothing to do with the World Wars of the twentieth century or the Jewish Holocaust.

Turkey’s “never again” story is the dismemberment of the Ottoman Empire following its decline in the nineteenth century, finalized by the Treaty of Sèvres, signed in 1920, which left the emperor with nothing but a small portion of Anatolia. Atatürk’s nationalist forces rejected this agreement and launched into a war of liberation against France, the United Kingdom, Italy and Greece. This conflict ended with the Treaty of Lausanne, signed on 24 July 1923, marking the birth of modern Turkey. For the Turks, Sèvres remains a symbol of the humiliation suffered by their country, which, thanks to Atatürk, was reborn and transformed into a “homeland” for persecuted Turks all over the world. Atatürk created a nation-State based on the Western model, with the army acting as the guardian of secularism. In recent years, however, the Turkish authorities have looked to the country’s Ottoman past with a renewed sense of pride and have questioned Atatürk’s strict interpretation of secularism.
Iran’s “never again” story features the 1953 coup d’état orchestrated by the CIA against Mossadegh’s democratically elected government. In 1979, Ayatollah Khomeini overthrew the shah and established the Islamic Republic of Iran, taking steps to ensure that he did not meet the same fate as Mossadegh. Towards the end of that year, students stormed the US embassy in Tehran, taking forty-three American diplomats hostage. This was a blatant flouting of international law, and the United States was humiliated. Apart from the 1953 coup, the Islamic Republic of Iran’s “never again” story is largely drawn from memories of the injustices suffered by Shia Muslims through the ages. It is these memories that have led the Islamic Republic to take a stand on the world stage against the “arrogant powers”, accusing them of pursuing imperialistic expansionism and having a vision that is demeaning and debasing for the peoples concerned.

China’s “never again” story is the “century of humiliation”, spanning the second half of the nineteenth century and the first half of the twentieth, when its empire crumbled and the country was preyed upon first by Western colonial powers and later by Japan. A symbol in China’s “never again” story is the Nanjing massacre perpetrated by Japanese occupation forces in 1937. The legitimacy of a power is premised on its ability to keep the peace and maintain national unity, and Taiwan’s independence constitutes the crossing of a red line for the Chinese authorities.

Turkey, Iran and China were deeply humiliated by their relegation to the status of minor powers in the nineteenth century. Humiliation, defined by Bertrand Badie in his book *Humiliation in International Relations* as “any authoritarian assignment of a status that is inferior to the desired status, in a manner that does not conform to defined norms”, leads to asymmetrical relations between powers – between great powers and weak powers, and between weak powers and weaker powers.

In an attempt to shake off this humiliation, Turkish, Iranian and Chinese leaders first embarked on a relentless quest to Westernize their societies in the first half of the twentieth century. They then made an about-turn, striving to recover their cultural heritage and assert their right to be different in a backlash against Western universalism.

In Iran, after the 1979 revolution, which ushered in a return to Islam, a renewed appreciation of the country’s pre-Islamic past developed. For example, when the Cyrus Cylinder, regarded by some as the first human rights charter, was loaned to Tehran by the British Museum in 2010–11, over half a million Iranians went to see it. In China, after the Cultural Revolution (1966–76), which sought to sweep away the past, and several decades of rapid progress on the path to economic development, the authorities began to promote the “Chinese dream”,

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in an attempt to reconcile the nation’s past and present. Turkey, for its part, sought to make its voice heard by repositioning itself as the heir of the Ottoman Empire.

For the Red Cross world, these assertions of identity by Turkey, Iran and China were nothing new and were evident in the actions of the National Red Cross and Red Crescent Societies (National Societies) of these countries, which were created before the First World War at a time when the Ottoman, Persian and Chinese Empires were feeling threatened. The Ottoman National Society was created in 1868, but it only became active from 1876 when it started using the red crescent, a Turkish imperial symbol. The Iranian national society (Persian at that time) adopted the red lion and sun, the Persian imperial symbol that was proposed as a protective emblem at the International Conference held in The Hague in 1907. These two imperial symbols were recognized as emblems on an equal footing with the red cross at the Diplomatic Conference held in 1929. Perfunctory attempts by the Chinese National Society, created in 1904, to adopt its own emblem came to nothing.

ICRC activities in Turkey, Iran and China

In Turkey, Iran and China, the ICRC has only rarely had access to victims other than during international armed conflicts. These emerging countries have no wish to be recipients of humanitarian assistance, nor do they want to join the club of ICRC donor countries. What kind of activities does the ICRC carry out in these contexts?

Promoting humanitarian diplomacy

The ICRC’s ability to work in the most challenging international contexts has caught the interest of the authorities in Ankara, Tehran and Beijing. A look at current events reveals the desire of Turkey, Iran and China to shine on the world stage. Aside from their economic interests, their status as regional powers (or as a global power in China’s case) leads them to position themselves, including in the humanitarian arena, precisely where the ICRC is most operational.

The diplomatic support of these countries has become essential in the most iconic contemporary conflicts, such as Afghanistan, Iraq, Syria, Sudan and Somalia. The Chinese authorities, keen to play the role of a “responsible” power, have expressed their willingness to support the ICRC diplomatically on

7 For more information on neo-Ottomanism, see, among others, Darko Tanasković, Neo-Ottomanism: A Doctrine and Foreign Policy Practice, Association of Non-Governmental Organizations of Southeast Europe (CIVIS), Belgrade, 2013.
8 Iran stopped using the red lion and sun in 1980.
9 In the 1980s, the ICRC visited Iraqi prisoners of war (PoWs) in Iran and Vietnamese PoWs in China. It also took part in operations to repatriate Iranian and Iraqi PoWs via Turkey.
several occasions, and the Syrian crisis has provided an opportunity to develop and deepen dialogue with the Iranian authorities. Turkey, which hosted the World Humanitarian Summit in May 2016, is striving to be acknowledged as a “humanitarian power”.

Strengthening respect for international humanitarian law

Activities to promote international humanitarian law (IHL) enable the ICRC to maintain direct contact with civil and military authorities. In addition to meetings of experts who understand and promote humanitarian law, what else can be done to encourage the incorporation and implementation of international rules in the systems of countries that are in the process of reaffirming their identity?

One way to prevent these rules from being regarded as foreign to the country in question is to recall that they are anchored in its collective memory. Turkey, as a regional power and NATO member, is keen to enhance its role as a link between the West and the Islamic world. In 2008, the Turkish Red Crescent Society invited the National Societies of the member countries of the Organization of Islamic Cooperation to Istanbul to attend the celebrations organized for its 140th anniversary, presenting itself as “the mother of the Red Crescent” whose roots can be traced back to the codification of humanitarian law. This initiative is a reminder that when the Ottoman Empire adapted IHL to its needs, it opened the door to the contextualization of a body of law that is even today not widely known and not always properly understood in Turkey outside specialist circles.

With the 1979 revolution, Iran put Islam at the heart of its political system and broke its strategic links with the West. The question of compatibility between IHL and Islam was raised when the ICRC carried out activities to assist Iraqi prisoners of war (PoWs) in the Iran–Iraq War (1980–88). At the start of the conflict, the Iranian authorities decided to treat Iraqi PoWs according to the principles of Islam, which put them at odds with some of their international obligations under the Geneva Conventions. Twenty years later, when Iraq became a battlefield once again, the question was back on the front burner. It was in these circumstances that the ICRC initiated a dialogue on humanitarian matters in the holy city of Qom with experts in Islamic jurisprudence. In 2016, at a conference in Qom marking the 10th anniversary of this dialogue, the president of the ICRC commended the progress made, highlighting “the necessity to translate academic achievements of the Islam/IHL dialogue into concrete humanitarian results in conflict-affected regions”. These efforts to promote IHL in religious circles are undertaken as a complement to the work carried out with civil and military authorities responsible for implementing and ensuring respect for IHL domestically and internationally.

Since its Cultural Revolution ended in 1976, China’s policy focus has been on peace and development. The new generations have no memory of the wars that

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dominated their country’s history during the nineteenth century and the first half of the twentieth. In October 2016, an exhibition designed by Geneva’s Art and History Museum, the ICRC and the Caen Memorial to celebrate the 150th anniversary of the original Geneva Convention was put on display to the Chinese public in Beijing, with the inclusion – in collaboration with the Red Cross Society of China and its Foundation – of elements drawn from national experience. This gave the Chinese audience an opportunity to see how the country’s National Society had operated throughout the twentieth century, including in the dark days of the 1930s and 1940s, when the country was divided and occupied by foreign forces.

Developing a dialogue on protection to gain access to people deprived of their liberty

In the atmosphere of this new era of international politics where human rights and humanitarian rhetoric were fused, for many States – especially States which had no tradition of openness to put it mildly – the whole field of humanitarian action became extremely dangerous. They started to perceive it as something which was there to promote changes in their States, up to regime change. I think the worst that happened in the 1990s and 2000s was a confusion between protection of human rights and regime change.

This observation by Fyodor Lukyanov fully applies to Iran and China. At the beginning of the 1990s, the authorities accepted the offer of services made by the ICRC involving visits to their prisons but then changed their minds as the confusion between the protection of human rights and regime change grew and it became increasingly difficult to make the authorities understand the ICRC’s strictly humanitarian approach. The creation of a humanitarian space for dialogue (see below) provides an opportunity to address these issues in a framework that is not prone to politicization.

Creating a humanitarian space for dialogue

Human rights-related questions are at the heart of the political issues that divide the international community, as observed by Fyodor Lukyanov. In order to cultivate dialogue in sensitive contexts, the ICRC offers a depoliticized space where tricky issues can be addressed, placing them in a strictly humanitarian framework.

14 Visits started in Iran in 1992 under an agreement with the authorities, but were discontinued.
15 The situation is different in Turkey. The European Committee for the Prevention of Torture, a body of the Council of Europe, makes regular visits to prisons and maintains a dialogue on this subject with the authorities in Ankara. See Council of Europe, “The CPT Visits Turkey”, 24 May 2017, available at: www.coe.int/fr/web/cpt/-/cpt-carries-out-periodic-visit-to-turkey.
One option for addressing some of these questions in Iran and China is the Health Emergencies in Large Populations (HELP) course, which brings together health professionals and aid workers and provides them with an opportunity to discuss the dilemmas facing humanitarians in an interdisciplinary framework. Another tool is Exploring Humanitarian Law (EHL), an education programme for young people. EHL has been very well received in Turkey and Iran and is being further developed in China, where it has been incorporated into the National Society’s programmes. The promotion of humanitarian values among young people is considered a priority by Chinese Education Ministry officials, and they welcome the participatory methodology used.

The messages conveyed by HELP and EHL focus on the dilemmas that humanitarians face in the performance of their work and that are engendered by conflicts of values arising in crisis situations. The participants are asked to decide what course of action should be taken based on ethics and freedom of conscience.

In China, the dialogue on health care in detention, initiated in 2007, provides ICRC doctors with an opportunity to discuss the challenges facing the Chinese prison system, particularly the fight against tuberculosis, with their Chinese colleagues.

Through these different dialogues, the ICRC emphasizes that humanitarian action must be centred on people, regardless of their circumstances and, as stipulated in Article 3 common to the four Geneva Conventions of 1949, “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”

EHL has contributed to a better understanding and increased acceptance of the ICRC in Turkey, Iran and China, by making government officials in charge of educational programmes more aware of issues relating to neutral, impartial and independent humanitarian action. Similarly, by bringing professionals from diverse sectors (governmental, non-governmental, civil and military) together around the same table, HELP contributes to promoting humanitarian ethics that transcend the differences between these actors.

Developing strategic partnerships with National Red Cross and Red Crescent Societies

As explained above, the National Societies of these countries are key partners for the ICRC. Their grounding in civil society, their role as auxiliaries to the public authorities in the humanitarian field and their commitment to Red Cross and Red Crescent principles in their work means that they can facilitate the work of

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16 HELP is a multidisciplinary training course on the principles and practice of humanitarian work in disasters, conflicts and other crises, with a focus on health and ethics. A brochure is available at: www.icrc.org/fr/publication/health-emergencies-large-populations-help-course.

17 Developed by the ICRC, in close association with the Educational Development Center and with the active participation of twenty sites from all parts of the world, EHL offers thirty hours of educational activities. Building on the experiences of a wide variety of countries, the programme is transnational in scope, cutting across political, social, religious and cultural contexts, and can easily be adapted to diverse educational settings. A project summary is available at: www.icrc.org/en/document/exploring-humanitarian-law.
the ICRC in accordance with their sometimes punctiliously upheld prerogatives. Strategic partnership agreements have been signed with the national societies of Iran and China to establish a cooperation framework at the national and international level.

The ICRC’s concept of strategic anchoring

The above examples of activities carried out in Turkey, Iran and China, while in no way exhaustive, help us to understand the approaches that enable the ICRC to anchor itself in countries that are neither aid recipients nor donors.

Other countries of importance to the ICRC did not enter the framework for humanitarian action that took shape at the end of the Cold War. Taking note of this, in 2011 the ICRC identified a number of emerging countries in which it wanted to rally long-term support for ICRC causes beyond the operational work carried out in them. This is how the concept of strategic anchoring came about.

My experience in Turkey, Iran and China is that the concept has strengthened the legitimacy of activities that have been under way for years, such as the Islam–IHL dialogue in Iran, the health care in detention dialogue in China and the HELP course, started in the 1980s, all of which find their raison d’être in strategic anchoring contexts. In addition to contributing to cooperation within the International Red Cross and Red Crescent Movement and the goals of gaining access to victims and donors, the concept of strategic anchoring also validates activities carried out in partnership with other national actors concerned with humanitarian issues (academia, think tanks, foundations, the media, NGOs, economic actors, professional associations, etc.).

Strategic anchoring also validates the need to listen to emerging countries in order to understand their take on humanitarian issues and develop a dialogue on subjects of common interest. In order to achieve this, the role of national ICRC personnel is strengthened at delegations carrying out strategic anchoring activities. The internationalization of ICRC expatriate staff also contributes to this effort. With a growing number of employees now recruited from outside donor countries, the ICRC is ensuring that it is equipped with the means to become better integrated into the multipolar world now taking shape, to better understand it and to be better accepted in it. All these efforts help to strengthen the humanitarian diplomacy work of the ICRC, which can no longer rely on the support of donor countries alone when it comes to operating in certain parts of the world.

Strategic anchoring is a useful concept for ICRC delegations operating in emerging countries that are keen to assert themselves in the international arena without renouncing their national identity. Some delegations operating in recipient countries fully engaged in self-assertion processes have taken on board the lessons learned from these experiences.
Conclusion

On 20 November 1985, Raisa Gorbachev and Nancy Reagan laid the first stone of Geneva’s International Red Cross and Red Crescent Museum. This symbolic act was part of a process that was to lead to the end of the Cold War. The Museum, conceived in this climate of optimism, opened its doors three years later on 29 October 1988. Visitors were invited to take a journey back into the history of humanitarian action, following a Time Wall displaying the main tragedies that have marked the Red Cross’s work since its creation. However, what had been intended as a simple reminder of a collective memory quickly became a source of controversy. The end of the Cold War caused memories to thaw. Which memory did the Wall display?

In the 1990s, the armed conflicts in the Balkans and the Caucasus showed that, in Europe, collective memory was fragmented, with the endeavours of some to remember often clashing violently with the endeavours of others to forget. In this climate, Turkey officially denounced the fact that the Time Wall placed greater emphasis on tragedies occurring during the collapse of the Ottoman Empire in which the victims were Christians rather than Muslims.

On 18 May 2013, the Museum reopened its doors after being closed for twenty-two months for refurbishment work carried out by three non-European architects, one from Brazil, one from Burkina Faso and one from Japan.18 The Time Wall did not survive this facelift and disappeared twenty-five years after its creation. The permanent exhibition is now simply called “The Humanitarian Adventure”, an adventure that is no longer centred on the European experience of history.

Up until the start of the twenty-first century, the national narratives of different countries had not called into question the common narrative of the “never again” story resulting from Europe’s tragic experience. However, with the return of major powers such as China and Russia to the international stage and the advent of many emerging nations, other narratives began to be heard beyond the borders of these countries and collective memory became plural. History is no longer a one-way street, and it is difficult to be sure who is on the right side of history and who is on the wrong side.

As Hubert Védrine wrote in the opening quote to this article, the Western nations “are now so disoriented by a world that is turning out to be very different from the one they expected”. Largely financed by Western donors, the ICRC uses the Fundamental Principles as a compass to guide its work, and it is these principles that have enabled it to remain operational throughout the twentieth century and the beginning of the twenty-first. Today, countries around the world, including Western nations, are witnessing the rise of identity politics and nationalist sentiment. The examples of Turkey, Iran and China show that it is not enough to remain neutral and independent to be accepted as a humanitarian

actor. In an increasingly globalized world, a growing number of countries want to be recognized as a different kind of nation. To be accepted, the ICRC must listen to these countries, understand them and accept their differences.

The “never again” story based on Europe’s tragic experience in the twentieth century remains an essential pillar of world order, but it is now echoed by other national “never again” stories arising from different episodes of suffering. In the Middle East, East Asia and elsewhere in the world, it is often the case that the national narrative of some contradicts the national narrative of others, and this is a real or potential source of conflict. The ICRC should not take positions on the essentially political issues that divide historians.

Jean Pictet, the ICRC’s eminent legal expert who was in charge of the preparatory work that led to the drafting of the four Geneva Conventions adopted in 1949 for the protection of war victims, wrote in 1986:

[Today] the uniformity of human psychological make-up and the universality of standards governing the behaviours of nations are recognized, and no longer is there belief in the supremacy of any one civilization: indeed the plurality of cultures and the need to take an interest in them and study them in depth is recognized. This leads to an awareness that humanitarian principles are common to all human communities wherever they may be. When different customs, ethics and philosophies are gathered for comparison, and when they are melted down, their particularities eliminated and only what is general extracted, one is left with a pure substance which is the heritage of all mankind.19

Today, over thirty years after these words were written, this “pure substance” remains the foundation on which the ICRC bases its presence and action in a world challenged by simultaneous trends towards globalization and fragmentation. In order to be understood and accepted in a multipolar world, the ICRC must take the trouble to contextualize its action and its discourse while upholding its universally recognized humanitarian principles.

Heroic memory and contemporary war

Gilbert Holleufer
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Abstract
Inter-State wars seem to have come to an end in the late 1990s; ever since, the global reality of collective violence has come down to the chaos of contemporary civil wars and terrorist attacks. In this article, it will be argued that in today’s civil wars, as well as in terrorist violence, the traditional warrior ethos is fading, giving way to types of violence governed by a new psychological and social paradigm. In other words, it is assumed that the very set of values that has universally determined the male gender role and the frame of hegemonic masculinity since time immemorial has also informed the waging of war according to a “heroic regime of violence”, and this phenomenon has made war a desirable option for countless generations of young men. On the other hand, the global changes entailed by modernity seem to have undermined this warrior ethos, giving way to a “post-heroic regime” in which extermination-oriented violence, rather than combat-oriented violence, is fostered. In this article, the author will scrutinize the founding psychological and social determinants that have so far upheld the cultural construct of the heroic model, in order to illuminate the ominous consequences of the deculturation of war in today’s chaotic conflicts. In such contexts, the men who are fighting suffer from a loss of meaning and the impossibility of gaining dignity and social recognition in an ecosystem of humiliation and ubiquitous violence that has little to do with the expectations of pride and dignity conveyed by the past ideals of heroism associated with a certain vision of masculinity. The article will also discuss ways and means of getting the message of international humanitarian law through to men on the front lines caught up in such circumstances.

Keywords: fighters, heroism, masculinities, armed conflict, terrorism.
Introduction

With the end of the Cold War, the 1990s were supposed to mark the emergence of a new international order based on the rule of law. That new order was quickly challenged by a new type of disorder in many parts of the world: a new kind of war emerged, not conventional in the sense of conflicts between States parties to the Geneva Conventions or between a national liberation movement and a colonial power. Today, the reality of war is located somewhere between various forms of civil war, arising from the collapse of States weakened by the upheavals of the modern world, and various forms of murderous and unpredictable attacks that are repeatedly being made by elusive and constantly shifting terrorist groups.2

It is against this backdrop that the International Committee of the Red Cross (ICRC) started looking at the realities of war on the ground in unprecedented detail. In 1999, at the time of the Geneva Conventions’ 50th anniversary, a survey titled People on War was carried out in the hope of sparking a discussion about the relevance of the law in the eyes of the fighters and civilians caught up in the terrible civil wars at the end of the last century, and capturing more effectively the psychological and social dimension of the violence and suffering that characterizes contemporary conflicts.3 It quickly

1 While it is a reality that combatants have historically been predominantly male, it is important to remember that women and girls are also involved in conflict, both as part of the military and fighting forces and through being impacted by sexual and gender-based violence. In this article, the author focuses his reflections on the experiences of men on the front lines.

2 The terms “terrorism” and “civil war” are not defined in international law. As regards terrorism, the author will hereinafter use the definition proposed by Alex P. Schmid, i.e. “an anxiety-inspiring method of repeated violent action, employed by (semi-)clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators.” Alex P. Schmid and Albert J. Jongman, Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature, Transaction Books, New Brunswick, 1988, p. 28.

“Civil war” is a term that is even harder to define. It no longer refers to the wars of liberation, decolonization or independence that made up the conventional typology of civil wars; rather, it now refers to wars between communal, ethnic and religious groups, such as those that became more common at the end of the twentieth century – wars between “neighbours”, certainly, but literally wars “against civilians”, who are these conflicts’ primary victims. They are infra-State wars, characterized by an outbreak of violence that disrupts the internal structures of a community, whose constituent sub-groups previously coexisted in a common territory and on the basis of balanced compromises. They are wars that originate in an explosion of traumatic events caused by a breakdown in social trust, leading to violence that tears up the social contract.

The recent history of Afghanistan shows how a liberation war can descend dramatically into an “inter-ethnic” civil war: when victory was secured against the Soviet-aligned regime and the Red Army, the war of liberation that had previously been a source of meaning, pride and hope for all involved turned into a fratricidal struggle, absurd but deadly, between rival clans, factions and ethnic groups.

3 The People on War project consisted of a quantitative and qualitative survey of fighters and civilians in twelve regions devastated by war in the second half of the twentieth century: Afghanistan, Bosnia-Herzegovina, Cambodia, Colombia, El Salvador, Georgia and Abkhazia, Israel and Palestine, Lebanon, Nigeria, the Philippines, Somalia and South Africa. Overall, more than 14,000 civilians and combatants responded to the questionnaire and more than 100 discussion sessions were held, including some in regions that were exceptionally difficult to access. For a first primary synthesis on the quantitative findings of the survey, see ICRC, The People on War Report: ICRC Worldwide Consultation on the
became clear that these so-called “destructured” conflicts, by their very nature, increasingly defied the traditional methods of implementing international humanitarian law.4

Part of the data collected was then analyzed by a team of researchers from the Harvard Centre for Health and Human Rights, and three reports were written, interpreting the accounts of people in Afghanistan, Bosnia, and Israel and Palestine – regions that had seen major intra-State armed conflicts that are particularly representative of today’s forms of collective violence.5

The most remarkable finding that emerged from analyzing those accounts was that most of the respondents seemed to offer a sort of meta-narrative, telling of a kind of demoralization that appears common to all, fighters and civilians alike, regardless of the specific context and circumstances. The accounts show a traumatic collective experience, not just caused by the great physical and psychological suffering that people had endured, but apparently connected with the awareness that war had lost its meaning as a social reality. These respondents’ experience of violence is a bitter rebuke to the representations, expectations and hopes that war has traditionally conveyed, rightly or wrongly. As noted by the present author and Philippe Cotter:

An overwhelming majority of those interviewed seemed to share feelings of demoralisation that negated their sense of dignity, be it on a personal or collective level, leaving them crushed by the absurdity and moral disgrace of the violent episodes they had been exposed to either as perpetrators, victims or spectators.6

In other words, the witness accounts show that, in 1999, both fighters and civilians saw very clearly that a paradigm shift had occurred in the way that wars were being conducted around the world at the time. In their view, the state of war, which had traditionally conveyed meaning and hopes of heroism, regardless of how brutal the fighting was, had turned into an outburst of extreme violence from which it was impossible to derive any dignity or pride. The experience of that violence contradicted all principles, all representations, all values inherited from the past and traditionally associated with war.

The inevitable conclusion is that, for those who have experienced these contexts, war has come to mean a fundamentally humiliating experience, not just

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6 Gilbert Holleufer and Philippe Cotter, Humiliation and War, Eclectica Editions, Geneva, 2010, p. 12. This one-off publication, in which the authors borrow from the People on War project discussed in this article, summarizes the main results of the research carried out at Harvard.
for the victims exposed to the kind of barbarity with which we are all too familiar, but also for the fighters, who it throws into a state of alienation that cannot be made sense of retrospectively, and whose “heroic” aspirations it has undermined. Both civilians and fighters are deprived of the sense of purpose that is fundamental to every human’s self-esteem and sense of dignity, including and perhaps especially during war.

Brought together, the often heart-rending accounts given by the men fighting these civil wars show that all veterans of such conflicts tend to paint the same picture of a masculinity that has become literally pathetic in these unexpected circumstances. Everywhere, there is the sense of people “going mad” collectively, and there is the repeated insistence that what these men have been through “was not a war”. Many of them describe the same experience, initially thinking that they were “going off to fight a just war” before having their heroic aspirations crushed by the reality of an endless slaughter that no longer involves any actual combat or victory. In both Bosnia and Afghanistan, men – or women speaking about their men – talk about the depression, shame and despair that haunt the “warriors” who, having returned from the “front line”, receive hardly any recognition of their heroism. These accounts clearly show that it is impossible to derive any “glory” from the experience of armed violence in wars in which no one, not even the fighters, recognizes any of the “noble” values that are commonly shared by warriors.

In conventional armed forces, the disconnect between the reality on the ground and “learned” expectations is just as demoralizing. When an Israeli soldier, “invincible” on the battlefield, is confronted with boys and girls throwing stones at him, his power becomes the most complete powerlessness. A similar feeling of powerlessness is probably felt by all soldiers around the world who are “prepared to face anything, but not that” when confronted by wars consisting of ambushes, traps and treacherous attacks, which undermine the expectations instilled in them by their training and their social learning of the warrior ethos. Their loss of bearings and their powerlessness are so unbearable that they lead to feelings of searing humiliation on the ground. As we know, in modern armed forces, this can lead to responses that are morally unacceptable even when adopted in the name of the “conventional” ethics of a “just war”, such as the renewed use of torture in Iraq as a means justified by the new ends of the “war on terror”.

Overall, the messages received from those witnessing these civil wars are valuable because, as well as revealing the suffering and feelings of helplessness caused by local circumstances, they point to a deeper, more general breakdown of the time-honoured logic of war as a concept, as opposed to that of specific wars. The stories told by veterans of the First World War or the Vietnam War, among countless others, reveal circumstances that led to a similar loss of meaning of war for combatants. However, we can see that the end of the Cold War created the conditions for an unprecedented “deculturation of war”: concerns hitherto that

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7 Ibid.
war would simply become increasingly destructive gave way to the concern that
dehumanizing feelings and attitudes would take root when collective, armed
violence was used within imploding communities. Since the 1990s, while most
States have been strengthened by the interdependence arising from globalization,
the civil wars that have suddenly erupted in the most fragile communities have
become the dominant paradigm of collective violence. After the Cold War, wars
have mainly arisen not because States are strong, but because they are weak. In
this article it will be argued that in contemporary civil wars, the heroic warrior
ethos is fading, giving way to new violent behaviours governed by a new
psychological and social paradigm that needs to be better understood if we are to
measure its overall consequences.

War and heroic memory

War is a cultural and social construct, and while it displays various gendered
dimensions, it has the specific feature of reflecting the masculine gender role
within the species,8 instead of relating to any one culture.9 The explanation of
why warrior behaviours persist over time, like anything relating to the human
condition, lies in the complex interaction between humans’ deepest psychological
infrastructures and the cultural and social superstructures that humans have been
able to build on the foundations of their unconscious mental processes. This
investigation, brief as it is, will require us to move constantly between the two
sides of that interaction, and this shapes the way the argument is organized. It is
in this interaction that we see the repression and denial of psychological suffering
combined with culture’s adoption of a selective memory, one that glorifies the
use of force according to the heroic warrior ethos,10 organizing the history of
communities around a universal heroic narrative. This fatal combination,
according to the present author, has determined the identity and role of the
masculine gender since time immemorial. Using knowledge acquired through

8 Maryam Khalid, “Gender, Orientalism and Representations of the ‘Other’ in the War on Terror”, *Global
Change, Peace & Security*, Vol. 23, No. 1, 2011. The term “toxic masculinity” is also affiliated with war: see
However, see M. S Kimmel, J. Hearn and R. W Connell (eds), above note 8, pointing to the influence of
both gender and culture in shaping masculine norms. From the anthropological point of view, the roles of
the masculine and feminine genders must under no circumstances be confused with biological
characteristics. Many women have taken on the gender role traditionally assigned to men in a wide
range of cultures, fighting on the front line “like men”. Female Kurdish fighters, who played a “heroic”
role in the war of liberation conducted by their community against the Islamic State group, are
currently the best-known example, but there have been many others in the past. For more on
masculine gender roles, see R.W. Connell, above note 8. “To speak of masculinities is to speak about
gender relations. Masculinities are not equivalent to men; they concern the position of men in a gender
order. They can be defined as the patterns of practice by which people (both men and women, though
raewynconnell.net/p/masculinities_20.html.

9 There are certain parallels between the warrior ethos and the concept of hegemonic masculinity. For more,
see R. W. Connell, above note 8.
modern research into the sociology of war, the psychology of combatants, the influence of masculine and feminine gender norms, and hegemonic masculinity, we can outline this dialectic in order to contribute to a better understanding of the paradigm shift in today’s wars.

We will start our exploration with the main cultural configuration that paved the way for men to enter the battlefield – i.e., the warrior ethos – as disseminated through the series of epic tales that, fundamentally, constitute history. We will then look at the instinctive psychological mechanisms that allow combatants not only to withstand the horrors of war but to participate in them, especially if combatants are bound up in the social expectations that define the warrior ethos and the system of masculine values consubstantial to it. Finally, we will attempt to assess the “crisis” in this heroic conception of war, which, although it has lasted for millennia, now seems to be fading in the modern world, giving way to the new post-heroic forms of violence such as civil wars and terrorism on the one hand, and military “strikes” by modern armed forces on the other. These new forms of violence appear to be “degraded” forms of war, which no longer pursue any social project, create any history, organize the memory of communities or produce any coherent, viable model of masculinity. Rather, they invariably seem destined to produce and reproduce feelings of humiliation and powerlessness that are devastating and both politically and socially sterile.

The warrior ethos: Inhibiting the instinct to flee and celebrating aggression

One is not born, but rather becomes, a fighter, a “violent man”. We know that fear is a vital evolutionary asset: humans have a whole instinctive apparatus helping them to monitor their environment constantly. If danger arises, the stress caused by fear and anxiety triggers the flight instinct, which is unique in that it mobilizes all of our psychobiological resources in a crisis of behavioural hyperactivity, on which our survival depends. Aggression, on the other hand, is not natural. Discussing the matter of “fight or flight”, Anthony Mawson – a specialist in the field of mass panic – concludes that an instinct to strike out, to engage in panic-related aggression, perhaps in the form of muscular hyperactivity directed at the source of the danger, only takes place if the subject cannot flee to safety.11

In any case, there is nothing instinctive about the danger and the aggressive response when it comes to war: both are primarily the result of a symbolic and social construct.12 The reason why war is constantly present is that humans very quickly created a symbolic and cultural barrier capable of inhibiting our natural instinct to flee, in order to promote aggression within society. Moreover, the fateful invention of lethal weapons means that attacking other fighters, who are symbolically and culturally identified as “enemies”, becomes a necessary condition of social integration of male warriors. War is a meaningful and organized social praxis

12 Ibid.
that promotes social integration. Fighting is a praxis that has largely been assigned to males from the outset, and it involves the cultural production of a specifically gendered set of values that has caused flight to be forbidden and has promoted risky and even life-threatening behaviour, giving war-like aggression the reward of social recognition, an identity-related reward that increases the self-esteem of those who wage war. That recognition is given to warriors by their peers in combat, and also by civilians – friends, family, and all non-combatant members of the community on which the warrior’s self-esteem relies – who can only express their gratitude to those putting their lives at risk to protect and defend them.

If we believe the psychologists’ attachment theory and the recognition theory of Axel Honneth, the need for recognition is fundamental to all inter-human relationships and conflicts. We can therefore understand that, as long as the institution of war generates such an absolute social consensus around a set of masculine norms, the symbolic capital – i.e., the recognition and self-esteem – that warriors derive from war is such that it can only feed their motivation. It is this interaction between cultural norms and that most “human” intersubjective need which has, paradoxically, ensured the survival of that most “inhuman” practice – war. As a consequence, of course, if warriors refuse to fight and reject the principle of sacrifice, if they “give in to fear” (which would prompt the flight instinct), then they will be denied recognition and subjected to implacable scorn. They will be isolated, permanently excluded from the group to which they belong, and condemned, if not to death, then to shame, which is a form of psychological and social death that is more fearsome than physical death, especially for a “real” man whose narcissistic expectations demand nothing less than glory and honour in the eyes of his whole community.

Glory and honour, courage and cowardice

In traditional societies, the codification of honour and glory, in all their incarnations, recycles fighters’ psychological need for recognition and adapts it to the requirements of war, optimizing their behaviour for combat. Even off the battlefield, being recognized as a “real” man means obeying the order to die while bearing arms rather than accepting the slightest blemish to one’s honour.

As a result, the warrior ethos, as one model for the masculine role, exploits the full spectrum of gendered values, from the most noble to the most ignoble, ranging between the two opposing extremes of courage and cowardice. The decriminalization of murder in the specific context of war allows courage, in a

fight to the death, to be celebrated as the ultimate masculine quality. Conversely, the
criminalization of flight, as a symptom of cowardice, represents the ultimate
masculine anti-value, denoting the infamy of “feminine” weakness and causing
unbearable shame.

This ethos spans all warrior cultures – in other words, all cultures – although some nuances may occur. To some extent, this is required by the
“system” of war, which paradoxically reveals the relational nature of war: it is
hard to wage war without an enemy to fight, to prove one’s courage without
hand-to-hand combat against a worthy adversary. As a result, all men are
brothers in potential enmity, and this is why war is defined by combat and not
by simply eliminating the enemy. There is a sort of emotional dependence on or
need for the enemy: in war, the need to kill is the corollary of the need to prove
that one is not afraid of being killed, which is certainly not what underpins
genocidal behaviour.

War and humiliation

The ultimate purpose of war, on the contrary, seems to be a transaction of pride and
humiliation between an in-group and an out-group, with the two masculine
coalitions going head-to-head in the fight to win prestige and pride through
victory, and to avoid the humiliation of defeat. All thinkers who have considered
the psychodynamics of humiliation have established a causal link between feelings
of humiliation and the use of violence. In general, the feeling of humiliation is
regarded as a specific form of “narcissistic wound” because, unlike other types of
related feelings that cause depressive responses (such as shame and guilt), it is
more directly relational and social. It relates to the feeling of powerlessness that
arises from being scorned and held in lower esteem by others, or at least what we
imagine to be the case on the basis of our own self-image and our image of
others. The extent to which war can promote this kind of dynamic is easily
understood. Psychiatrist James Gilligan, one of the greatest theorists of the
relationship between humiliation and violence, sees the feeling of humiliation as a
universal cause of violence: “the purpose of violence is to diminish the intensity
of shame and replace it as far as possible with its opposite, pride, thus preventing
the individual from feeling overwhelmed by the feeling of shame”. Conversely,
Axel Honneth views the fight for recognition as a universal driver of social
conflicts, which invariably aim to restore a moral identity that has been injured
and humiliated. Humiliation is the antechamber of shame, a type of infamy that
has become a stigma standing at odds with masculine gender norms and
inevitably brings them to a state of stress and hysterical emotional insecurity
depending on the circumstances. The system of cultural expectations and taboos
related to the role of the masculine gender massively heightens the threat and the

15 See, for example, James Gilligan, Preventing Violence, Thames and Hudson, New York, 2001.
16 Ibid., p. 29.
17 A. Honneth, above note 13.
fear of humiliation, a sentiment that, when exacerbated by war, can only be avoided in practice by the use of force, aggression and violence.

Although it is easy to imagine the humiliation of the defeated as a cause of war in many situations, it may seem less obvious that such feelings could explain the predatory warmongering of “conquerors” in the broad sense, from Alexander the Great, via Julius Caesar and Genghis Khan, to Hitler and Stalin. However, it is precisely the psycho-cultural interplay of honour and fear of shame that can reduce self-esteem in such a way that the subject becomes paranoid and especially vulnerable to humiliation. This results in a tendency towards an obsessive and pre-emptive quest for “glory” in order to prevent any threat of shame. We know the extent to which circumstances can favour the emergence of charismatic leaders who are “drunk on glory”, who will always find a good reason to wage a predatory war. This seems to be the model of the imperialist war of conquest that has dominated the history of the last 3,000 years.18

In any event, the heroic narrative of the warrior ethos requires that the enemy be made to submit through violence, that victory in combat force the enemy into a shameful flight, that the enemy recognize his humiliation and shame, and thereby the superiority of the victor, and that the enemy’s inferiority be recognized through his capitulation. War, because its invariable aim is that the victor’s superiority be recognized by the defeated, is the most radical form of institutional humiliation, to borrow Bertrand Badie’s phrase.19 In war, the defeated inevitably suffer collective psychological and moral wounds, but those wounds remain encoded by cultural and social superstructures as a result of a violent transaction – that of combat – and therefore remain a humiliation that needs to be avenged and is potentially reversible. By encoding both the humiliation of the defeated and the glory of the victor, the warrior ethos shares this type of violent transaction between pride and shame with the negative reciprocity of vengeance, which forms the basis of the ancient principle of “an eye for an eye”. The talionic law may be quite elementary, yet it has a regulatory power like any law, and it may be more powerful than generally thought, because combat requires a symmetry of means that characterizes war and which imposes codifiable forms of violence that depend on shared fundamental moral values, or at least understood values. Those values, in the end, allow us to determine who is the winner and who is the defeated, and to distinguish war from exterminations such as genocide, and perhaps even to prevent them.

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18 This links again to the work of Axel Honneth, who does not view social conflicts in terms of biological or material interests per se, or in terms of self-preservation, but always in relation to the need for symbolic recognition, which is given form by the often excessive material wealth and privileges that powerful men, with their oversized need for recognition, strive to gain.

19 See, in particular, Bertrand Badie, Le temps des humiliés: Pathologie des relations internationales, Odile Jacob, Paris, 2014, p. 13. Badie very simply defines the concept of institutional humiliation as the process by which a status inferior to the desired status of an individual, a group, or a State is authoritatively conferred by another individual, group or State, which therefore places the latter party in a position of superiority. War radicalizes this process in a paroxysmal way.
The order of masculine recognition

To the extent that the fundamentals of the warrior ethos are shared by all men on both sides of a battle, the institution of war, like all institutions, operates as an order of mutual recognition that allows the two sides to coexist and regulates that coexistence. War is not defined as a breakdown of connections, because there can be no doubt that communities at war have coexisted. However, it is a very particular form of coexistence because it is based on combat “between men”. The act of recognition in war, applied to the masculine gender role as a whole, is what regulates the conflictual behaviour, and it is according to its values, rules and masculine standards that combatants have always been able to recognize each other and to assess, measure, respect and fear each other as enemies.

Julius Caesar was criticized for glorifying the Gauls’ passion in combat in his writings, in order to glorify himself for propaganda purposes. That is an obvious criticism, but a false one, because by doing so Caesar merely followed the logic of reciprocal recognition which is the basis of the warrior ethos: in the highly narcissistic configuration of combat, the recognition of my strength depends on the recognition of my enemy’s strength. Combat, at least in its traditional types, requires a system that should result in a symmetry of risk and proportionality in the means of aggression on the battlefield. Only the reciprocity of combat on equal terms allows the value, “glory”, “honour” and masculine dignity of both sides to be measured. This is the source of today’s jus in bello, the rules regulating the conduct of parties engaged in armed conflict. The ethical principles of combat have always defined the ethical scope of warfare, and did not deal with the desire to eliminate the enemy, which perverts war and turns the use of lethal force into a massacre. This explains the centrality of the battlefield, which is often highly debatable in purely practical terms, but is where all of the warrior’s imaginative universe and social learning converge, where everything plays out, and where everything has played out time and time again over the centuries according to a highly uniform and universal model.

Heroic narrative and “psychotherapeutic” memory

It is probably by turning the exploits of their warriors, appointed as protectors of the group, into stories that human communities started to become aware of themselves as communities, and to create memories that initially aimed to strengthen their social cohesion, precisely with a view to future wars. This relied on a narrative that built a myth of power through a selective reading which repressed the traumatic reality of slaughter on the battlefield, a reality that Henry Dunant had the merit of reclaiming from the realms of the unspoken in his well-named Memory of Solferino. To some extent, universal epic mythology was used to

20 For more details on the notion of “orders of recognition” as major structures that regulate social interaction, see Paul Ricoeur, The Just, University of Chicago Press, Chicago, IL, 2003.
exorcise the deep psychological wounds that the reality of war inflicted on survivors: it is a reading of reality that organizes the myth around the denial and repression of real suffering, and against the threat of feelings of powerlessness and shame.

We can posit a psychotherapeutic function as well as an ideological function for global and transcultural epic narratives. The greatest epic tales explore warrior behaviour, exposing its constantly arising dilemmas, crises, challenges and human issues. They provide food for thought, and for centuries have prompted discussions about war, a topic with which they are obsessed. Nevertheless, a wounded fighter, mutilated in combat, is never depicted as a “victim”: that type of reality is left out, and remains unspoken in epic tale-telling. He will only be portrayed as a wounded “hero”, or possibly as an unjustly defeated martyr.

What the modern era calls “history” has been quick to produce an “edifying” popular narrative capable of being disseminated in schoolbooks, conveyed mainly through dates of victories and defeats and punctuated by the great deeds of war leaders and other heroes. The social imagination, celebrating the heroic model, embraces the commemorative rituals dedicated to men fallen on the “field of honour”, which exorcise the experience of loss through a type of cultural communion. They are a form of sacred recognition that the community owes to those who have given or have lost everything, a condition for maintaining self-esteem and the feeling of belonging among the survivors, and one which no State dare do without, at the risk of weakening social cohesion and consensus.

The way in which culture smoothes out and recycles suffering to promote a kind of consensual symbolic hero worship of hegemonic masculinity is shown by the fact that, in the tradition of epic tales, the figure of the hero remains untouchable, whether in victory or defeat. Whether the hero is triumphant or a martyr, he remains an example and a founder, representing his community’s masculine ideal and reinvigorating the motivation to wage war in both the victor and the vanquished.

Buddy relations

While the social pressure exerted by a culture and by a heroic masculine ethos leads men into combat, even with enthusiasm, the shock of the real is likely to cause an immediate weakening of these “learned” certainties, and instinct takes over in the hostile and violent environment of war. Modern studies of the soldier’s psyche come to the same finding: in the hell on earth that is the battlefield, men no longer fight “for the cause” or any other high ideal.22 They fight and continue to fight to preserve the ties with their comrades, within an emotional closeness that

is the only source of psychological security they have left. Judith Helman, quoting
the research of psychiatrists focusing on the trauma of war, wrote that “the
situation of constant danger led soldiers to develop extreme emotional
dependency upon their peer group and leaders. They observed that the strongest
protection against psychological breakdown was the morale and leadership of the
small fighting unit.”23 Today, all military experts seem to agree that immersing
men in an environment of permanent danger generates bonds of extreme emotional
dependency between soldiers, and between soldiers and their leaders. And any
soldier knows that, to maintain that vital emotional bond, he needs to fight and not
“lose face” among his peers. In other words, more than ever, the recognition that a
fighter obtains from his peers through these “buddy relations” gives him an
emotional foundation, a sort of pride and sense of his own dignity that is
exceptional and of a strength that is unmatched in any other circumstance. That
connection, vastly more powerful than any type of “ordinary” social relationship, is
formed both horizontally and vertically in the traditional military structure. If
unconditional obedience to the leader’s orders merely results from coercion or
disciplinary training, it remains fragile. In combat, however, dependency on the
leader, a figure of ultimate protection in the chaos, is so total, and loyalty to him so
vital, that if the leader shows his men that he is “one of them”, if he takes risks and
keeps a cool head, then his role as leader is invested with an emotional bond that is
as natural and unconditional as that between a parent and child. Finally, the
attachment of the fighter to his “combat buddies” naturally forms part of a wider
spectrum of intense emotional connections, which are vital to his psychological
stability: buddy relations on the front line, but also connections with the “rear”, with
the “home front”, whereby a son writes to a father and mother, a friend writes to a
friend, a lover to a lover. These connections, by maintaining the link between the
soldier’s subjective experience and his “attachment figures”, protect the foundations
of inner security on which his motivation and psychological balance depend.

The bond between this specifically masculine fraternity of fighters is
invariably regarded as “sacred” by the fighters themselves, who are the ones best
placed to know what they owe to that bond and what they owe to each other in
psychological terms. That bond, which has been central to epic tales since the
Battle of Thermopylae, has always contributed to the heroic war being lauded as
revealing man’s most noble qualities. However, at the risk of demystifying the
legend, facts must be faced: it is the circumstances of war and these emotional
ties that in most cases have determined the “heroism” of all those men who had
no alternative but to throw themselves “heroically” into death, because losing face
was not an option for them.

The brutalization of masculine identity

The repression, denial, conditioning and social learning that shore up all
psychological defence mechanisms against painful emotions cause fighters to

close down their emotions altogether. The adaptive response to the trauma of violence is the repression and draining of sensitivity, emotion and empathy. In other words, fighters reduce their exposure in order to become less vulnerable to pain. The descent into gratuitous cruelty is not a recent development, and remains an inseparable part of the history of war. Violence breeds violence, and long-term exposure to violence, brutality, danger and suffering in the homosocial environment of armed forces and masculine fighting forces leads to a serious loss of empathy and the denial of the need for other people. This is a fatal defence mechanism, because it facilitates the process by which stress and the most severe inner wounds are relieved through violent aggression.

It is well known that in order to achieve a cool head in combat, all military training includes a kind of preventative brutalization. From Sparta’s hoplites to today’s marines, that training has always subjected men to intensive humiliation in order to teach them how to resist those kinds of feelings, to restrict their moral horizon to simply obeying the orders of the hierarchy, and to thereby repress their emotions until they are no longer capable of showing the slightest “weakness”. This takes place in barracks that make individuals captive to a homosocial environment in which they are required to mimic the codes of masculinity that surround them, with various levels of brutality, in their actions and words.

The spectrum of humiliation ranges from the most benign – the ridicule we feel when other people look at us in a certain way, for example – to the most intolerable inner pain. On the battlefield, humiliation is built into the environment; everything around the fighter conspires to test his ability to maintain his self-esteem and meet the expectations of his peers and leaders, among whom he cannot countenance losing face.

Intense fear of an omnipresent danger, the loss of control, uncontrollable stress, the inability to protect one’s comrades, the whirlwind of stimuli that prevent any type of rational thought, the moral shock of the inevitable atrocities that a fighter will commit, the impression that one’s own action, personal initiative or anything else no longer makes sense or has any impact on reality – beyond a certain threshold, all of these experiences combine to overwhelm the individual and drag him down into powerlessness, incapable of living up to “learned” expectations. Those extreme conditions are the fate of fighters in civil wars, where there is no longer any battlefield, where all the rules of heroic war collapse into unpredictability and the ubiquity of deadly threat and unlimited violence. Those are the conditions witnessed by the fighters who took part in the People on War study. In those circumstances, the disintegration of subjectivity may cause groups and individuals to adopt hyperactive and compulsive behaviours amounting to a “killing frenzy”, based on the instinctive causal effect.

24 Regarding the traumatic origin of violence and the way it is passed down through the generations through social learning in disciplinary and authoritarian patriarchal societies, see the interesting study by Felicity de Zulueta, From Pain to Violence: The Traumatic Roots of Destructiveness, John Wiley & Sons, Chichester, 2006.
25 ICRC, above note 3.
between unbearable humiliation and violence, as described by James Gilligan and mentioned above.\textsuperscript{26}

Military discipline and strategic interests have always sought to restrict such “misconduct”. However, it only intensifies further when the very expectations of the hierarchy and of the dominant social discourse veer towards the ignoble. That is what happens in war environments that tend towards genocide, ethnic cleansing and collective violence with the intention to exterminate. In such circumstances, “buddy relations” have the unfortunate perverse effect of supporting and promoting the moral regression. The primary connection that boosts the morale of each fighter and enforces the taboo of flight is mostly emotional and instinctive. It is therefore divorced from any moral rationality, and “buddy relations” become the most effective way of brutalizing fighters in the event of a massacre or organized extermination, because of the behavioural mimicry described above. In a context where the fighter is extremely isolated, possessed and therefore made insane by the pressure of a totally corrupt environment, it is likely that he would be prepared to accept any moral compromise in order not to “lose face” and to avoid being cast out of the group, through the unconscious fear of abandonment.\textsuperscript{27}

In the end, it is in the furnace of war and the toxic masculinity of the barracks that the myth of the “violent man’s” nature probably emerged and has been reproduced and disseminated. The personality of that man, with its macho authoritarianism and impulsive temerity – finicky and vigilant regarding anything that could compromise his “honour”, arrogant, easily angered and hardened to any form of “effeminate” sentimentalism – asserts itself as “tough but fair” in the best-case scenario, in a world where men are the standard-setters, where a “man’s word” is law.

The trap of the heroic regime

It is through the combination of excessive privileges and recognition that men have constantly benefited from their “exploits” in war. From the ban on flight, which forms the foundation for social expectations regarding the courage of warriors, and from the related shame of cowardice, men have been trapped by a myth that forbids them from recognizing that they can have their own emotions, and this has condemned thousands of young men to burn in the fires of the hell on earth that is war. The model has been reproduced to some extent from generation to generation, and neither the worst moral lapses, nor the worst suffering or humiliation, nor the worst destruction, has been able to damage that model. On

\textsuperscript{26} J. Gilligan, above note 15, p. 29.
\textsuperscript{27} As regards this type of collective descent into hell, it is impossible not to refer to Christopher Browning’s essential work, \textit{Ordinary Men: Police Battalion 101 and the Final Solution in Poland}, Harper Collins, New York, 1992. However, the extraordinary accounts of Hutu killers, reported in Rwanda by Jean Hatzfeld, are possibly even more illuminating. See Jean Hatzfeld, \textit{Machete Season: The Killers in Rwanda Speak}, Picador, New York, 2006; and \textit{The Antelope’s Strategy: Living in Rwanda after the Genocide}, Picador, New York, 2010.
the contrary, those evils have merely strengthened the momentum of war. However, since the dawning of modernity in late nineteenth century, a new cultural ideology of masculinity has gradually emerged, which obtains self-fulfilment in ways other than the use of force.\textsuperscript{28}

It is reasonable to ask whether the logic of war – which, even as it unleashes hegemonic masculinity, confines it in a psychological and social system of reciprocal and symbolic exchanges and transactions that regulate it and set its limits – has not restricted the extension of “extermination” behaviour aimed at eliminating the enemy, a behaviour which is not in the nature of war. Such behaviour is invariably caused by highly corrupting situations, such as the collapse or breakdown of community structures, likely to cause extreme emotional insecurity and, therefore, extreme brutalization of masculine subjectivity. This is precisely the breeding ground for the post-heroic crisis of hegemonic masculinity that has existed since the 1990s.

The post-heroic crisis

In \textit{The Iliad}, Homer – the father of the Western heroic narrative – explores from the outset the risk of \textit{hubris}, the excessive destruction that war can engender: in war, men are constrained to use force, but the confrontation contains the seeds of excessiveness. The West has not paid much attention to Homer in this respect, and the massacres of colonial wars, World Wars and the proxy conflicts of the Cold War have been hubristic flare-ups that may have sounded like a death knell for the conventional, long-standing warrior ethos. In the last four centuries, following the West’s colonial–imperial model, the world has been engaged in a mad rush to achieve the greatest asymmetry possible, increasingly giving in to extermination tendencies and maximizing the means of destruction without restraint, until nuclear weapons stopped that surge in its tracks by establishing the definitive model of impotent power.

The good news is that conventional war between States has been dying out, and if this trend continues in the next few decades, it will probably save the lives of millions of young men who would have been condemned to death by States continuing conventional wars “as a continuation of politics by other means”.\textsuperscript{29}

The bad news is that in many post-colonial and post-imperial contexts – where these slaughters have drained the available supply of masculine pride, where men have had to repress colossal humiliation, and where whole societies have been stripped of their culture and deprived of their past, their sense of history and their identity – it was inevitable that what had been repressed would


resurface again. That is what has happened, and when the logic of West-versus-East collapsed, an epidemic of civil wars caused resentment to explode and opened up the psychological and social scars borne by various heirs to oppression or “deculturation”, which are synonyms for “modernity” for large numbers of people in what once used to be called the “Third World”. In these civil wars, unbearable narcissistic wounds that had had no chance to heal have been reopened, and it was inevitable that violence would be used to relieve the collective humiliation arising from various types of failed existence.

These civil wars share common elements that can only increase the humiliation and demoralization felt by the fighters: no casus belli, but the collapse of social trust that disrupts relationships with neighbours. Where there are no longer any “battles” worthy of the name, where the symmetry of risk and the territorial nature of the battle disintegrate, the whole social space is transformed into a “dead zone”. In every conventional war there is an effort to limit that dead zone to a “front line” where armed men are supposed to protect the rear, civilians and vital resources, or in other words, territory that is “off the battlefield” and in which the emotional security of the whole group – starting with the fighters themselves – is rooted.

In the contexts of “deculturation” of war, such as those experienced by most people taking part in the People on War survey, negative passions blind the whole group and are made even more acute by anxiety. That anxiety stems from the unpredictable and the incomprehensible, from the previously unthinkable and senseless killing between “neighbours”. It is the anxiety of fighters who realize that they can no longer protect those close to them from a type of violence which no longer has any meaning; anxiety related to a lack of organization, equipment, training and structured leadership; anxiety arising from the blurring between fighters and civilians that makes the whole environment a mortal threat. All of these factors are humiliating for fighters, making them even more susceptible to panic and to the processes of brutalization that cause extermination behaviour and atrocities to flourish. In this ecosystem of fear and hatred, the trade-off between pride and humiliation for which so many men have “courageously” prepared themselves slips into a continuum of passion-driven and perverse violence. Feelings of unbearable humiliation are then relieved especially fiercely through deliberately humiliating forms of aggression, in a spiral of violence that seems impossible to contain: mutilation, rape, torture and massacres form a spectrum of violence that not only lies outside any form of recognition or pride but actively aims to send a message of scorn and of denial of the out-group. It is

For example, the contexts of Afghanistan, Angola, Congo, the former Yugoslavia, Liberia, Mozambique, Somalia, South Africa, South Sudan, Iraq, Libya, Syria and Yemen could be mentioned. We could add, while emphasizing the obvious difference in scale, the Rwanda genocide, the causes of which feature dynamics similar to those of civil wars in the post-Cold War era. This tendency is paradigmatic in the author’s view, although it should be noted that in certain infra-State conflict situations, “heroic” motivations, the sense of one’s own history and purpose, clearly still exist. In the Kurdish fight for self-determination or in the Israel–Palestine conflict, to take just two examples, the motivation and bravery of many fighters is based, albeit to varying extents, on a consistent, consensual heroic narrative.
a situation in which there is no longer any trace of a “victor” after the killing, only the devastated subjectivity of the perpetrators.

Finally, as the ultimate manifestation of the dissolution of the heroic warrior ethos, terrorism and the so-called “war on terror” seem to be the culmination of a slow post-heroic reconfiguration of masculine collective violence. There is no doubt that terrorists are no longer seeking “victory”: it is as if they have learned the “lesson” of the above-mentioned civil wars. It is likely that members of terrorist groups are convinced that they have a “just cause” but if an acceptable doctrine requires a rational relationship between the ends and the means used to achieve them, the relationship that terrorist aggression establishes between ends and means is impossible to defend in terms of the warrior ethos. The means – i.e., terrorist operations – are simply designed to humiliate everyone by creating fear, forcing flight and imposing behaviour that would be “shameful” in a war, with no possible alternative. As has happened so often in the past in war operations that have “got out of hand”, this violence no longer constitutes a war. What remains the exception in war becomes the rule in terrorism, which targets defenceless civilians instead of adversaries. The unexpected massacre of unarmed innocent people is the opposite of the symmetry of risk involved in “fighting your way to victory”, and its sole aim is to sow terror and panic. Civilians are targeted as representatives of a way of life that symbolizes today’s disqualification of traditional patriarchal values. The adherence to patriarchal values is a social model that has to some extent become obsolete and is steadily being forgotten by new generations.

The author believes that terrorism can be interpreted as a highly radicalized way of relieving specifically masculine feelings of powerlessness, felt by men who are humiliated and deeply wounded by the lack of recognition from a society which they feel has doomed their lives to failure. Hans Magnus Enzensberger painted an incisive picture of “the radical loser”: a young man who is denied access to modernity by his circumstances, who has lost everything, but who is the product of the system that excludes him, and who falls back by default on the toxic norms affiliated with certain types of masculinities, which have always been encoded in such a way as to enable him to recover some self-esteem. Furious action, including suicide bombing, can then be interpreted as a defence mechanism against despair and a lack of meaning: a suicide attack borrows the masculine sacrificial values of the warrior’s courage but radically perverts them, since there is no longer any symmetrical combat, since the individual that perpetuates such values is already psychologically dead, and since he is not representing or

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31 This is the counterintuitive view of Scott Atran, who believes that the West is making a major strategic mistake by closing its eyes to the genuine appeal of the Islamic State. Scott Atran, “ISIS Is a Revolution”, Aeon, available at: https://aeon.co/essays/why-isis-has-the-potential-to-be-a-world-altering-revolution.


protecting anyone through his act, other than in fantasy. In the case of the jihadi, that fantasy takes the form of an “umma”, a community of Muslims around the world, which obviously does not exist in reality— but after all, far-right extremists also invoke supremacist community links that are just as fictitious. The radical nature of the loser’s violence here depends on the absolute “narcissistic isolation” of a subject cut off from any social connection, which causes him to hate both himself and the other. His feelings of humiliation can apparently only be relieved by killing himself while killing the other.

The impact of “Islamic terrorism” on the global stage is such that we forget that it is based on a fatal misunderstanding: we are seeing an Islamization of radicality, much more so than a radicalization of Islam. The psychological mechanisms that lead jihadis, lone wolves carrying out school massacres and far-right activists like Timothy McVeigh and Anders Breivik to take action are undeniably similar. On the whole, there are very few practicing Muslims among the many young Western men who, suffering and lacking any bearing, are drawn to Islamic State’s jihad because it offers them an “identity kit”, giving them the impression of restoring meaning to their lives through violence.

Finally, “the asymmetry of the weakest” strategy adopted by terrorists is particularly humiliating for Western societies suddenly stripped of their omnipotence precisely because it makes terrorists unpredictable and elusive, and because it helps them to inflict on the armed forces of modern, peaceful societies one of the worst humiliations. Yet such a type of asymmetry is precisely what characterizes the civil wars discussed above, where the fighters are unable to defend and protect members of their own community against the violence of “enemies” who it is their supreme mission to fight and defeat. There is a tragic irony to this reciprocal powerlessness shown by such post-heroic enemies – conventional armed forces and terrorists on the ground. After some bitter failures and the stalemate reached in many attempts at military intervention based on a heroic-messianic model, modern States no longer want young men to die “on the front line”; instead, they try to combat elusive terrorist threats with smart

34 While Olivier Roy, an expert in Islam, is right to state that the “umma” does not exist other than in a Western fantasy, the People on War accounts relating to Afghanistan emphasized the extent to which a form of “ideal umma” remains a reference in the minds of many Muslims exposed to violence and the dissolution of their specific culture, who find in it a consoling hope of a “superior” identity. See G. Holleufer and P. Cotter, above note 6, p. 25 ff.

35 In the conclusion to his essay, Hans-Magnus Enzensberger emphasizes unambiguously the systemic nature of the “radical loser” phenomenon, which is a product of our modern times: “Attacks [by radical losers] represent a permanent background risk, like ordinary everyday deaths by accident on the streets, to which we have become accustomed. In a global society that constantly produces new losers, this is something we will have to live with.” H. M. Enzensberger, Le perdant radical, above note 33, p. 57. Our modern times constantly exclude certain individuals, whose violence can therefore not be reduced to any disease of individual subjectivity.


37 S. Atran, above note 31.

38 The author chooses to focus on Western societies as an example because he believes they could feel particular frustration since the West tends to consider itself as being in charge of global security issues.
weapons systems. The war between drones and presumed terrorists, lying in ambush and often sheltered by the human shield of the surrounding population, takes on a novel and unusual form of symmetry: modern States are using human-free weapons systems against men who are already dead and have been transformed into bombs. Obviously, although the two sides’ motivations are diametrically opposed, at root terrorism and drone warfare share a common modus operandi: on both sides it becomes reduced to an erratic and potentially endless series of “strikes” that aim to achieve not “victory” but the elimination of the other without resorting to “combat”. There is nothing here that can engender any real masculine pride, nothing that could resurrect a relationship of recognition between enemies, even between the victors and the vanquished. Dialogue with terrorism is impossible, since its real language consists of extreme and arbitrary violence, a language of terror addressed directly to its enemies’ media, which pass it on and broadcast it extensively, in a way that merely perpetuates the violence that they condemn.

Conclusion

To summarize, we can posit that, during the 1990s, the global process by which hegemonic masculinity was reconfigured became significantly more intense, and it is hard to retrace its history here. A regime of violence, which the author refers to as “post-heroic”, became widespread, cut off from its roots and taken out of the battlefield. The drama of aggression no longer consists of promoting a transaction between pride and humiliation in face-to-face combat “between men”; rather, it involves creating essentially extermination-based operational procedures from which no-one can derive any pride. Those procedures have become locked in an endless cycle of violence, mistrust and social scorn, and as well as constantly propagating terrorism, their most recent incarnations are the flood of violence being inflicted on the Muslims in Myanmar and the endemic forms of violence arising from the civil wars currently taking place in Syria, Yemen, the Democratic Republic of the Congo and South Sudan.

Today, instead of helping to underpin the community and strengthen ties of belonging, instead of restricting aggression with the socially integrating values of combat and of the warrior ethos, collective hegemonic masculinity is sinking into a tendency to deny and exterminate the other. This only increases feelings of humiliation on all sides, harmful feelings that render impossible any type of

39 The useful work done by Edward Luttwak on “post-heroic warfare” should be mentioned. Luttwak analyzes in detail the Western tendency to avoid loss of life and its consequences in conducting war in his essay “Toward Post-Heroic Warfare”, Foreign Affairs, May–June 1995. However, the present author uses the term “post-heroic” in its more widely accepted meaning, which aims to include the experiences of fighters in conventional armed forces and in the full range of irregular armed formations seen today, within the same overarching psycho-social reality.

reciprocal recognition (emotional, legal or cultural) – which, according to Axel Honneth’s typology, is a requirement for social relationships and coexistence, even in cases of conflict.\textsuperscript{41}

It is unclear where this movement will lead. Although today’s gendered violence reveals to the observer the mythical, self-fulfilling and illusory foundations that have allowed war to perpetuate itself, it shies away from any attempt to give any “noble” meaning to armed aggression.

If we explore this shift in humanitarian terms, we reach two conclusions. The first is that most fighters in the world today must be regarded as active victims of a kind of violence that, in the post-heroic configurations arising from the ongoing disappearance of the warrior ethos, can simply no longer be regarded as a plausible continuation of politics “by other means”, or even as a source of any legitimate type of masculine pride. The new uncharted territories – including the ghettos of the modern city and danger zones such as South Sudan, the Democratic Republic of the Congo, Afghanistan and Yemen, which seem forgotten and in which millions of demoralized young men are trapped – will always be fertile ground for recruiting and replacing the perpetrators of post-heroic violence. This should be enough to prompt discussion about the resources that should be used to engage with these men, who are demoralized and disconnected from the world – to restore a link with a reality that is not deadly and that can offer alternatives to violence where such alternatives no longer seem to exist. Henry Dunant lifted men physically wounded in combat from the realms of the unspoken, making them the focus of relief efforts. It could be argued that his legacy should include targeting men who are psychologically and socially wounded in a universe of violence no longer founded on combat, but on a systemic syndrome whereby men brutally relieve feelings of failure, powerlessness and humiliation.

The second conclusion is that, in a global context in which the rules on the conduct of hostilities are increasingly struggling to have an impact, regardless of how they are adjusted, it may initially seem that the priority is to remind parties of their legal obligations. However, that would be to ignore the fact that the problem does not involve violations of recognized laws, but a gradual shift in the very paradigms that used to form the basis of war.\textsuperscript{42} If that shift is moving the warrior ethos towards a post-heroic state, as we have discussed above, we must move away from a prescriptive approach, because it is pointless to disseminate rules when they have become incomprehensible because the frame of reference that validates them – i.e., war according to the traditional warrior ethos – is disappearing, like the whole ancient world that is fading before our eyes.

As a result, the answer is not to remind people of the rules, but to remind violent men of their identity. In other words, to prevent humanitarian law sinking

\textsuperscript{41} A. Honneth, above note 13.
\textsuperscript{42} For example, there are numerous fighters who have no knowledge of international humanitarian law. One may argue that their original culture should have taught them some traditional rules as warriors, but this may not be the case today given the above-mentioned global deculturation of war, which places it further from the traditional “paradigms” of war.
into a kind of self-commemorative state, we must restore a psychological and social connection between the law and men, by directly addressing the need for recognition that we all share. This is not a kind of naive evangelism, a pious wish, marketing or collective psychoanalysis, but the desire to restore a dialogue with men who are suffering precisely because they are excluded from the modern world. The final goal would be to explore the issues through dialogue with those most affected, with an open mind, instead of giving ready-made responses. This may prove impossible. However, one of the ICRC’s unique characteristics has always been its constant willingness to “talk with the devil”, to meet all participants in war without prejudice and regardless of the circumstances. When carrying out the People on War survey, which involved a high level of interaction with all kinds of fighters for several months, there were often doubts as to whether it was even possible to meet and talk with certain particularly violent armed groups. By way of conclusion, let us describe one of those apparently impossible meetings. In 1999, in South Africa, a project team managed to meet a group of former militia, undoubtedly “dangerous” men, armed to the teeth and with a price on their head. Not only did they agree to meet but, gradually, they opened up about their own violence, which they discussed with authenticity. At the end of the discussion, the group’s imposing commander stood up with a sombre air, causing those present to fear the worst. On the contrary, however, he approached the head of the team and said, “You know, the world considers us as wild animals, and my hands are stained with blood, but this discussion gave me back part of my dignity.”

43 Can there be any clearer exposition of the post-heroic masculine condition? Also, since discussion seems to give men back their identity and boost their self-esteem through the simple recognition provided by a real interaction, might not this contain the seed of some practical way forward? Might not this offer the highly pragmatic prospect of meeting and restoring connections with people in places where that is least expected?

43 This story is a personal memory of the author.
Cultural memory and identity in the context of war: Experiential, place-based and political concerns

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Abstract
Remembrance of war and conflict exposes the intricate interweaving of cultural memory and identity. Nations commemorate war to link narratives of the past with the present. This linking creates shared national narratives that temporally reinforce identities across the geography of the nation and among diverse citizenry. In this paper, the authors turn their attention towards the experiential and place-based concerns of the politics of memory within the context of war. It is argued that through attentiveness to individual experience we can better understand how cultural memory is enveloped into constructions of identity and critique such constructions alongside official narratives.

Keywords: cultural memory, national identity, commemoration, politics of memory.

Introduction
Nation-based memories of war have long been linked to articulations of national identity, to patriotism and to efforts to sustain the importance of the past, both in a nation’s present and in future-oriented notions of cultural and collective identity.1 War and conflict so often punctuate the continuity of a nation’s memory timeline and leave memories of wounding, trauma and suffering, regardless of victory or defeat. These wounds are “felt” both in the material structures of a nation – in its buildings, artefacts and cityscapes2 – and in its psyche, or its sense of identity, its capacity for recovery and its empathy towards those who lost their lives. In cases of territorial subjugation, such wounds are particularly pronounced and often have extended longevity. Here, one need only think of the extent of post-socialist renaming of streets and towns or the public removal of statuary in the former Eastern Bloc to see our point.3 Yet beyond such impulses to remove material and physical reminders of occupation, intangible wounds remain inevitable. As Drozdzewski et al. argue, such memories of place, and the etching of identity in, on and to those places,4 seem always to simmer and potentially provide fuel for further conflict, as was the case in the 2014 Russian annexation of Crimea. Such examples make it clear that memory matters to our individual constructions of identity, as well as to constructions of collective national identity.

4 Danielle Drozdzewski, Sarah De Nardi and Emma Waterton, “The Significance of Memory in the Present”, in Danielle Drozdzewski, Sarah De Nardi and Emma Waterton (eds), Memory, Place and Identity: Commemoration and Remembrance of War and Conflict, Routledge, Abingdon, 2016, p. 3.
In this paper, the nuanced ways in which cultural memory “matters” in different national contexts is explored. Drawing from the work of Astrid Erll, the authors treat cultural memory as encompassing notions of collective and social memory. Here, the “cultural” serves to embed memory in the practices, stories, myths, monuments, events, rituals and other configurations of cultural knowledge that weave together past and present amid their “socio-cultural contexts”. In a rapidly changing world, where the incidences and implications of conflict show no sign of abatement, it is crucial to continue to probe at the nexus between memory and identity, and to interrogate not only how memory is used for political purposes but also how it extends far beyond normative materialities of memory, exemplified by monuments, memorials and museums.

Such explications are crucial not only for conceptualizing the nation, but also for becoming part of that nation and feeling a concomitant sense of belonging. Indeed, nations rely on memory to assert collective identity and strengthen national resolve. In other words, if “memory makes us what we are”, one needs to look closely not only at the way national identities exercise elasticity and stretch, but also at how they are deliberately plied. Amid the (frightening) global momentum for nations to look inward and exclude difference, and for fear of the other to predicate how national identities are evolving in an era of global mobility, studies focused on memory tell us about much more than who we were in the past. This paper contends that such studies tell us what we can be in the future, why, and what political decisions and resources can be mustered to support different visions or versions of identity. Moreover, how calls to action that use memory are framed, the terms in which memory is manifested and described, and the empirical and conceptual location of memory can all shape what cultural memory means, how it matters and what it does.

From the perspective of geography, memory is understood as being firmly grounded in its links to place and identity, but also to the role of power in representations of memory. By attending to the politics of memory, we can apprehend not only how power impacts and influences the experience of representations of memory, but also how it affects the (re)production, maintenance and performance of identity. While explorations of the politics of memory are hardly new, this paper’s orientation towards the experiential, sensory and emergent distinguishes it from other scholarship investigating the nexus of memory and identity. By focusing on memorial sites, events and the everyday, the authors show how a focus on how people experience, understand and make sense of the narratives promulgated by the State can illuminate where these


narratives might likely be transformed or used to particular political ends. In short, the paper argues that by attending to experience, we can gain new insight into how memory and identity fold together, with a fresh perspective on the resulting political implications.

Following an introduction to the politics of memory, three thematic sections will present an assemblage of viewpoints through an experiential lens. First, the location of memory will be explored through an examination of the official memorial sites associated with Pearl Harbor in the United States. Building on this, the article will touch upon the event of memory by exploring ceremonies that commemorate conflict, drawing out a range of experiential aspects that shape how societies make sense of these moments. The penultimate section focuses on memory’s spatiality, paying particular attention to the everyday landscapes of memory that intersect with daily routines. The sections below investigate the ways in which memory becomes a part of our experiential worlds, illustrating the details of how memory is expressed, felt and experienced.

Memory and its politics

Tosh has argued that moments chosen as symbolic to the nation work to confirm both self-image and group aspirations. Instrumental in this process of “choosing moments” are attempts to connect the past to the present by creating a milieu of shared historical consciousness through which representations of the past are deemed of importance to the collective present. Further, Osborne has argued that public monuments often act as “consensus builders”, thereby becoming “focal points for identifying with a visual condensation of an imagined national chronicle rendered in heroic symbolism”. Such focal points are important sites from which national identities are scaffolded; they are not merely the material and everyday backdrop of the urban facade but are an integral part of a nation-building agenda. Ewa Nowicka-Rusek and Ayur Zhanaev provide a clear example of this in the form of contemporary nation-building by the Buryats (Siberia), who draw heavily on the figure of Genghis Khan in public monuments, films, TV series and songs to communicate a sense of strength and cultural maintenance.

Accordingly, memories of nation are stories of the past specifically chosen by the State to impart a certain version of a nation’s past to the public. Because these State-led memory narratives are not experienced by all individuals in the same way, the State uses prompts to create, and then invoke, memory narratives of nation-based events; for example, specific dates and the form of commemoration for a historical event are chosen (such as Remembrance Day in the United Kingdom), and streets are named for significant people, places or events (such as those

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named for Martin Luther King in the United States). Decisions about such symbols are executed by people in power and, as they are often not made without a struggle, comprise a politics of memory.\textsuperscript{10} Rusu has argued that a politics of memory involves the use of political strategies to come to terms with the past.\textsuperscript{11} The use of memory in national discourse also builds continuity: memory links past to present because, as MacDowell argues, “without memory, a sense of self, identity, culture and heritage is lost”.\textsuperscript{12} Moreover, as Graham Smith contends, “[c]ontinuity is the socially constructed sense that a group has a relatively consistent connection between its past and present”.\textsuperscript{13} This sense of continuity, whether real or imagined, is a key component of the politics of memory.

Critically, processes of identifying or creating national memories invoke the senses. This aligns with approaches in memory studies that identify how important sensorial cues are for making memories stick with us. As Drozdzewski \textit{et al.} have argued, “a smell, a familiar touch, an image, a sound once heard before can transport us not only to different times but also different places”.\textsuperscript{14} At a routine level, then, memory is “a highly important element in the account of what it is to be a person, as it is the central medium through which identities are constituted”.\textsuperscript{15} These intimate experiential memories become part of how we define not only ourselves, but where we have been and with whom. Via similar sensorial prompts, memory narratives championed by State authorities permeate public spaces and everyday lives to shape how national identity feels as much as how it is understood.\textsuperscript{16} This experiential, sensory “everyday nationhood” is evidenced in the sight of national buildings or monuments, the sound of music such as national anthems or public broadcaster themes, and the flavours of cuisines identified as specifically national.\textsuperscript{17} Conflicts over the latter in relation to their inscription on the Representative List of UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage are a case in point – fierce disputes over national ownership have ensued, for example, between Turkey and Armenia due to the inscription of the dish keşkek, prepared from meat and

\begin{thebibliography}{17}
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\item D. Drozdzewski, S. De Nardi and E. Waterton, above note 4, p. 1.
\item Michael Skey and Marco Antonsich (eds), \textit{Everyday Nationhood: Theorising Culture, Identity and Belonging after Banal Nationalism}, Palgrave Macmillan, Basingstoke, 2017.
\end{thebibliography}
crushed wheat, on behalf of Turkey in 2011, despite opposition from Armenia, which also claims links to the dish’s origins.\textsuperscript{18}

**Remembering in place**

Many types of memoryscapes can, and often are, captured within the rubric of “heritage”. These include burial sites, battlefields and memorials dedicated to wars, as well as other events such as those created at the perimeter of Ground Zero, Manhattan, in the immediate aftermath of 9/11.\textsuperscript{19} While numerous memoryscapes are created to commemorate or celebrate a sense of achievement, many are established to honour, remember or justify political acts, such as the Vietnam Veterans Memorial in Washington, DC, or the Australian War Memorial in Canberra. These places might be referred to as sites of “dissonant” or “difficult” heritage, as places that open up dark or painful histories and foreground the politics of the past in the present.\textsuperscript{20} Much has been written about such places and the connections they have with cultural memory and identity, particularly from post-structural perspectives.\textsuperscript{21} Such scholarship has done important work in uncovering the relations of power implicated in any attempt to represent the past, and in revealing implicit political meanings and associated processes of marginalization. Relatedly, this literature has also explored the many instances in which memorials and heritage sites have been mobilized to invoke agitations against domination, such as in post-conflict struggles over recognition and reconciliation. Clear evidence of this can be seen in the flurry of active memorial-making in post-Soviet Mongolia, or the purging of Soviet monuments following the collapse of communist control in places like Georgia, Uzbekistan and Tajikistan.\textsuperscript{22} Other examples within this mix are official locations of remembrance such as national museums, memorials and monuments.

As Jay Winter has argued, these sorts of sites, often located in symbolic settings, are “places where groups of people engage in public activity through which they express ‘a collective shared knowledge’ … of the past, on which a


group’s sense of unity and individuality is based”. Moreover, such places of memory are key materialities in the wider processes of nation-building. Dealing as they do with collective memories, or “what remains of the past in the lived experience of groups”, such memorials and museums are necessarily imbued with messages and meanings that are social in origin and are embedded in a range of cultural, political and economic contexts. The memories they trigger and produce are thus also inflected with, and influenced by, language, rituals and commemorations, and perform in a variety of processes that make past events meaningful in the present.

Memorial landscapes such as Auschwitz-Birkenau Memorial and Museum, Hiroshima Peace Memorial Park and the Pearl Harbor memorial complex form a particular variant of this sort of “dissonant” or “difficult” heritage, in that they narrate the trauma of war in places that are built around the residual or material remains of conflict – memories literally etched into place. As reminders of pain and destruction, such sites, as Curti argues, are “always performed and felt between, in and through bodies and thus always work through entangled forces of emotion, affect and memory”. As such, they hold particular sway in the imagination. Their evocative power lies in the links they are able to make between the physical spaces in which visitors stand and what is known to have happened there. The way such sites are officially framed and represented plays a significant part in the overall memorialization process, signalling at least part of the range of responses one might have when reflecting on the horrors of conflict and war.

However, as Curti claims, there are other responses at work too, and these are often more personal. Such responses are not immediately expressible but are deeply felt, physical and visceral, and emerge as visitors react to atmosphere and a sense of haunting in situ. The physicality of many heritage sites thus acts as an anchor between “now” and “then”, and is perhaps best understood as a vector for feelings of identity and belonging, through which historical events come to have an enduring impact on our emotions and understanding. Such processes may be referred to as “embodied remembering” and point to the “experiential dimensions of memory”. At the same time, it is important to be mindful of the risks of presentism in prioritizing the immediacy of the “here and now”, which can, if left unchecked, diminish the importance of past experiences. Indeed, as Bergson has so powerfully argued, “[t]here is no perception which is not full of

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memories. With the immediate and present data of our senses, we mingle a thousand details out of our past experience.”

The heritage of Pearl Harbor

To explore these processes in the context of war and cultural memory, one need only look to the memorial sites associated with the attack on Pearl Harbor of 7 December 1941. This case provides a powerful example of how some objects, people and places can grow “sticky” or saturated with affect, to borrow from Sara Ahmed – or, in other words, charged with meaning due to their associations with significant events. It is an example that also has strong echoes with Trigg’s work on the memory of place, in which he considers the various ways in which materiality, or the incision of a monument within a landscape, interacts with “the making of memories” and the placing of “our own selves within relation to that past”.

The memoryscape of Pearl Harbor beautifully illustrates the pulsing relations between war, cultural memory and identity in its changing orientation to national memory. Pearl Harbor, as a memorial complex, is an important site of memory in the US context, where it has become the end destination for a significant secular pilgrimage. In this regard, it has an incredible spatial reach. A National Historic Landmark, with parts still operating as an active military base, the Pearl Harbor memorial complex is comprised of the Pearl Harbor Visitor Centre and USS Arizona Memorial, the USS Bowfin Submarine Museum and Park, the USS Missouri Memorial (affectionately named “the Mighty Mo”) and the Pacific Aviation Museum. In addition, the complex includes a number of mooring quays that formed part of “Battleship Row” within the Harbor itself, six historic chief petty officer bungalows, the USS Utah Memorial and the USS Oklahoma Memorial, all of which are located on Ford Island. The narratives associated with Pearl Harbor draw explicitly on the Japanese attacks that mark the entry of the United States into the Second World War in 1941. On the morning of 7 December, just after 8 a.m., 183 fighters and torpedo bombers targeted the 185 vessels of the US Navy that were moored in Pearl Harbor, including seven battleships clustered together close to the eastern shoreline of Ford Island on “Battleship Row”. Five of the battleships sank, and the other two were badly damaged. One, the USS Arizona, sank in nine minutes but burned for two days: 1, 177 servicemen died, leaving 337 survivors.

The first stirrings of an interest in preserving elements of the complex as a mode of remembrance emerged in 1949, with the establishment of the Pacific War Memorial Commission, which was followed by a Congress-endorsed authorization


to build a memorial to the USS *Arizona* almost a decade later. Its centrepiece, the 184-foot USS Arizona Memorial, designed by architect Alfred Preis to straddle the ship’s sunken wreck, was opened to the public in 1962 – at the height of the Cold War. Initially operated by the US Navy, this early iteration of the memorial complex revolved around water transportation to and from the shoreline and the USS Arizona Memorial. In 1965, the naval base at Pearl Harbor was designated a National Historic Landmark, and from that point onwards visitor numbers steadily increased. The visitor centre opened in 1980, at which time the Navy handed over the management and organization of the site to the National Park Service, though it retained control over transportation to and from the USS Arizona Memorial. Shortly thereafter, in 1981, the USS Bowfin submarine arrived, effectively developing into the USS Bowfin Submarine Museum and Park by 1987. Just over a decade later, in 1998, the USS Missouri, recently decommissioned and struck from the Naval Vessel Register, was donated to the museum complex. In 2006, a final historic site was added with the Pacific Aviation Museum, which includes two of the original aeroplane hangars and the Ford Island Control Tower, all three of which were in operation in 1941. There is no shortage of remains left in place at Pearl Harbor that may serve as reminders of trauma.

The authors’ interest in Pearl Harbor lies in its ability to illustrate the power of places to “gather, attracting people, memories and affects” around them, or to operate as what Gaston Gordillo has described as a “bright object”. In using this term, Gordillo is referring to the ability of some things, people or places to “attract because of the way they relate to other subjects”. Pearl Harbor offers a clear illustration of the way an object of war can, and often does, become an object of memory, not only because it has a resilient gravitational pull and affective intensity, but because it is also used to define the meaning of other objects and events in its vicinity. For instance, Pearl Harbor’s “brightness” may have diminished in recent years were it not for the occurrence of 9/11, which brought renewed focus – nationally and internationally – to American wartime history and memories. Significantly, these two events represent the only times the nation has been attacked on its own soil, such that the 9/11 attack prompted those places associated with the Pearl Harbor attack to re-emerge as key reference points for both the media and the public. The release of the Hollywood blockbuster *Pearl Harbor* in 2001 similarly pierced the popular imagination.

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34 Ibid.
35 Ibid.
working to ensure that visitors would continue to actively seek out its memorial spaces, which currently attract some 1.8 million visitors a year.

In addition to their ability to “pull” other objects and meanings to them, memorial sites like Pearl Harbor have the benefit of allowing visitors to see and feel history in context and on site, which is an important component of the war/memory dyad. However, this pull factor is not a nod to the importance of “authenticity”. Rather, it inflects and references a site’s ability to conjure up feelings of “being there”, or put another way, authentic feelings. At Pearl Harbor, the ability to enter the USS Bowfin submarine is vitally important, as is standing above the USS Arizona or gazing down on the Surrender Deck of the USS Missouri – all three examples give a sense of space, confinement, touch, silence, claustrophobia and helplessness. Interestingly, the USS Bowfin was not moored in Pearl Harbor during the attacks themselves – it was launched into service precisely one year later. But the opportunity to board a submarine that was in service during the war, one that is now moored within the historic memoryscape of Pearl Harbor, is for many visitors a crucial experience. The concept of “authenticity”, then, plays a fluid and changing role in processes of memory: the materiality of the submarine is “real”, but the location itself is something of a necessary surrogate.

This observation allows us to extend our thinking towards affective capacities – what a body is capable of feeling and doing. This is a notion positioned somewhere in between human and non-human agents, and it effectively blurs the boundaries between them. The memoryscape of Pearl Harbor provides an illustration of the way memory-work is contingent upon a visitor’s own histories and memories, the nuances of their personalities, social positions, cultural affiliations and ethnic backgrounds, and the discursive realms within which they operate and to which they respond. But it also confirms that such processes of memory-making are contingent not only on the human. The affective capacities of the Pearl Harbor memorial complex push forward a narrative of the past that is almost entirely American and based on narratives of warfare and nationalism. In this, the memorial becomes a clear component of a wider political project: its narratives are consumed by an overwhelmingly American audience, a significant portion of which, as research has shown, feels compelled to visit Pearl Harbor as a way of performing their own individual national duty.37 In other words, they have the capacity to be affected in very particular ways, and thus come to know and connect with the nation through their visit in ways that revolve around acknowledging sacrifice and subsequent military action or service. This ability to know and remember the history of Pearl Harbor is particularly expressed in an apparent contradiction: the unimaginability of the attacks together with the violence, suffering and visceral horror, and at the same time the idea of a connection, or an identification of the subjective

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experience that is activated and energized by the affective and emotional motilities that the non-human site and its human event engender together.

The relative “brightness” of sites such as Pearl Harbor lies in their ability to speak to, and in many cases (re)affirm, a sense of both personal and national identity. Moreover, it is the process of “being there”, in place, coupled with the visceral sensations of pride and honour that are produced there, that particularly thickens the site’s capacity to move and affect, which in turn lends it the ability to “weigh on” and intersect with a variety of visitors as they move around the complex. In the next section, these relations are explored through the act of commemoration.

**Commemorative events**

Given that heritage sites such as those associated with Pearl Harbor play a vital role in how the relationship between memory and collective identity is understood, the regular use and animation of such places through commemorative events is crucial. In this section, the authors consider memory and identity by way of regular commemorative events, and the collective and experiential analytical orientations that investigating them affords. These are rituals on a predictable, often annual schedule, of which many people have foreknowledge and previous experience, and that are intended to reinforce particular narratives of group memory and renew the connection of individuals to those narratives and to each other. Moreover, these events often carry particular sensorial and material aspects that are central to how they are experienced and what meanings they carry. Memorial or heritage sites, as discussed above, are spaces redolent with representative symbols, which also often invite or compel us to engage with them bodily in particular ways, such as tilting our heads to look up at their statues or displays or walking quietly through their hushed, reflective spaces. When these sites are activated by a commemorative ritual, elements such as music, artificial and natural light, weather, gatherings and the recitation of well-known texts temporarily transform them into significant and atmospheric places which do particular forms of work in terms of memory and identity. Accordingly, in this section the authors will focus on commemorative events’ regular nature, which builds accreted foreknowledge and anticipation for individuals whilst also reinforcing the events’ importance in the public imagination. Next, the opportunities such events provide for widespread reflection, conversation and debate about group identity, as well as their inherently collective character, will be explored.

Wagner-Pacifici speaks of a reimagined version of the event in which commemoration can be thought of as a “provisionally congealed moment” of the

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occasion that it seeks to reinforce in collective memory. In her example, the 9/11 terrorist attacks in the United States must be understood as having subsequently moved “beyond the initial stage of incoherence, rupture, and surprise” to be sedimented in official forms that include memorials and that have become “part of the event itself as it lives on in intermittently tamped down and restless modes”. What is important about the relationship between memory, identity and how they are taken up and understood by way of experience is her point that in remembering events, we must grapple with their restless and mutable nature – the fact that they come to take on new meanings and change in significance over time. This point is pragmatic because, as will be discussed below, a focus on commemorative events demands that not only their regular rhythms and familiar discursive elements are attended to, but also their contingency, their particularity and the diversity of engagement that participants have when participating in them. Moreover, attending to the specific detail of memory events and sites helps to see not only how they work, but also the extent of their reach and the fixity (or not) of who they might be able to include. Such attentiveness to place and event becomes important politically when we consider who is rendered as “other” in memory narratives and what may be the implications of this “othering”, for example in questions of social justice, post-conflict reconciliation, multicultural inclusion or the political transformation of the State. For example, in Australian military commemorative events, the formal recognition of Indigenous service people has only recently begun to occur, demonstrating how narratives can be transformed, but also how hard-fought and delayed such recognition can be.

Accordingly, four aspects of commemorative events and the way they are related to the politics of memory and identity will be further explored, with an emphasis on the importance of empirical approaches that attend to the specificities of place and event.

First, as part of annual calendars of national events, commemorations reinforce specific narratives through regularity and the repetition of particular elements from which they are comprised. The opening notes of familiar music, for example, or sounds that punctuate the rhythm of events, such as gunshots or murmured speech, signal when the visitors are engaged in a ritual and lead them forward from moment to moment. These rituals are enacted by way of bodily gestures – gathering, standing, bowing, placing hands over hearts – that layer their meanings into physical memory. Particular days may be looked forward to or dreaded, because the same day on previous years could have conditioned the understanding of the event in general. Anticipation is one way to understand how

40 Ibid.
41 Ibid.
Commemorative events are articulated and interpreted. For example, in the case of Anzac Day, the annual day of national remembrance in Australia, and its ceremony of Dawn Service, “anticipation is built publicly in the days leading up to [the event] with an increased intensity of media coverage, and at a personal level by the preparations and bodily experiences of collective movement to memorial sites immediately before the commemorative ritual”.\(^{44}\) The emotional terms in which the event is remembered in previous years—perhaps as moving, sad, boring or annoying—coalesce to form part of how it is understood in general, and are often imbricated in visitors’ stances towards the narratives it promulgates. These regular, bodily performed rituals act to connect participants together in commemorative moments, and provide a sense of connection to people they imagine have performed or will perform the same ritual in the past or future. Those points of connection are crucial in the formation and maintenance of (imagined) national communities.\(^{45}\)

The peculiar temporal effect of these events’ repetitive nature, however, is not limited to how they build foreknowledge and anticipation each year. It also shows how commemorative events are as much about the future as they are about the past. They are a way for the State and participants to speak forward to other people who will come in the future and experience what is thought to be significant in the present. Middleton and Brown suggest that this focus is akin to thinking about “imaginary futures in the past”.\(^{46}\) The necessity for forward thinking helps us to understand why governments invest in memorials, museums, repeated rituals, education and many other forms of national historical representation and experience in order to reinforce and protect particular memories and particular ways of remembering. Linking the past to the present and having the populace connect with that narrative reinforces the collective adhesiveness of national identity narratives—the so-called “stickiness” mentioned previously. Official remembering is a way to reach into the future, to try to legitimate certain perceptions by making them difficult to forget and by leaving material and immaterial remains to shape the understandings of others. This organized remembering includes the rhythms and material and sensory elements of regular commemorative events.

The second notable aspect of commemorative events is that they provide an opportunity for public reflection on matters of shared identity. To that end, they are usually accompanied by widespread media coverage. These are moments in which chosen memory narratives are certainly used to buttress national identity, but there might also be openings for challenge, contestation or transformation. For example, journalist Paul Daley treated Anzac Day 2016 as an opportunity to

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point out what was not remembered during the “carnival of commemoration”. Daley emphasized the silence on many aspects of conflict, such as the death or disfigurement suffered by combatants and others and the large sums spent reinforcing commemorative narratives. Most notably, Daley and others have pinpointed the politics of memory of Anzac narratives and how they obscure national recognition of the frontier wars and violence against Indigenous people that was and is at the heart of the Australian colonial project. Historian Mark McKenna, for instance, has argued that Anzac Day is a form of political displacement which salves public unease and distracts from the unresolved and ongoing dispossession of Indigenous peoples from their land. Relatedly, Drozdzewski and Waterton have questioned how and whether the Anzac narrative is elastic enough to stretch to encompass Australia’s increasingly diverse population. Yet, they also point out that deviation from the accepted public narrative is scarce and that vilification ensues from such dissonance. Thus, the regular commemorative moment of Anzac Day enables an ongoing debate and shaping of public engagement with historical narrative in Australia.

A third aspect is the way in which commemorative events draw together and invite people to participate in a collective practice. This collaborative remembrance happens in two distinct ways. The first is the knowledge that many others are commemorating the same event. For example, Anzac Day in Australia occurs every year on 25 April, when Dawn Service events are held around Australia and the world. The coming together of citizens is demonstrated and made visible by rolling coverage on the national public Australian Broadcasting Corporation network, which begins with the local metropolitan Dawn Service and the official national ceremony at the Australian War Memorial in the capital city of Canberra. Coverage continues throughout the day, following the rising sun at Australian memorial sites in Gallipoli (Turkey) and Villers-Bretonneux (France), and various locations in Southeast Asia. This span of coverage means that Anzac ceremonies are on television from 5.30 a.m. to around 3 p.m., contributing to a sense of collectivity made manifest through collective participation and/or spectating of the ceremonies.

A final aspect of collectivity that requires attention takes place at the ceremonies themselves. The experience of gathering in the pre-dawn light, standing in a large group waiting for the ceremony to begin, and murmuring the same words or singing the same songs with a crowd that can number into the

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tens of thousands is powerful for many people. At these moments, the imagined national community is immediately evident and visceral, with groups of people around the country sharing experiences that are made more significant through their collective nature. Scenes of this connection are beamed nationally via media broadcasts. However, at the same time, the bodies of others can diminish or complicate the rhetorical impact of the event, for example as their umbrellas block the view or the rustling of their coats or their murmured conversations make it difficult to hear the speeches. The point here is that because State-sponsored commemoration is so often experienced collectively, the particular affordances of being in a group must become a part of the understanding of conflict and trauma and how commemoration matters to people and influences particular configurations of perception.

Commemorative narratives are often understood in the abstract in relation to feelings of pride or grief, narratives about individuals that come to symbolize whole groups, or exemplars for so-called national characteristics. Cumulatively, however, they are always experienced as a particular set of material, sensory and discursive conditions. Commemorative events blur State-sponsored memory and narrative with the particular, lived conditions of which they are comprised. Mitchell identifies an implication for the politics of memory and identity related to this when she remarks:

The repetition engaged in various commemorative events and rituals … is crucial in blurring the differences between individual interpretations of events, and creating a single, highly idealized, composite image. This image then forms the generalized social framework for future recollections, and through time, individual memories tend to conform and correspond with this composite.

When visitors attune to the bodily and sensory experience of memory sites and events, certain meanings can be parsed in terms of individual experience, an approach that opens up potential for them to be reimagined. This experience then “shows how both the representational and the more-than-representational are important elements in the creation and maintenance of national identities, and recognises this as related to the interaction between people and their built environments”. For example, while Anzac Day might be presented in terms of its invocation of a particular historical discourse, the experience of actually attending a ceremony can be chilly, uncomfortable and tiring. As the experiences of such events have shown, there might be moments of reflection and of engagement with collective memory, but there are also cold feet, tired eyes and sore backs from waking early and standing for an hour in the pre-dawn autumnal weather. Thus, the connection between memory and identity might not be as

52 S. Sumartojo, “Commemorative Atmospheres”, above note 38, p. 5.
determined and monolithic as the State would sometimes have us believe, but instead is conditioned and intertwined with the fleshy, affective and individual engagement of the people through whom it is meant to do its work. This engagement becomes even clearer if one looks beyond official and State-sponsored memory sites to those of the everyday.

**Remembering and the everyday**

In scrutinizing the relationship between memory and identity, the authors have thus far focused on official locations and events of memory. In both cases, the spatiality of memory, or the “a-where-ness” of memory, is paramount. The place of memory, its physical locale linking memory to territory, and the metaphoric and atmospheric places of memory created through the performance and practice of commemorative events rely on the bounding of memory to specific geographic places. Routine commemoration and official designation imbue these places with significance to the nation through things like monuments, memorials and historical plaques. Such places often rely on official and State-led designation to coordinate large-scale and ongoing acts of remembrance, testifying to the importance of what is being remembered about the nation, as much as where it is being remembered. In this final section, the authors shift their focus to the everyday, which encompasses the places, landscapes and spaces of our daily routines, and can include streets, commercial areas, parks, public squares and playgrounds. These are locations where we work, live and recreate; we also move between, in and through them, sometimes at speed while we are hurrying from one daily task to the next. They are also the types of spaces and places that we innately and intimately know—we can navigate them (almost) without thinking because we rely on our memory of them. Memory resides in such spaces and places, often without us realizing the extent of our vernacular expertise. Because movements and thoughts in these spaces and places are often directed not towards commemoration or remembrance but towards our daily routines and tasks, the operation of a politics of memory may not be necessarily apparent or overt. Yet, the streetscapes, parks and public spaces that we traverse daily nonetheless portray the nation’s memories.

Overlaying a consideration of the everyday as a location where memory and identity share a symbiotic and intricate relationship is a focus on small-scale acts of commemoration. Small-scale commemorations may include, but are not limited to, street names, plaques affixed to buildings or into the pavement, remnants of war and conflict such as bullet holes or shrapnel, and candles and flowers. Thus, our
everyday focus permeates not only the type of space but also the implicitness of the form of commemoration and remembrance in those spaces. Indeed, the representation of the nation’s past in the everyday matters, a point vividly evidenced by the recent eruption of violence in response to attempts to remove the statue of Confederate general Robert E. Lee in Charlottesville, Virginia.58 In other words, memory intersects into our everyday lives; it has longevity and adhesion. The politics of identity prompt further questions, such as how the use of memory in everyday spaces and places may express political hegemony, and whether there are spaces of/for resistance. In addition to considering these provocations, examples of material commemoration “need” to be visited and/or actively remembered to maintain their impact. In theorizing sites of war-related memory, for example, Jay Winter has argued that such activities and performances are “crucial” for maintaining the force and meaning of such sites, along with the related impulses to present and conserve them.59 Similarly, James Young contends that without processes of socialization, “monuments are of little value, mere stones in the landscape”.60 As an example, it is useful to consider whether passing a memorial on a daily basis qualifies as activity, particularly if one does not stop to look at the memorial, but nevertheless knows that it is there.

In investigating small-scale memorialization in the everyday streetscapes of Warsaw and Berlin, for example, it was found that residents of those cities would not necessarily stop at the memorials, but they did note an “a-where-ness” of their location and what was memorialized there.61 In arguing that “memory is always ‘available’ but only made ‘accessible’ when faced with sensual cues”, Muzaini suggests that active remembrance may take many forms, and that these can be unspoken, affective and internal.62 Moreover, he contends that “everyday practices [of remembrance] often take place at the confluences of multiple subjectivities, multiple affects, multiple temporalities”.63 Similarly, in his examination of how memories of war intersect with the identities of young Falkland Islanders, Benwell has argued that an assemblage of memory mediums (post-war landscapes, school curricula, dialogues with adults and formal commemorative events) work together to transmit national identity.64 At Victoria Dock, a residential development in Hull, United Kingdom, Atkinson has also shown how a focus on everyday markers of memory, in the form of maritime street names, ship anchors and pavement mosaics, enabled a “rethinking of

61 D. Drozdzewski, above note 57.
63 Ibid., p 110.
memory as a less bounded and continually reconstituted process”.65 Taken together, these scholars show that engagement and experience matters in how we interact and continue to interact in everyday spaces and places.

What these studies contribute is their consideration of memory beyond representation, which is precisely what we, and other authors, argue for in our orientation towards experience.66 Atkinson has conceptualized this more-than-representational leaning as a movement towards a “topology of memories … [that is] continually reconfigured by new eruptions of memory”.67 Thinking about the (re)production and transmission of memory through an everyday lens decentres a more orthodox tendency to fix memory to particular events and days, encompassing certain activities of remembering. Rather, remembrance and commemorative practice in the everyday streetscape may be simultaneously discreet, contested, multiple and exemplified through multi-level performances. For example, speaking about the Tchorek Tablets (commemorative plaques embedded in the walls of buildings in Warsaw) that commemorate Polish victims of Nazi aggression in Warsaw during the Second World War, one study participant noted that the Tablets “are more connected to the reality/everyday life. It isn’t a place where we go to visit a certain monument, but we pass next to it every day, it’s slightly different feeling.”68

Key to the argument here is that an apparent lack of activities to signify remembrance does not and should not necessarily equate with the devaluation or forgetting of memory, since remembrance and its performance(s) may differ depending on place. If, then, memories of war in the everyday landscape can be experienced, (re)produced and maintained with and without coordinated collective ritual, what are the implications for a politics of memory and identity in this context? Markers of a nation’s past selectively represented in everyday streetscapes can be “ostensibly visible, quintessentially mundane, and seemingly obvious”.69 In their recent book The Political Life of Urban Streetscapes, Reuben Rose-Redwood et al. comment that “a site of everyday routines and fleeting encounters, the ‘street’ can also become a place of memory”.70 Think, for instance, how many streets in Italy are named Via Garibaldi; in Poland, Aleja Armii Krajowej; or in Australia, after the Anzacs. The naming of these streets after important battles, armies and wartime heroes is no coincidence. Further, the placement of these street names, often as large thoroughfares in and out of the city centre, testifies to the overt use of a politics of memory.

67 D. Atkinson, above note 65, p. 537.
68 Participant 34, 21 May 2014, in D. Drozdzewski, above note 57.
In the post-war renaming of streets in Kraków, Poland, most of the inner city’s street names reverted from their wartime German names to their pre-war Polish names. However, the newly installed Soviet regime chose to rename seven streets within the Krakow Old Town and its ring roads. The common intention of these new names was to explicate fascist failure and German’s subjugation of the Poles, but the choice of location of these renamed streets, in the Old Town, expounds the usefulness of both name and location. For example, a large section of the ring road around the perimeter of the Old Town, along which trams and buses traverse, was renamed May Day (Święto Pierwszego Maja) – an important date in the Soviet calendar instituted to reinforce the collective experience and identity of workers in the socialist-controlled Soviet territories. This example shows how “decision-making procedures and the wider re-planning of the political geography and semiotic order of the city” influences the likely level of exposure to certain street names through their spatial positioning. When city inhabitants think about the transportation route they will use daily, they recall that street name, understand the significance of that name to the nation’s history and repeat it (verbally or mentally). This repetition is part of a process of naming as norming, of what Azaryahu describes as the “ability [of street naming] to make a version of history an inseparable element of reality as it is constantly constructed, experienced and perceived on a daily basis”. The astuteness of the spatial positioning of a certain street name can amplify how often that name is repeated, so one must also look past the discursive and structural in the everyday streetscape (that is, the production of naming the streetscape) and towards the (re)production and performative capacity of the everyday to implicitly reinforce certain political agendas and how they shore up consensus for a particular version of the nation’s past.

Yet, strategic placement of a street name does not necessarily guarantee repetitive performance of that name. Part of the process of attuning to the experiential includes considering how people in those spaces receive and possibly also resist attempts to inculcate memory into the streetscape. An often-cited example of resistance to naming is Meyers’ study of Zanzibar, in which he outlines how “under colonialism, many sardonic [place] nicknames became official” because few colonial officials spoke Swahili. He points out that the names must be vocalized and heard in order to understand their full cultural

73 M. Azaryahu, above note 69, p. 321.
This experiential component, not deducible from map reading or archival research alone, allows for the detection of derision and apathy in audible cues. Kearns and Berg also explore speaking as a form of resistance in the pronunciation of the names of Maori places in New Zealand. They contend that “pronunciation can potentially be a form of resistance” because “speaking, in almost all circumstances, is a social act.” The oral repetition of Maori place names, encompassing a diversity of “politically correct versions of pronunciation”, may therefore have the cumulative effect of bolstering support for Maori identity politics in New Zealand. Duminy’s Durban-based study provides a further example of resistance to the (re)inscription of street names after colonial subjugation. Interrogating the concept of symbolic resistance, Duminy summates that activities of resistance to street name changes in Durban, which included removing new street signs, the continued use of original street names and the generation of media discourse concerning the location of new names, were limited and thus demonstrated acceptance of the State’s right to change names.

At this point in the discussion it is useful to think through the acceptance of the right of the State to mark public space with markers of the nation’s past. The power of the everyday setting, unlike specific commemorative locations and events that very obviously demarcate a specific narrative line, is that in linking national identity to cultural memory, the parks, streets and place names of local neighbourhoods have greater potential to slip under the radar as spaces and places of political purpose. For example, in the major Australian cities of Sydney and Melbourne, where the authors reside, numerous street and place names commemorate colonial history. Elizabeth, William, George and Victoria are all popular toponymic markers of colonization. For the most part, these names remain unquestioned because they appear largely unequivocal. Likewise, statues of James Cook, Lachlan Macquarie and Arthur Philip are common; yet, there is a nascent discourse among non-Indigenous Australians about these men’s role in the decimation of the Indigenous population’s post-European arrival in Australia. The resonance of such voices remains minimal in a political landscape where discussions on republicanism have failed to gain political currency, and where Australia’s largest symbolic wartime commemorative event still narrates the heroic birth of a nation on the foreign battlefield of Gallipoli, while failing to narrate as loudly the tactical British decision to send Anzac troops to a doomed battlefront. Significantly, the democratic birth of the nation took place thirteen years prior to that battle at Federation.

76 Ibid., p. 86.
77 Robin A. Kearns and Lawrence D. Berg, “Proclaiming Place: Towards a Geography of Place Names”, in L. D. Berg and J. Vuolteenaho (eds), above note 75, p. 158.
78 J. Duminy, above note 74.
Marking physical public space, combined with the domination of certain political agendas in everyday discourse, provides political elites with access to the populace in seemingly mundane and ordinary spaces and places. In these settings it would seem that dissenting voices occupy very small corners of the discussion, which is otherwise dominated by an unwitting or indifferent acceptance of the instituted norm.

**Conclusion**

The selected representations of a nation’s past, displayed publicly, are mediated and remembered through the contexts of the societies in which we now live, but also through their histories. Halbwachs argued that remembering is an inherently social process: we not only recall a certain event, place or person, but also contextualize that memory within a certain time, with groups of people or places. Most crucially, when we remember, we recall from our position in the present, and present-day contexts have the ability to influence what is recalled and the relevance and/or importance of a specific memory. When it comes to the concept of the politics of memory, the portrayal of national narratives through memorials and monuments should not be conceived merely as a “material backdrop” from which a story is told; rather, public representations of memory should be perceived as an integral part of a nation’s story of remembering, commemoration and identity-making. In addition to its particular social and temporal aspects, “commemorative activity is inescapably political” which means that it always includes and excludes people, and has always been a powerful means of defining the “other” in national terms.

In this article, the authors have sought to situate their perspective in the encounter between the material and discursive artefacts of shared memory and the individuals who do the remembering. As such, when State-sponsored memory comes to “matter”, there is a need for attention to the experiential. This approach, supported by the authors, is fruitful precisely because it allows us to step beyond the well-trammelled representative and discursive aspects of the memory of war, or its “material backdrop”, and to see how the society perceives and makes sense of it in a range of settings. This aspect often goes unexamined in the bulk of accounts that attend to structural or discursive factors, even though, as Marshall remarks, “we use our senses to forge connections with our physical environment and develop our sense of place …. Remembrance, because it is experienced through the senses, is one such embodied state.”

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Concurrently, however, it is not argued that such official modes of remembering as monuments, museums, and commemorative days and events should be disregarded, because they are powerful and often well-resourced anchor points for narratives regarding conflict and nation that circulate widely. In attending to the individual and experiential in official sites and events, as well as in more banal everyday settings, there is a need to show how such narratives are actually taken up in complex ways that do not somehow sit apart from other aspects of our lives. Put differently, memory is integral to how we understand ourselves and our worlds, and this includes those aspects that might overlap with State interests. It follows that in order to fully grasp the impact that nation-based and collective memories of war might have in cohering people socially and culturally, there is a need to see them as entangled with our sensory, experiential, idiosyncratic and quotidian individual lives. This could provide a route to understanding how one might feel a part of the nation, and come to have a sense of belonging to it – and also how conventional or existing understandings might be changed or resisted. In their account, the authors have attempted to locate the nation in how societies feel about and feel in it, and how this exceeds the limits of the discursive vocabulary that official channels provide. This may help us to reimagine how memory “matters” when it comes to national belonging, and where the politics of memory might be disrupted, challenged or transformed to adopt more inclusive and just forms.

Cultural heritage and memory after ethnic cleansing in post-conflict Bosnia-Herzegovina

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Abstract

This article draws on my book Bosnia and the Destruction of Cultural Heritage, which incorporates ground-breaking fieldwork in Bosnia-Herzegovina and extensive research, and on my subsequent research and fieldwork in the post-conflict country. In the article, I explore the meaning that restoration and reconstruction of cultural heritage intentionally destroyed during conflict can have, particularly to the forcibly displaced. With the protection of cultural heritage increasingly being treated as an important human right and with the impact that forcible displacement during armed conflict has on cultural identity now in the spotlight, the importance of cultural heritage for those ethnically cleansed in Bosnia-Herzegovina during the 1992–95 war (both those who returned and those who did not) has relevance for considerations of contemporary post-conflict populations.

Keywords: cultural heritage, memory, identity, conflict, post-conflict, ethnic cleansing, forcible displacement, human rights.
“And what will happen if the Aladža Mosque … is not rebuilt? They’ll say it never existed …”

“… it is our duty not to forget …”

Introduction

This article looks at cultural heritage and memory in the aftermath of a conflict that was driven by ethnic exclusivism and where cultural and religious property was systematically destroyed in pursuit of creating visibly mono-ethnic spaces – a conflict which attempted to destroy the historic pluralism of a European country. But it was also a conflict where there was an enormous international military and humanitarian intervention, both during and after the conflict, and where the final peace settlement not only guaranteed the right of return to the victims of ethnic cleansing to rebuild their communities, but also gave legal protection to cultural heritage. It was a war where the atrocities committed were so numerous and so severe that they were considered war crimes and crimes against humanity, leading the United Nations to create an international criminal tribunal to hold to account the perpetrators and those who allowed such crimes to be committed and bring justice to their victims. Yet despite all this, and despite the presence of a post-conflict international civilian–military protectorate with sweeping powers, the restoration and rebuilding of cultural and religious property intentionally destroyed during the war was for the most part a difficult, long-drawn-out, often violently contested process. This article examines how, when cultural heritage has been instrumentalized during wars and conflicts, it has then been instrumentalized after the fighting has stopped. As some argue in favour of forgetfulness, I enquire – if attacks on culture during conflict are crimes against memory and identity, is there a duty not to forget?

With the intentional destruction of cultural heritage during contemporary conflicts seemingly now the norm, the obliteration of cultural and religious property as the visible symbols of an unwanted ethnic or religious group – or even of a reviled narrative of national identity – shocks, but no longer surprises, when we witness it
on our television screens or social media feeds. The assaults on cultural and religious property during the first decades of the twenty-first century, particularly on world-famous archaeological sites in Syria and Iraq like Palmyra and Nineveh, loom largest in the Western imagination, especially the malign destructive events performed and publicized by ISIS/Daesh – though they were far from being the only perpetrators, and these were far from the only types of cultural and religious monuments destroyed. Heritage professionals such as UNESCO have taken to proposing that this type of premeditated destruction is a new phenomenon.5

Yet one does not have to go far back in the post-Cold War era to find an earlier conflict in which the widespread intentional destruction of cultural property had the power to shock the world. These were the wars of the 1990s that accompanied the dissolution of Yugoslavia with violent conflicts taking place in Croatia, Bosnia-Herzegovina and, lastly, Kosovo. What have become known as the Wars of Yugoslav Succession were the culmination of years of nationalist rhetoric and propaganda pouring out of Slobodan Milošević’s Serbia, rhetoric that mobilized the past and emphasized perceived ethnonational and ethnoreligious differences, binding cultural identity tightly to religion. Fears of an existential threat to Serbs who lived outside Serbia in other parts of Yugoslavia, particularly from Muslims and Islam, and the need to live separately were forcefully promoted and, when the time came, were backed up by the might of the Yugoslav People’s Army (Jugoslovenska narodna armija, JNA) and vicious paramilitary units.6

It was during the war in Croatia that cultural heritage first became a target. Universal outrage followed the JNA and Montenegrin bombardment of the UNESCO World Heritage Site of Dubrovnik in 1991 – but worse was to come. The 1992–95 Bosnian War stood apart in its ferocity and violent campaigns of ethnic cleansing, and the purposeful destruction of cultural and religious property were among the defining (and most publicized) aspects of that conflict.7

The devastation wreaked on cultural and religious property during the Bosnian War, as symbols both of ethnoreligious affiliation and of a historically diverse Bosnian identity, was the greatest destruction of cultural heritage in Europe since the Second World War. But, as with Syria and Iraq, we should beware of seeing the destruction in isolation – as a phenomenon somehow distinct from other atrocities. Rather, the destruction was an inextricable part of the ethnic cleansing of the Bosnian War and one of the central objectives of those who drove the conflict. This was not collateral damage, a side effect of military action and a byproduct of war, but a premeditated and systematic destruction that took place, for the most part, far from the front lines.8 It has been

6 For a fuller account of the trajectory of the war in Bosnia-Herzegovina, see Marko Attila Hoare, The History of Bosnia: From the Middle Ages to the Present Day, Saqi, London, 2007.
7 For more information, see Helen Walasek, “Destruction of the Cultural Heritage in Bosnia-Herzegovina: An Overview”; in ibid.

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convincingly demonstrated that the obliteration of structures from the landscape which marked the long historic presence of the groups targeted for elimination (most often Bosnia’s Muslims) went hand in hand with forced expulsion, imprisonment in concentration camps, torture, mass rape, the sexual enslavement of women and mass murder.9

The enormous devastation of the Bosnian War was to become a critical marker in discussions on cultural heritage, as heritage experts and the wider public debated how (and if) cultural property could be protected in times of conflict – a debate resurrected twenty years later following the destruction in Syria and Iraq. In the years following the end of the war in 1995, Bosnia became the paradigm of human rights abuses, intentional heritage destruction and the failure of the international community, as sectors from the military to the human rights and humanitarian aid professions struggled with the question of how the horrors of ethnic cleansing, with its accompanying destruction of cultural and religious property, could have been prevented, and where their representatives on the ground were frequently left as passive onlookers or unwitting participants.10

The 1992–95 Bosnian War has had a long afterlife that continues to influence and preoccupy policy-makers today. The questions raised over how to prevent ethnic cleansing and the accompanying cultural destruction remain unanswered.

Before we can assess cultural heritage and memory in the aftermath of violent conflict, ethnic cleansing and the destruction of cultural and religious property, we need first to look at the trajectory of the conflict and in what circumstances the destruction took place. The focus of this article will be on the wartime destruction and post-war reconstruction and restoration of the cultural heritage of Bosnia-Herzegovina’s Muslim communities, which by all evidence suffered most during the conflict. Analysis of the types of built heritage destroyed or badly damaged during the 1992–95 Bosnian War shows that they were overwhelmingly religious, and overwhelmingly Ottoman, or associated with Muslims or Islam. Out of a pre-war total of 1,144 mosques and other Islamic religious structures, almost 1,000 were destroyed or damaged during the conflict.11

The Bosnian War, 1992–95: The erasing of memory

The Bosnian War began in earnest after first Slovenia and then Croatia declared independence from federal Yugoslavia in 1991, and Bosnia-Herzegovina followed

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9 See H. Walasek, above note 1.
11 According to the figures of the Islamic Community of Bosnia-Herzegovina. See “Dan dzamija”, 6 May 2015, available at: www.islamskazajednica.ba/vijesti/aktuelno/22237-dan-dzamija. Of course, many religious structures with no architectural or historic values were also destroyed as part of the same processes. In contrast, around 233 Catholic and seventy Orthodox churches (including monasteries) were destroyed or badly damaged during the conflict.
suit in March 1992. Fighting began as separatist Bosnian Serbs, led by Radovan Karadžić, who had long been working towards the ethnic division of the country, and aided by the JNA and Serbian and Montenegrin paramilitaries which moved into Bosnia from Serbia, aggressively occupied territory and embarked on the removal or elimination of the now unwanted populations. Karadžić and his supporters began implementing their long-held plan to create a separate statelet of Republika Srpska, which would be a place where Serbs and their cultural identity (inextricably linked with the Serbian Orthodox Church) would dominate and which would hopefully would eventually unite with Serbia.

But Bosnia was home to three principal ethnonational groups (Bosnian Muslims/Bosniaks, Bosnian Serbs and Bosnian Croats) living in a demographic patchwork that would be impossible to separate without violence. Bosnia-Herzegovina’s capital of Sarajevo—to the separatists, the hated symbol of a cosmopolitan pluralism—was now a target, and artillery entrenched on the mountains overlooking the city under the command of Bosnian Serb general Ratko Mladić began what became the longest siege of a city in modern times.

While the conflict pitted first separatist Bosnian Serbs against the newly formed army of the internationally recognized government of Bosnia-Herzegovina (labelled by many with the ethnically determined category of “Muslim”), the latter fought in alliance with the forces of the Croatian Defence Council (Hrvatsko vijeće obrane, HVO). It did not take long, however, for secessionist Bosnian Croats, encouraged and supported by Croatia, to turn on their former allies after the terms of the Vance-Owen Plan of January 1993, with its proposals for ethnically segregated provinces, became known and the HVO moved to claim territory for an ethnically homogenous Croat para-State of Herceg-Bosna, with Mostar as its capital. Once again, widespread ethnic cleansing was accompanied by the destruction of the religious and cultural heritage of non-Croat/Catholic communities, and the removal of Bosnian Muslim populations from Croat-held lands was a key aim. This “war within a war” ended with the Washington Agreement in March 1994 and the creation of the Federation of Bosnia-Herzegovina (the so-called Muslim–Croat Federation).

Global condemnation followed the attacks on iconic monuments such as the burning of Sarajevo’s Austro-Hungarian era National Library (Vijećnica) in August 1992 by Bosnian Serb forces, and the destruction of Mostar’s graceful sixteenth-century Ottoman Old Bridge (Stari Most) in November 1993 by Bosnian Croat forces. The two cities were home to many important archives, libraries, museums, and institutions and structures that symbolized a historically diverse pan-Bosnian identity—the architectural expressions of the country’s

12 Herceg-Bosnia ceased to exist upon the signing of the Washington Agreement in March 1994, which ended the fighting. The Agreement created the Federation of Bosnia-Herzegovina, the so-called Muslim–Croat Federation. During the conflict, however, the separatists received substantial support from Croatia and the Croatian Army. The HVO was the military force of Herceg-Bosna.

13 Few Bosnian Serb residents remained by that time, as most had either fled or been expelled.

14 See H. Walasek, above note 1, for a fuller account of the destruction in Bosnia-Herzegovina and its aftermath.
pluralism and the holders of its cultural memory – which were now targeted by separatist troops. In Sarajevo, like the National Library, the renowned Oriental Institute, with its rich collections of Islamic and Jewish manuscripts and important Ottoman documents, was deliberately targeted with incendiary shells and its collections destroyed.15

Yet the most extensive destruction took place far from the gaze of the international media, based as they were largely in Sarajevo. It was in small towns and villages and isolated rural settings, where secessionist forces waged violent campaigns of ethnic cleansing across huge swathes of territory, that the destruction of religious and cultural property was carried out, along with multiple atrocities and human rights abuses. Here was a determined assault on the material evidence of a long-lived heterogeneity, transforming a visibly diverse cultural landscape into an apparently historically mono-ethnic domain. These were the first steps towards the creation of a mono-ethnic realm with a fictitious past, a rewriting of history in which the mayor of Bosnian Serb-held Zvornik could confidently tell journalists in 1993 of the once Muslim-majority town: “There were never any mosques in Zvornik.”16

Professor Cherif Bassiouni, the international criminal lawyer who headed the United Nations (UN) Commission of Experts appointed to document and investigate the atrocities of the Yugoslav conflicts, was convinced that neither the ethnic cleansing nor the destruction of cultural and religious property were random acts. Rather, they were the implementation of a policy made at leadership level – and it was the leaders, and not only those who carried out their orders, who should be brought to justice and held accountable.17 The work of Bassiouni and his team ultimately led to the formation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 by the UN Security Council.18 The ICTY began to actively include charges related to the intentional destruction of cultural and religious property in its indictments, and its jurisprudence went on to make a distinctive contribution to the prosecution of crimes against cultural heritage, particularly in establishing that the deliberate destruction of structures which symbolize a group’s identity was a manifestation of persecution and a crime against humanity.19

For it was evident to victims and observers alike, even as the Bosnian conflict raged, that for the most part, the destruction was taking place during the

18 The ICTY was based in The Hague, the Netherlands. Its remit ended in 2017; the outstanding work of the ICTY is being carried out by the UN-established International Residual Mechanism for Criminal Tribunals. See http://www.icty.org for more information on the work of the ICTY.
aggressive campaigns of ethnic cleansing being waged against civilians. The destruction was aimed not only at removing the living unwanted “Other”, but at systematically removing the material traces of their historic presence from the landscape. The perpetrators themselves left no doubt as to the reasons for the destruction, openly voicing their intentions to obliterate the built evidence of the expelled communities’ roots in a locality in the hopes of discouraging those who survived from ever returning. Milan Tupajić, wartime chief of the Bosnian Serb-held municipality of Sokolac, spelled this out when he testified at the ICTY and described how over a few days in September 1992, all the mosques in his municipality were demolished. Asked by a prosecutor why he thought the mosques had been destroyed, Tupajić explained: “There’s a belief among the Serbs that if there are no mosques, there are no Muslims and by destroying the mosques, the Muslims will lose a motive to return to their villages.”

But we should be clear that this was far from being the equivalent and mutual destruction of cultural heritage by all three principal warring parties to the conflict – as it is still sometimes portrayed. More than twenty years of war crimes investigations and expert assessments have convincingly determined that the greatest part of the deliberate destruction of religious and cultural property took place during campaigns of ethnic cleansing, the principal perpetrators of which were Bosnian Serb forces and their allies (including the JNA and paramilitary units), who by the autumn of 1992 controlled over 70% of Bosnia-Herzegovina’s territory, targeting mainly Muslim but also Bosnian Croat populations. They were followed to a lesser extent by Bosnian Croat separatist forces which also carried out ethnic cleansing directed chiefly at Muslim, but also Bosnian Serb populations. As for Bosnian government forces, assessments have found that while they did commit grave breaches of the Geneva Conventions, they had no policy of ethnic cleansing and did not engage in such operations.

For it was typical of Bosnia-Herzegovina, most visibly in small towns, to find a Catholic church, an Orthodox church and a mosque (and sometimes a synagogue) within metres of each other. Now these proofs of a lived coexistence were being violently eliminated. The particular targeting of minarets and their removal from the landscape was noted as “a kind of architectural equivalent to the removal of the population, and visible proof that the Muslims had left”. By the end of the war, with one exception, not a single minaret on a functioning

mosque was left intact on territories occupied by Bosnian Serb forces.24 This radical transformation of the landscape was often completed by what has been called the “linguistic cleansing of toponyms” – the changing of place names to more “Serbian” names.25

Many of the mosques destroyed were of little architectural value, but many (perhaps most) were of ancient foundation, and although much renewed, arguably had held important movable heritage such as Islamic manuscripts and carpets donated by members of their congregations over the centuries. Moreover, as prosecutors at the ICTY have argued, religious institutions, whatever their architectural or heritage values, have an additional spiritual value for an entire community that needs to be taken into account when considering the depth of the harm committed when such structures are destroyed, damaged or desecrated.26

But some of Bosnia-Herzegovina’s most significant Ottoman monuments were purposefully obliterated. In Banja Luka, de facto capital of Republika Srpska and the country’s second-largest city, where there were no military operations at any time, between April and December 1993 fifteen mosques – twelve of them listed national monuments, among them the Ferhadija, a domed sixteenth-century mosque which stood at the very heart of the city – were systematically blown up, along with other monuments of the city’s Ottoman heritage such as its ancient clock tower, one of just a handful that remained across the country.

The small but strategically important town of Foča, to the east of Sarajevo near the Montenegrin border, had a Muslim majority population at the start of the war and much surviving Ottoman architecture, including the Aladža Mosque, one of the most important examples of classical Ottoman architecture in Southeast Europe, renowned for its exquisitely painted interior. Some of the war’s worst atrocities were committed against Foča’s Muslims by Bosnian Serb forces and their allies, from forced migration, murder, detention and torture to the systematic rape of scores of women and girls.27 Entire Muslim neighbourhoods and all the town’s mosques had been attacked, the majority razed to the ground and their remains removed. The Aladža, the last intact mosque standing in Foča, was blown up in a huge explosion on the night of 2–3 August 1992, months after Bosnian Serb authorities had established complete control over the town. Photographs from a US satellite passing over Foča one week after the mosque’s destruction graphically show the

26 S. Brammertz et al., above note 19.
27 The crimes committed against the Muslim population of Foča were the subject of a number of cases at the ICTY. See ICTY, “Facts about Foča”, available at: www.icty.org/x/file/Outreach/view_from_hague/jit_foca_en.pdf.
empty space where the Aladža had once stood. By the beginning of 1994 Foča’s name had been officially changed to Srbine, or “Serb-town”.

In rural settings or on urban fringes, ruins of destroyed structures were often left to crumble, the stones lying in heaps where they had fallen. But in town and village centres there was usually active intervention. Ruins were bulldozed, debris trucked away and sites levelled so not a single trace of the structures could be seen. The levelled sites went on to be used as parking lots, markets or locations for garbage dumpsters, or were left as empty, often rubbish-strewn spaces. The remains of the Ferhadija Mosque were dumped at a municipal landfill site along with the remains of the historic Arnaudija Mosque, or thrown into a nearby reservoir, while fragments of the Aladža were discovered by a team from the Federation Commission on Missing Persons excavating a mass grave site in Foča in 2000. Rubble from the eighteenth-century Savska Mosque in Brčko, a mosque so completely obliterated by its destroyers that even its foundations had been dug up, were found covering the mass grave of local Muslims murdered during ethnic cleansing by an ICTY excavation in 1997.

It was in such an environment that the post-war recuperation of ethnically cleansed communities and the restoration of their shattered cultural memory took place. If we look at the post-conflict fate of two of Bosnia-Herzegovina’s most important Ottoman monuments, the Ferhadija Mosque in Banja Luka and the Aladža Mosque in Foča, we see how long and fraught this process can be. It took until 2016 for the rebuilding of the Ferhadija Mosque to be finally completed and formally reopened, using as much of the destroyed structure as was possible through a feat of archaeology and restoration. The rebuilding of the Aladža Mosque only began in 2014, and was not completed until mid-2019.

Cultural heritage and human rights

It was a frequent claim (and indeed, often an insistence) of the international community in Bosnia-Herzegovina that the reconstruction and restoration of
cultural heritage destroyed or damaged during the conflict would lead inevitably to reconciliation between the formerly warring ethnonational groups. Yet there is little evidence to support this assertion in the short (and even medium) term, at least. On the other hand, there are scores of examples to suggest the opposite. It is clear that in settings where there had been ethnic cleansing, and where the perpetrators of ethnic cleansing and their supporters remained dominant and their ethno-exclusivism was sustained by official structures, the return of the expelled and the restoration of their cultural and religious heritage was often violently contested. Here heritage was more frequently a source of conflict and organized aggression, particularly during the rebuilding of religious structures, with their function as clear markers of identity – the very reason they had been destroyed in the first place.

The signing of the General Framework for Peace in Bosnia and Herzegovina, known as the Dayton Peace Agreement (DPA), in December 1995 marked the end of the Bosnian War and formalized Bosnia-Herzegovina’s division into two entities: the Federation of Bosnia-Herzegovina (the so-called Muslim-Croat Federation, consisting of ten cantons) and the Serb-dominated, centralized, Republika Srpska. A huge international presence headed by a NATO-led multinational peacekeeping force and a civilian High Representative through an Office of the High Representative (OHR) oversaw implementation of the DPA; billions of dollars in humanitarian aid poured into the country in an enormous reconstruction and State-building exercise.

A central aim of the DPA was to reverse the effects of ethnic cleansing in the hope of restoring Bosnia-Herzegovina’s pre-war diversity, but the unresolved dynamics behind the conflict (including the continuing influence of Serbia and Croatia) and the political settlement of the peace accord were to have a significant negative impact on cultural heritage preservation and restoration. Yet to those drafting Dayton, addressing the devastation to Bosnia’s cultural heritage had been considered so essential to the peace process that Annex 8 of the treaty provided for the formation of a Commission to Preserve National Monuments. The Commission’s mandate was to receive petitions to designate property of “cultural, historical, religious or ethnic importance” as national monuments, and committed entity authorities to protect and make efforts towards the rehabilitation of the designated monuments and to refrain from taking any measures that might damage them – a protection extended to monuments on the interim list awaiting a decision on designation.


34 The full text of the DPA is available at: peacemaker.un.org/bosniadaytonagreement95.
Along with Annex 8, two other annexes of the DPA were also to have an impact on the reconstruction of cultural heritage: Annex 6 on human rights, which incorporated the European Convention on Human Rights and established a Human Rights Chamber (HRC), and Annex 7 on refugees and displaced persons, which included the right of return for refugees and displaced persons to live in their pre-war homes. As refugees and the displaced slowly began to return to the localities from which they had been ethnically cleansed, all these annexes were increasingly invoked in the struggle to restore and rebuild.

It might seem apparent that the restoration and preservation of Bosnia-Herzegovina’s destroyed and damaged historic monuments and religious buildings should have taken place within the framework of the Dayton Agreement, supporting the return of refugees and displaced people to the homes and communities from which they had been forcibly expelled. However, the international community’s involvement in heritage restoration in Bosnia-Herzegovina in the critical first ten post-conflict years was characterized by a narrow focus on a small number of high-profile projects, chief among them the World Bank-led, UNESCO-coordinated restoration of Mostar and the Old Bridge. The iconic bridge came to be extensively mobilized as a visible symbol of the ideas of reconciliation and the reconstruction of relations between Bosnia’s ethnonational groups that the international community was keen to promote in the aftermath of the war.35

It would be difficult to find any international actors in post-war Bosnia-Herzegovina who linked heritage restoration to the return process, or any discussions of justice or human rights for the survivors of ethnic cleansing in their discourse on heritage. Support for restoration or rebuilding projects for war-damaged or destroyed historic structures in Republika Srpska or in locations in the Federation where there was strident opposition from hostile and deeply entrenched ethnonational power structures was non-existent, as international donors feared to become involved in what they perceived as difficult and contentious settings.

Yet the majority of historic structures in need of restoration and rebuilding were in fact in just those localities where ethnic cleansing had taken place, and the most significant and most active actors involved in post-conflict restoration of cultural and religious property were the communities that had been ethnically cleansed and were now dispersed throughout Bosnia-Herzegovina, across the region and around the globe.36 But the return of the ethnically cleansed was a long and contested process that did not really begin to gather pace until 2000 – five years after the end of the war.


36 For instance, most of northwest, northeast and east Bosnia-Herzegovina (such as Prijedor, Bosanska Krupa, Bijeljina, Zvornik, Brčko, Foča, Gacko, Trebinje), and Stolac.
Reconstructing cultural heritage in post-war Bosnia-Herzegovina

Sites of contention

As noted above, it was when the survivors of forcible displacement began to return and rebuild their destroyed communities in the first decade after the end of the war that the most widespread restoration began – restoration in difficult, frequently hostile settings, and which received little support (if any) from international donors. Contact with local heritage institutions was minimal or non-existent, and even relations with those charged with implementing the Dayton Agreement could be problematic. It was in such settings that restoration clashed most forcefully with the still deeply rooted politics of ethnonational exclusivism, which did not disappear with the war’s end. This was restoration by the victims of ethnic cleansing in territory now dominated and controlled by the perpetrators and supporters of the crimes against them.

It was here that the rebuilding of destroyed and ruined historic structures (inevitably, most often mosques) became highly contested, and efforts at reconstruction encountered active, sometimes violent opposition – opposition encouraged by obstructive local authorities, many of whom had been active participants or supporters of ethnic cleansing. Here restoration became a battle for justice and human rights – including the right to equality in the public space through the reconstruction of the physical markers of a community’s identity. It was a battle fought for the most part far from the international media spotlight, which focused almost exclusively on Sarajevo and Mostar.

Yet the restoration of cultural and religious monuments was to be crucial in creating an environment for supporting the return of the forcibly displaced to the places from which they had been violently expelled, which were often isolated rural or small-town settings. Thus restoration became a narrative of the psychological and physical restoration of communities, the re-establishment of presence through rebuilding the visible markers of identity that affirmed a historic longevity in the landscape. Restoration also became about restoring a sense of home, of belonging and identity through the physical reconstruction of the destroyed heritage. This was also a story of community mobilization in which, as we shall see, the “absent” could play as active role in return and reconstruction as the “present” who had physically returned to their pre-war homes.

As return began, the restoration of mosques in these contentious settings often faced multiple obstructions from local authorities, including excessive delays and obstacles in issuing building permits, refusal to order the removal of structures built on the sites of destroyed monuments or the termination of enterprises carried out on sites (like markets and car parking). This was the case with the attempts to reconstruct the Ferhadija Mosque in Banja Luka, the Atik Mosque in Bijeljina, and the Kizlaragina Mosque in Mirkonjić Grad.

As, for example, on the site of the Kizlaragina Mosque in Mirkonjić Grad.
urban plans had been revised and mosques had been removed from the new plans or that permitted uses for the site had changed; and assertions that the land on which the structure had stood had been socially owned and that the pre-war owner of the now non-existent building no longer had the right of use of the site.

Most contentious and most opposed by local authorities were the reconstruction of mosques in town and city centres. Yet until 2001 the international bodies implementing Dayton paid little attention to the growing problems with this crucial aspect of return and failed to devise a systematic policy for dealing with the issue. This lack of attention as return gathered pace led some returnee communities and the Islamic Community of Bosnia-Herzegovina (the Islamic Community) to take recourse to Annexes 6 and 8 of the Dayton Agreement to ensure that their destroyed and damaged cultural and religious property was reconstructed. Thus, after months of obstruction from the Banja Luka municipal authorities, on 4 December 1996 the Islamic Community filed a case against Republika Srpska at the Human Rights Chamber over its fifteen mosques in the city. It alleged discrimination and violation of the freedom of religion as well as of its property rights in connection with the continuing desecration of the mosque sites and the refusal of the authorities to issue building permits for reconstruction.

Yet this testing of Dayton implementation by the victims of ethnic cleansing through restoration of their built cultural heritage could be regarded as provocation, not only by the perpetrators of human rights abuses, but on occasion by those whose duty it was to oversee the peace agreement and support the return process. For instance, in 1999 François Perez, the OHR representative in Bijeljina, in relation to the local Islamic Community’s efforts to rebuild the historic Atik Mosque on its city centre site, stated that the Islamic Community was “too extreme in its demands” and that “Maybe in time, a mosque could be built on the periphery of town”.

This aim of testing returnee rights under Dayton was openly stated by the Association for the Renewal of Civil Trust in Stolac, an association of citizens from Stolac, many of them forcibly expelled. The Association’s programme to systematically restore the devastated Ottoman-era core of the town faced determined obstruction, threats and violence from the hard-line Bosnian Croat

39 As in the cases of the Ferhadija Mosque in Banja Luka and the Atik Mosque in Bijeljina.
40 The social ownership obtained from the era of the post-Second World War federal socialist state of Yugoslavia, of which the Republic of Bosnia-Herzegovina was a part. On the Atik Mosque, see HRC, *The Islamic Community in Bosnia and Herzegovina v. The Republika Srpska (Bijeljina Mosques)*, Case No. CH/99/2656, Decision on the Admissibility and Merits, 6 December 2000.
41 The Islamic Community (Islamska Zajednica) is a legal entity representing the formal practice of Islam in Bosnia-Herzegovina.
local administration and its supporters.\textsuperscript{44} Restoration of the cultural heritage in Stolac, beginning with the focal structure of the sixteenth-century Čaršija Mosque,\textsuperscript{45} was linked explicitly to testing implementation of the Dayton Peace Agreement (including Annex 8), the return process, justice for returnees and a framework for victims of persecution to exercise their human rights.\textsuperscript{46}

Yet Annex 8 was the most neglected of all the annexes of the DPA by the international community and the OHR, which took until 2001 to focus on its implementation, in which up until then it had taken little interest. Then came the disruption of cornerstone-laying ceremonies at the sites of the Osman-paša Mosque in Trebinje and the Ferhadija Mosque in Banja Luka in May 2001 by large, violent and well-planned anti-Muslim riots which the Republika Srpska authorities made little efforts to control.\textsuperscript{47} These were tremendous embarrassments for the OHR, which now realized how it had neglected implementation of Annex 8, and brought to the fore how the issue of national monuments was being used to obstruct refugee return and community redevelopment, especially as the situation in Stolac over the rebuilding of the Čaršija Mosque was now, too, threatening to come to a head.\textsuperscript{48}

The misuse of memory: The claims of archaeology

Once it became clear that the OHR would take active measures to ensure that returning communities were able to rebuild their religious structures, another tactic came into play to try to prevent mosques from being reconstructed. This new tactic co-opted the scholarly community and what was presented as a reasonable and “scientific” reason to halt the reconstruction of mosques where structures had been razed to the ground was the alleged urgent need for archaeological investigations to investigate what other layers might lie beneath the mosque in this opportune moment.

Based on spurious or non-existent historical evidence, these claims were given a veneer of legitimacy by the active involvement of professional archaeologists and historians who provided an academic basis for these

\begin{itemize}
\item \textsuperscript{44} See Amra Hadžimuhamedović, “The Built Heritage in the Post-War Reconstruction of Stolac”, in H. Walasek, above note 1, Chap. 6. Also see Edin Mulač (ed.), “Written Memory against Apartheid in the Municipality of Stolac”, in The Revival of Stolac, Association for the Renewal of Civil Trust in the Stolac Municipality, Sarajevo, 8 July 2001.
\item \textsuperscript{45} Sometimes also referred to as the Careva, Carska, Emperor or Imperial Mosque. Its reconstruction was completed in 2003.
\item \textsuperscript{48} On the events of June 2001 in Stolac, see A. Hadžimuhamedović, above note 44.
\end{itemize}
assertions, sometimes through “expert” seminars and publications, which presented the wartime act of destruction, although usually described as criminal, as ultimately beneficial, by allowing an exploration of the site and a deeper understanding of Bosnia-Herzegovina’s past.49

But these proposed archaeological investigations had a single aim: to “prove” that a Christian church had once existed on the site before the Ottoman conquest of Bosnia-Herzegovina, and that it had been destroyed so that a mosque could be constructed on its site. Preventing the reconstruction of the mosque, according to this tactic, would right a historical injustice. A common feature of claims of the prior existence of a church on a mosque site was to cite the work of prominent Bosniak (Muslim) historians. The need for archaeology as a tactic to try to delay or prevent the reconstruction of mosques was used at the sites of the Atik Mosque in Bijeljina, the Ferhadija Mosque in Banja Luka and the Osman-paša Mosque in Trebinje (all in Republika Srpska), as well as the Čaršija Mosque in Stolac and the Šišman Ibrahim-paša Mosque in Počitelj (in the Federation).

In Stolac, the forcibly displaced began to return and to assert their rights to their heritage and identity in the public space. Stolac municipality had been ethnically cleansed of Muslims and Serbs by Bosnian Croat forces, its Ottoman heritage devastated and its mosques and Orthodox churches razed to the ground in one of the most notorious acts of cultural destruction of the Bosnian War. Few now visited the once lovely stone-built town, whose devastated landscape was likened to post-Second World War Dresden. Stolac’s post-war municipal government was (and still is) dominated by hard-line Croat nationalists who promoted a cultural identity for Stolac that was meant to be purely Croat and Catholic.

From spring 2001, the returnees to Stolac began to make plans to reconstruct the Čaršija Mosque in what had once been the centre of the little town, with its harmonious complex of Ottoman structures, but was now its blank empty heart. To those who wanted to rewrite the cultural memory of the town as a place without a Muslim presence, the reconstruction of the mosque would be the start of the re-Ottomanization and Islamization of Stolac. The local Catholic priest Don Rajko Marković and the Roman Catholic Bishop of Mostar, Ratko Perić, encouraged the belief that an earlier Christian structure had existed on the site of the mosque and argued for the importance of carrying out archaeological investigations on the site.50 Marković applied for planning permission to construct a church on the site where the mosque had once stood.

The “evidence” for the existence of the church (given the name of St Ann) consisted of local legends and speculation on the possibility that the mosque might have been built on top of a church in a work by the respected Bosniak (Muslim)

49 Such as the academic round table held at Stolac on 5 October 2001, entitled “The Stolac Region in the 16th Century: Religious and Political Situation” (see more below), and “Povijest Hrvatskog Počitelja” (“The History of Croatian Počitelj”), held at Počitelj in 1996.
historian Hivzija Hasandedić. Hasandedić later publicly condemned this wilful misinterpretation of his text. Bishop Perić, meanwhile, took a morally righteous line, writing that the rebuilding of the Čaršija Mosque would be “a fresh act of irreligion, injustice and immorality” if the restoration of a mosque went ahead – just as it had been a crime to destroy the mosque in 1993, it would be just as much a crime to reconstruct the mosque on top of a Christian sacred site.

A “scientific” justification for archaeological investigations taking place was provided by a round table held at Stolac in October 2001. A host of Croatian and Bosnian Croat professional archaeologists and historians provided an academic framework and respectability for its findings. Between them, the gathered experts confidently asserted the former existence of a church on the site of the Čaršija Mosque. The round table participants condemned the purported destruction of the supposed church by the Ottomans in the sixteenth century as a crime against humanity that could never “expire” and an injustice that needed to be righted in the present. They demanded that archaeological investigations be carried out at the mosque site in a pursuit of “truth” and “justice” that should be supported by the international community.

Such credible, apparently rigorously “scientific” and “professional” calls for archaeological investigations at sites where historic buildings had been destroyed (always mosques on the verge of being rebuilt) were occasionally able even to persuade otherwise well-intentioned heritage professionals of all ethnicities to declare their support for this supposed chance to explore Bosnia-Herzegovina’s layered past. However, it was clear that these calls for excavations were focused solely on preventing the reconstruction of the mosques at the heart of towns which had been ethnically cleansed and where the ethnically cleansed were now returning. The Office of the High Representative began to take a strong stance on the many continuing attempts to obstruct the reconstruction of mosques, including calls for archaeological investigations, and refused to permit any such investigations to take place.

The single exception was at the site of the totally destroyed Atik Mosque in Bijeljina, now in Republika Srpska, near the Serbian border. Here, twenty-two pre-Ottoman medieval Christian tombstones, of the type known in Bosnia-Herzegovina as stećci, some with inscriptions in Cyrillic, as well as a number of unassociated human remains, had actually been uncovered in December 2002 while the

51 The book referred to was Hivzija Hasandedić, Muslimanska Baština Istočne Hercegovine (Muslim Heritage in East Herzegovina), El Kalem, Sarajevo, 1990.
surviving foundations of the mosque were being excavated in preparation for its reconstruction. Here the OHR did permit a strictly time-limited excavation.

The discovery galvanized the local Bosnian Serb media and led to claims by some residents that what had been found were the remains of a medieval church and cemetery, the skeletons, the bones of long-dead Christians. Opposition to the rebuilding of the mosque led to candlelight vigils for the souls of the Christians over whose graves the mosque had allegedly been constructed. A coalition of six local Serb NGOs called for a “multi-national and multi-religious facility, as a symbol of co-existence” to be constructed on the site, rather than the mosque, threatening to resort to “unconstitutional measures and activities” if their demands were not met.

The excavations were to be the last in a series of delays and obstructions to the rebuilding of the Atik Mosque, which, despite a Human Rights Chamber ruling of 8 March 2001 that the permit for the reconstruction of the mosque should be issued within three months, had not been allowed to begin until December 2002. However, the OHR consistently and explicitly cited the HRC ruling regarding reconstruction of the mosque and its protection under Annex 8 of the Dayton Agreement as the basis for its decisions. Those who had been prevented from carrying out excavations at the site of the Čaršija Mosque in Stolac were roused to accuse the OHR of double standards in sanctioning the excavations at the Atik Mosque.

The excavations at the Atik Mosque site were carried out by a team of archaeologists from the Zemaljski Muzej (National Museum of Bosnia-Herzegovina) in Sarajevo and heritage institutions in Republika Srpska. The team conclusively agreed that no previous church had existed on the site and that the tombstones had been brought from elsewhere solely to be used as foundation stones for the original construction of the Atik Mosque in the sixteenth century. The human remains were actually those of Muslims who had been buried in a long-disused graveyard near the mosque. The obstructionists, however, declared that the remains of a church would surely have been found if only the archaeologists had kept digging. After a presentation of the results of the excavations, reconstruction of the Atik Mosque resumed in the spring of 2003.

This misuse of archaeology was not just a feature of the early days of the return of the ethnically cleansed, but continues into the present. Here we return to Foča to look at the case of the razed sixteenth-century Careva Mosque. It was not until 22 October 2012 that the foundation stone for the reconstructed mosque was finally laid, more than twenty years after the original building had been destroyed. But just as reconstruction was about to begin, the local Serbian Orthodox Church authorities demanded that work on the site stop, contending that (as in Stolac) the mosque had been built on the foundations of a church – in this case an Orthodox church. They insisted that archaeological investigations took place to establish the “facts”.

This was despite the site of the Careva Mosque having been a designated national monument since 2004 and the Islamic Community in Foča having been granted planning permission from the Republika Srpska authorities to start rebuilding. Many wondered why it had taken seventeen years since the end of the war for the Serbian Orthodox Church to raise this question. Once again, as at Stolac, the Serbian Orthodox Church officials based their “evidence” on the writings of a Bosniak historian – claims made by Alija Bejić in an article from 1956, but whose interpretation had been comprehensively dismissed by later historians.56

Nevertheless, work was suspended while archaeologists from the Republika Srpska Institute for the Protection of Cultural, Historical and Natural Heritage in Banja Luka excavated the site. But there was no question now that the reconstruction of the mosque would take place, whatever the attempts at obstruction. By the end of April 2013 the archaeological investigations were completed and though the foundations of a pre-Ottoman structure were uncovered at the site, there was no evidence they had been for a church and the reconstruction of the Careva Mosque resumed.

Sites of memory: Constructing a virtual Bosnia

A crucial role in keeping alive the memory of what had been lost through destruction and absence was played by the scores of town and village websites created by refugees and the internally displaced during and after the war.57 Created at a time when internet usage was becoming widespread, these websites constructed a virtual Bosnia that enabled globally dispersed communities to maintain a vital cohesion. These websites of the ethnically cleansed were literally sites of memory, heritage and identity.

As the rewriting of the local past by the perpetrators of ethnic cleansing and their supporters began, the pre-conflict histories of towns and villages were remembered, documented and made accessible to the forcibly displaced via the pages of these websites. Sites featured galleries of pre-war photographs, old postcards and other illustrations of now-destroyed structures, townscapes, people and events from the recent and more distant past, alongside information on

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history and heritage (often transcriptions of scholarly articles), and even such commonplace yet revealing documents as pre-war telephone directories.\footnote{Such sites included the now inactive www.focaci.org.}

After the war’s end, as parts of expelled communities began to return (or in some cases, \textit{before} they began to return), the websites became channels for “restorative” community-sustaining actions, including fundraising for rebuilding local mosques and churches. The majority of such sites have now disappeared from the web—a huge loss of these largely unrecorded sites of community memory.

\section*{Reconstructing the heritage}

Among the websites still functioning in 2019 is the more broadly based \textit{Bošnjači.net}. From 2006, \textit{Bošnjači.net} published fundraising campaigns for rebuilding ruined and demolished mosques in East Herzegovina, now in Republika Srpska. Few Muslims had returned to the area, and it was felt that the situation of those who had was the worst in the country. In 2009 the campaign openly called on Muslims not to abandon their “cultural and religious traces in the region”, urging them to be persistent in preserving their heritage and identity.\footnote{The original text reads: “Bošnjački je narod protjeran iz dobrog dijela Gacka, Trebinja, Bileće, Ljubinja i Nevesinje, međutim mi ne smijemo odustati od naših kulturnih i vjerskih tragova na tim prostorima. Moramo biti uporni u očuvanju naše baštine i identiteti, kako nam se ne bi ponovila islamska Španija.” See “Ramazanska akcija prikupljanja novca za obnovu džamije u Pridvorcima kod Trebinja”, 14 August 2010, available at: https://bosnjaci.net/prilog.php?pid=38585.} Thus fundraising began to rebuild and restore mosques in the small towns and villages of Nevesinje, Odžak, Gacko, Bileća, Ljubinje, Trebinje, Gornje Graničarevo, Lastva, Pridvorci and Skočigrm.

It was in such challenging settings that returnees focused on literally “restoring” their communities— including the right to visibility in the public space through the reconstruction of the built markers of their community identity, often, as we have seen, in the face of obstruction and violence from hard-line nationalist local authorities and their supporters. Looking at some of the initiatives to reconstruct Muslim cultural and religious property purposefully destroyed during the Bosnian War in areas where there had been extensive ethnic cleansing reveals the meanings that these reconstructions came to hold both for those who returned and those who did not, as well as for Bosnian Muslims and the Islamic Community more widely.

The reconstruction of such intentionally destroyed religious structures became almost an imperative for the returning ethnically cleansed, not only as part of re-establishing a sense of home and belonging, but also as a powerful act of remembrance and bearing witness, to ensure that the rewriting of history by the perpetrators of ethnic cleansing was overturned. These reconstructions took place, even, as we shall see, where the survivors of ethnic cleansing did not physically return.
“Just as it is our duty not to forget Srebrenica, the holocaust of the Jews, it is our duty not to forget our demolished mosques.” These were the words of Enis Tanović, leader of the Islamic Community in the small town of Gacko in East Herzegovina, now in Republika Srpska and not far from Foča, on 7 May 2014 as he addressed a gathering in front of Gacko’s recently reconstructed mosque—which had been among those featured in the Bošnjaci.net campaigns. Before the war the population of Gacko had been almost evenly divided between Serbs and Muslims, but the little town and its wider area were the scene of the violent ethnic cleansing of its Muslim population at the beginning of the war in 1992. Now, over twenty years later, not a single Muslim had returned to live in the town, although a small number had returned to live in villages nearby.

7 May was the anniversary of the destruction of the Ferhadija Mosque in Banja Luka in 1993, and the date had been chosen by the Islamic Community to be the Day of the Mosque, when Muslims were meant to reflect not only on the importance of the mosque in Islam but on the intentional destruction of mosques during the 1992–95 war.

In Gacko, Enis Tanović had tenaciously led the local Islamic Community and its reconstruction efforts—but post-war Gacko was no longer a place where Muslims could feel at home. Across the municipality, six mosques had been destroyed. Of the three that had been rebuilt since the end of the war, two were attacked again in 2001 and 2008, long after the signing of the Dayton Agreement. Early returnees trying to reconstruct their houses often found the ruins planted with landmines. Even in 2014, as Tanović addressed the gathering in front of the reconstructed mosque, anti-Muslim songs could be heard coming from nearby cafes and many walls in the town carried graffiti glorifying the convicted war criminals Ratko Mladić and Vojislav Šešelj. Despite this, Tanović felt driven by a compelling mission “to restore life in Gacko”, to restore a sense of “home”, beginning with the reconstruction of the mosques and the restoration of place—which he saw as the essential foundation for those who came after him to build on.

In nearby Nevesinje, the local imam, Mehmed Čopelj, told a similar story as he took the author and her colleague Richard Carlton around the different religious sites in the little town and its surrounding area. We had visited Nevesinje in 2000 when we documented the destruction of cultural and religious property in Republika Srpska and had returned in 2015 to see for ourselves how return and reconstruction had evolved. As in Gacko, there had been violent ethnic cleansing of Nevesinje’s non-Serb population, including the total destruction of the town’s functioning mosques and of its Catholic church—all in the absence of any military operations. Before the 1992–95 war, Muslims had formed just over 15% of the town’s population. Yet in 2015 not a single Muslim (including Čopelj himself) had returned to live in the town itself—mainly due to fears over

60 E. Tanović, above note 3. In the original: “Isto kao što nam je dužnost da ne zaboravimo Srebrenicu, holokaust nad Jeverejima, naša je obaveza da ne zaboravimo i naše porušene džamije.”
security – though some did live in villages nearby. For now, no Muslims dared live in Nevesinje.

Nevertheless, two mosques had been restored in the town centre, as well as the seventeenth-century Ljubović Mosque in the nearby village of Odžak (where no Muslims lived). The Čučkova Mosque, which had been used as a workshop before the war and had not been damaged, was the first to be restored as a functioning mosque. The reconstruction of the main Careva Mosque was nearing completion. The Careva had been completely demolished in 1992 and its remains (along with those of the Catholic church) dumped at a landfill site outside town.

The local Islamic Community also had permission to reconstruct a third religious structure in central Nevesinje – the Dugalića Mosque. But apart from the question of funding, as so few Muslims had returned and as they already had two functioning mosques, Čopelj was compelled to ask: “Who would go to it? We don’t need another mosque.” Yet when we saw the site of the Dugalića Mosque, it was as if the fifteen years since we had travelled around Republika Srpska looking at parking lots and heaps of stones had not passed. The unfenced site of the mosque was still being used for parking cars, still had garbage dumpsters parked on it and was still being used for chopping wood, all – in theory – illegal. Meanwhile, the nearby Serbian Orthodox Church, its precinct surrounded by a low fence, was carefully and beautifully kept.

**Memorial mosques**

But restoration also became a potent way of bearing witness to the historic pre-war existence of the communities who had been ethnically cleansed, of re-establishing a visible Muslim presence – even in the absence of the people themselves. Thus, in a number of locations, the expelled (but absent) survivors of ethnic cleansing refused to abandon their “cultural and religious traces” and chose to reconstruct their destroyed heritage – a phenomenon that has been called “memorial mosques”.62

One of these memorial mosques was the seventeenth-century Avdić Mosque in the devastated Muslim village of Plana, with its distinctive, square, campanile-style minaret, believed to have been originally built by Christian builders from Dubrovnik on the nearby Adriatic. Plana stands near the main road running north from Bileća, even today a stronghold of support for the Serbian paramilitary leader and convicted war criminal Vojislav Šešelj. Plana’s residents were now scattered around the globe from America, Australia and Scandinavia, to places in the Federation like Tuzla, Zenica and Sarajevo.

By December 2008 the campaign for the Avdić Mosque had raised over $10,500 from donors in amounts ranging from $20 to over $2,000,63 and

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63 “Izvještaj o akciji obnove Avdića džamije”, Bileća Online, 3 December 2008.
fundraising campaigns were carried out by the Association of Citizens of Bileća in faraway Chicago. Yet reconstruction took a considerable time: while the main structure of the mosque was rebuilt by 2010, there were not enough funds to complete the work, and the mosque was not formally reopened until 2013 – more than twenty years after it had been destroyed. When the author visited the mosque in 2015, not a single person had returned to live in the devastated village, and its houses remained empty, roofless shells. The first mevlud for a quarter of a century was held at the mosque in May 2017 to celebrate its 400th anniversary, bringing together former residents displaced by the war and even the descendants of those who had left after earlier conflicts. But the return was only temporary, and Plana remains a village empty of residents. Only the recent dead have returned to stay permanently, buried in the graveyard beside the mosque.

Conclusion

Thus we have seen how the restoration and rebuilding of cultural and religious property intentionally destroyed during war in pursuit of creating visibly mono-ethnic spaces could be a difficult, drawn-out and often violently contested process. When cultural heritage has been instrumentalized during wars and conflicts, neither the perpetrators of the destruction nor their victims are able in the short or even medium term to embrace forgetfulness. Far from leading to reconciliation, restoration of the destroyed cultural heritage in Bosnia-Herzegovina was more frequently a source of conflict, particularly during the rebuilding of religious structures, with their function as clear markers of identity – the very reason they had been destroyed in the first place.

64 In Bosnia-Herzegovina a mevlud is a Muslim celebration featuring Islamic recitations, songs and poems honouring the birth of the Prophet Muhammad.
The Shoah Memorial: A history retraced from the Drancy site

Annaïg Lefeuvre

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Abstract
Between the inauguration of the Tomb of the Unknown Jewish Martyr in 1956 in Paris and the opening of the Shoah Memorial in Drancy in 2012, the narration of the Shoah in France has evolved through the use of archives, discussions, commemorations and exhibitions. In the immediate post-war period, a small group of people worked on the construction of a dedicated place to document the genocide of Jews in Europe in order to ensure that the memory of the Shoah would be impregnated into the collective consciousness. This project, which later evolved into the Paris and Drancy Shoah Memorials, could be seen as an expression of what remembrance is in France today.

Keywords: Shoah Memorial, Holocaust Museum, Jews of France, Drancy camp, sites of memory, memorialization.

Introduction
The Paris Shoah Memorial and its extension in Drancy were born from the Contemporary Jewish Documentation Centre (Centre de Documentation Juive Contemporaine, CDJC) and were made possible by the Foundation for the

* The author was an Education Coordinator at the Drancy Shoah Memorial at the time of writing this article. References to historical facts in this contribution come from materials available in the Memorial.
Memory of the Shoah (Fondation pour la Mémoire de la Shoah, FMS). The Paris Shoah Memorial opened its exhibition to the public in 2005, at the same time as the inauguration of the Wall of Names, where the names of the 76,000 Jews deported from France are engraved. The location was not chosen because of any specific association with the genocide but because a place of remembrance and research had already been established in Geoffroy l’Asnier Street in the Marais neighbourhood, where a large community of Jews had lived before the war.

During the next few years, several memorials emerged in France at places where instances of persecution, internment, detention and rescue had taken place during the war. Among them was the Drancy Shoah Memorial, opened on 21 September 2012, which is dedicated to the history and memory of the Drancy camp, the main internment and transit camp for Jews in France from 1941 to 1944. Of the 76,000 Jews deported from France, around 63,000 departed from Drancy for the Nazi camps. The aim to grow awareness of the history of the Shoah in France was achieved by using the available infrastructure and tools, with support from various financial contributions, in particular from the FMS. The role of the FMS is essential to understanding the history behind the Paris and Drancy Memorials.

The Drancy Memorial stands across from the former camp building in the La Muette housing estate, in Seine Saint-Denis, and was not intended to be a replica of the Paris Shoah Memorial. It differs from the Parisian site in at least two ways. First, the story is told in the very place where an essential page of the history of the Holocaust was written – the camp building, which was used for its intended residential purpose after the Liberation, stands right opposite the Memorial. Second, the history of the Holocaust in France is told based on a case study of the Drancy camp, as a hub in the network developed for the persecution and deportation of France’s Jews.

Simone Veil, president of the FMS from 2001 to 2007, worked tirelessly to create the Paris and Drancy Memorials, as did the lawyer and historian Serge Klarsfeld. Today, the two sites cover two interrelated aspects of Holocaust history: the French history of the Holocaust in Europe, and Drancy’s history of the Holocaust in France. It seems that one is interwoven into the other, each referring to the other like a story within a story.

On the occasion of the fifth anniversary of the Drancy Shoah Memorial, in the autumn of 2017, the communication department of the Memorial launched a poster campaign in the Parisian region with the slogan “Paris–Drancy 12 km,

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1 Renamed the Shoah Memorial Documentation Centre in 2013.
3 27 January 2005 is a symbolic date referring to the anniversary of the liberation of the Auschwitz camp in 1945. A few months before the Memorial was inaugurated, the United Nations designated 27 January as the International Day of Commemoration in Memory of the Victims of the Holocaust.
4 For example, the internment and deportation memorial at Royallieu was opened in 2008, the Memorial Museum to the Children of Vel d’Hiv in 2011, the memorial site of the Les Milles camp in 2012, the Museum in Le Chambon in 2014, and the memorial site of Rivesaltes camp in 2015.
5 Among all deported Jews from France, 84% were deported from the Drancy camp.
Drancy Camp–Auschwitz Camp 1,220 km” (see Fig. 1). In addition to encouraging people in the Île de France region to visit the museum, the campaign also aimed to bring the story of Drancy out of an unsituated place and into the spotlight, evoking places both near and far. The distances highlighted in the poster are a reminder that the history of the genocide began in France, on Paris’s doorstep, and continued in Poland.

This article retraces the history of Paris and Drancy Shoah Memorials from 1943, when the CDJC was founded, to 2012, when the Drancy Shoah Memorial was opened.

**History of the Drancy site**

**Before the camp: La Muette housing estate**

The history of the camp, or the place where the camp was set up, has its beginnings before the war. Internment camps in France were generally established in available places urgently requisitioned to intern people who had been arrested.6 This was what happened in Drancy. In the 1930s, it had been chosen as the site for La Muette, a vast housing complex designed to provide working class people with affordable homes equipped with modern comforts (see Fig. 2). The complex, promoted by socialist Henri Sellier, head of the Low-Income Housing Office, and designed by architects Eugène Beaudoin and Marcel Lods, comprised 1,250 homes, laid out in two main structures: a four-storey U-shaped building set around a large courtyard, and next to this horseshoe structure, five fourteen-storey tower blocks combined with low-rise buildings. The plans included shops, a church and a school inside the housing estate. The development received considerable media attention7 and was widely admired.8 Postcards featured the fourteen-storey tower blocks with the caption “The first skyscrapers in the Parisian region”. High-rise buildings were a novelty in this relatively rural landscape. When financial difficulties arose, the cost of the project became the subject of discussion, strongly influenced by politics, jeopardizing the continuation of the works. Only the tower blocks were completely finished, and they were used as police barracks from 1938.9 The U-shaped courtyard building remained unfinished, with no interior partitioning, finishes or coverings.

This was the situation until June 1940, when German troops entered and occupied the Northern Zone. The large U-shaped building became a camp called Fronstalag 111 which, until the summer of 1941, held French, British and Canadian prisoners of war, who were then transferred to the stalags and oflags.

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6 For example, factories, barracks or military camps.
7 In the journals Urbanisme, No. 16, July 1933, and L’Architecture d’Aujourd’hui, No. 6, 1935.
8 “All of Europe has visited Suresnes and Drancy. They came to take a look at what was being done under the direction of Sellier.” Marcel Lods, “Cité de la Muette à Drancy”, L’Architecture d’Aujourd’hui, No. 9, 1935, p. 40.
9 High rent prices meant that the working class could not afford to live there.
Figure 1. A poster on the occasion of the fifth anniversary of the Drancy Shoah Memorial. © Mémorial de la Shoah.
Fronstalag 111 was the first departure from the estate’s original intended residential use, converted into a place of confinement before the internment camp was established.

The “Jewish camp”

Over a three-year period from August 1941 to August 1944, La Muette, otherwise known as the “Jewish camp”, held over 75,000 Jews. Some 63,000 of them, including women and children, were deported from Drancy; the rest were either released, escaped or were deported from other camps, such as Pithiviers or Beaune-la-Rolande in Loiret. The building’s characteristics, in particular its horseshoe shape, made it easy to secure and guard, and surveillance was further facilitated by the fact that the police barracks overlooked it. Its location facilitated the organization of arrivals and departures, with inmates being bussed to one of two train stations – Bourget-Drancy or Bobigny, 2 kilometres away. Three Nazi officers – Theodor Dannecker followed by Heinz Röthke and then Aloïs Brunner – were in charge, marking three distinct periods in the internment

10 In this northeastern suburb of Paris, other camps were set up – Fort Romainville in Lilas and Fronstalag in Saint-Denis – which were at the disposal of the Germans.
camp’s three years in operation. Until Brunner took over in June 1943, the camp was under French administration. French police officers searched the internees when they arrived and before they were taken to the train station for deportation. In the time between their arrest and their deportation, the internees would try to show that they were eligible for release from the camp, based on what they knew or guessed about the categories of people considered non-deportable or based on rumours that ignited a spark of hope. If they failed, they struggled to maintain some semblance of everyday life in a precarious environment exacerbated by overcrowding, where Jews from Belleville and Jews from Champs-Elysées were forced to live in close proximity. In addition to French and Yiddish, other languages, such as German, Turkish, Spanish and Hungarian, were heard in the camp. Inmates were often moved from one dormitory to another as more people arrived and others departed. Uncertainty about what was going to happen next created an atmosphere of anxiety and fear, although the proximity to Paris – a large city – was reassuring. What did the camp’s inmates know about the place they would be going to and what would happen to them there? Survivors who had been interned with their parents as adolescents have also wondered how much their parents, who kept silent or offered words of comfort, really knew.

As collaboration with the Germans intensified in the summer of 1942, the deportations increased to unprecedented levels. Between July and September, over 3,000 internees were deported each week from Drancy to Auschwitz-Birkenau. In this same period, 10,500 foreign Jews were transferred to Drancy from camps in the unoccupied zone. In the vast network of internment camps that operated

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12 See Georges Horan-Koiransky, Journal d’un interné: Drancy, 1942–1943, Créaphis, Paris, 2017. Horan-Koiransky was an internee who volunteered for “wagon duty” so that he could observe the operation of the camp. He witnessed the departures and described in great detail how they were organized, and the roles assigned to French and German officers.
13 The categories were constantly changed: at one point, the spouses of Aryans were considered non-deportable, as were French Jews and Jews of some other nationalities in accordance with diplomatic agreements. François Montel and Geroges Kohn, Journal de Compiègne et de Drancy, Les Fils et Filles des Déportés Juifs de France (FFDJF), Paris, 1999.
14 Noël Calef, Drancy 1941: Camp de représailles, Drancy la famine, FFDJF, Paris, 1991. In 1948, Noël Calef wrote an account of his internment in 1941. In it, he discusses the problems arising from the social distinctions between inmates from different parts of Paris – Belleville and Champs-Elysées – and belonging to different social classes.
15 See the chapter “Une immense tour de Babel”, in Renée Poznanski, Denis Peschanski and Benoît Pouvreau, Drancy: Un camp en France, Fayad and Ministère de la Défense, Paris, 2015.
16 For example, Simone Veil, Marceline Loridan-Ivens and Ginette Kolinka, who was interned and deported when she was 19 and remembers imagining that she would be sent with her family to a work camp: “As my father was 61 and too old to be sent to a factory or a farm, I imagined he would work as a tailor in a workshop. I thought that my brother Gilbert, who was 12, would go to school and that Jojo, my 14-year-old nephew who was strong, would work like me in a factory or in the fields.” This is an excerpt from Kolinka’s first testimony in 1997 for the Spielberg Foundation, available in the Multimedia Learning Centre of the Shoah Memorial. In this exhibit, these three young women, who were all interned in April 1944, speak about romances at the camp, describing Drancy both as “a little village” and “the last stop”.
18 Ibid.
like a system of communicating vessels, the Drancy camp was the hub where the journeys of arrested Jews converged. The last convoy departed on 17 August 1944, a week before the Liberation of Paris.  

Shortly after, collaborators were interned there until September 1945. Then, at the end of 1947, a rehabilitated La Muette was returned to its original intended use, and the first tenants moved into their new homes in 1948.

A history shelved: Back to residential area

At the end of the 1940s, La Muette housing estate had come back to life. The dormitories were now comfortable flats, and the courtyard that had been fraught with misery and humiliation was now a pleasant area for residents. Former internees and deportees soon came together to pay tribute to the victims and bear witness, at the site itself, to the history of the camp. The first ceremonies were held in 1944. In 1945, the first accounts were published, and commemorative

19 Ibid.
20 See the report of council of 18 March 1946 in the Municipal Archives of Drancy.
21 In addition to pilgrimages made by individuals and families to the site, a religious ceremony was organized by the Israeli Consistory in front of the camp on 22 September 1944.
plaques were erected from 1947. Taken together, these plaques map, in approximate terms and figures, the history of memorialization of these events in France. In 1947, the first commemorative plaque referring to the interned Jews evoked only the responsibility of “Hitlerian occupants”; in the plaque of 1993, French responsibility is mentioned, although in ambiguous terms, referring to the racist and anti-Semitic persecutions committed under the authority of the so-called “government of the French State (1940–1944)”.23 The quotation marks produce a sense of discontinuity and distance from this period of history.24 In 1976 a monument in pink granite, charged with Jewish symbolism, was erected by sculptor Shlomo Selinger, and a freight wagon and railway tracks were added in 1988.

The fact that these memorials and gatherings were created to remember the past did not exclude engagement with current issues, as evidenced by the invitations to remembrance ceremonies sent out by Henry Bulawko, president of the French Association of Jewish Deportees, in one of which he wrote:

With those nostalgic for Nazism intent on reducing the extermination of Europe’s Jews to a mere ‘detail in history’, it is more urgent and necessary than ever to take part, alongside survivors, in acts of remembrance at the site

23 The first plaque erected in 1947 made reference to “120,000” Jews interned “by Hitler’s occupying forces”. In February 1993, after a decree had been issued designating 16 July a national day in remembrance of racist and anti-Semitic persecution, a plaque was erected bearing an inscription that refers to the crimes committed “under the de facto authority known as the Government of the French State (1940–1944)”, although French responsibility had not yet been officially recognized in these terms.

24 The speech by President Jacques Chirac on 16 July 1995, during the commemoration of the Vel d’Hiv round-up, cleared up this ambiguity by recognizing that “the criminal folly of the occupiers was seconded by the French” and that “France, on that day, committed the irreparable” (Review’s translation).
of a camp into which Jews were crammed before being deported to the death camps.\textsuperscript{25}

For over twenty years, from the late 1980s, the Conservatoire Historique, created to preserve the memory of the camp, carried out educational activities in ground-floor premises in La Muette, staging exhibitions and holding meetings with former internees and deportees. In the same place, the memory of the camp was being preserved and residents were going about their daily business.

Yvette Lévy was a young woman from Noisy-le-Sec, a commune located several kilometres from Drancy. After being arrested in the summer of 1944 when she was 18, she was interned in Drancy and deported to Auschwitz-Birkenau on convoy 77. She was among the 4% who survived deportation. She returned to settle near Drancy in the late 1940s and, in the talks she still gives to schoolchildren, she remarks that she was in favour of La Muette being rehabilitated as a housing estate to give it a function centred on life, a conversion that responded to a practical necessity as well as a vital need: to provide post-war housing and to get over the past and move on.\textsuperscript{26} This order of things, which seemed natural to Lévy, was to be brought into question fifty years later. At the turn of the century, the social housing estate itself – its walls, windows and basements – became an object of remembrance.

Rehabilitation and listing as a national heritage site

In 1999, shortly after Maurice Papon’s trial in which the Drancy camp was featured, American photographer William Betsch, curious to see any material or symbolic traces of the camp remaining in La Muette, travelled to Seine-Saint-Denis.\textsuperscript{27} He researched and talked to local people, asking them about the past. He met with La Muette residents, looked around some of the flats, explored the basements and photographed traces of the past. Betsch was there when work began to replace the window frames in order to improve the insulation in the flats. The original windows, designed by Jean Prouvé, were removed one by one and thrown away. On witnessing this destruction, Betsch alerted the Ministry of Culture’s Île de France Regional Directorate for Cultural Affairs, calling for the site to be protected and listed: “The alterations being carried out at Drancy are an act of memoricide heralding a criminal denial of history.”\textsuperscript{28} He was shocked that the building was being lived in and was not listed as a historic monument, and

\begin{footnotes}
\item[25] Letter of invitation to the ceremony of 25 October 1987. At the end of the 1980s, when the trials of Klaus Barbie and Maurice Papon were in progress, the ceremonies provided an opportunity to respond to the anti-Semitic declarations of Jean-Marie Le Pen and the Holocaust denial theories that were gaining currency. The installation of the freight wagon corresponds to a more explicit form of memorialization that seeks to put the evidence on display.
\item[26] From Yvette Levy’s conversations with children at the Memorial. The Memorial gives an opportunity for schoolchildren to meet a survivor and speak to them.
\end{footnotes}
appalled that the original frames were being replaced with standard PVC ones, with complete disregard for their value. In the French decade that saw the exhumation of Vichy coming to an end, William Betsch referred to “the effort to forget”, observing that, faced with reminders of the past, “it is easier to plastinate a corpse than a living body, and this is true for La Muette”.

In May 2001, the Ministry of Culture listed La Muette as a heritage site for two reasons: first, because it is a major twentieth-century architectural and urbanistic development designed by Beaudoin and Lods; and second, because it was used during the Second World War as a transit camp holding internees prior to deportation. The residents of La Muette thus became tenants of a place that occupies a highly prominent place in the nation’s historical memory. It is the actual structure rather than the dwellings that is listed – that is, the facade, the roofs, the basements, the staircases, the courtyard and the tunnel.

The decision to list La Muette as a heritage site was a questionable one according to Françoise Choay, a historian of architecture and urbanism. From an architectural point of view, “[t]he La Muette housing estate is unfinished, mutilated and unauthentic”: unfinished by its creators (architects, engineers and designers), who are the reason for its architectural value; mutilated because, in the mid-1970s, the five tower blocks that were part of the development were torn down; and unauthentic because when it was rehabilitated, alterations were made without regard for the original specifications. As for the second reason for its listing, its historical value, “the preservation of historical memory is only possible if the site has no everyday utilitarian function. No one lives on the Verdun battlefields. No one lives at Auschwitz. People go there to honour the past.”

The listing of this building may seem like a call for the impossible, merging historical heritage with a place of remembrance. Françoise Choay put forward two possible options: La Muette could either be returned to its original purpose, in which case the old buildings, steeped in traumatic significance, would be torn down in order to “enable people living there to enjoy decent conditions and forge a local identity”; or “a significant part of the buildings could be classed as a relic to be revered by visitors … with their only function of bearing witness to the past”.

After the building had been listed as a national heritage site, the renovation work went ahead, but the new windows were required to accurately reproduce the original design. When graffiti was discovered during the work in 2009, plaster

29 After the three trials for crimes against humanity held in France (Klaus Barbie, 1987; Paul Touvier, 1994; and Maurice Papon, 1997) and the controversy in the mid-1990s regarding French president François Mitterrand’s past under the Vichy government, Vichy continues to torment the collective memory. Faced with the Drancy case, William Betsch, above note 27, titled his book Drancy ou le travail d’oubli (Drancy or the Effort to Forget). See also David Rieff, “…And if There Was also a Duty to Forget, How Would We Think about History Then?”, in this issue of the Review.
30 Françoise Choay has published a number of works on heritage; the most frequently cited is Allégorie du patrimoine, Seuil, Paris, 1992.
32 Ibid., p. 92.
33 Ibid.
boards were progressively removed in order to carry out a study which recorded over seventy graffiti inscriptions dating from the time of the camp. As noted by Choay:

On the housing estate, life went on although, during this period, the residents were often worried—concerns about the buildings being listed as heritage sites, suspension of the renovation work and unfounded rumours about eviction made living on the site of the “Jewish camp” no bed of roses.34

When interviewed by a journalist from Libération in 2012, the residents voiced their frustration: “People are more interested in the past than the present. … Our problems are of no interest to anyone.”35

Museum in the face of a composite past

The successive changes that the La Muette building would undergo had to be considered when it came to determining how a museum designed to tell its history would be situated alongside it. Although the idea of a museum had been around for a long time, the choice of its location would have to resolve two apparently conflicting questions. On the one hand, there was a need to produce a narrative on a site with a prominent role for the Jews of France: “Drancy is the place best known worldwide in connection with the memory of the Holocaust in France”,36 recalled Serge Klarsfeld in his inaugural speech. On the other hand, it was important to fit this narrative into a place now being used as low-income housing for disadvantaged people.

The Drancy Shoah Memorial building

The Drancy Shoah Memorial building, the work of Swiss architect Roger Diener,37 is a four-storey white concrete cube featuring a glazed facade with transparent windows, except for the ground floor, which is fitted with reflective glass (see Fig. 5). The museum, standing on the corner of a residential street, keeps a low profile with very discreet signage: the first thing passers-by notice on their way past it is their own reflection. Its shape and proportions could allow it to blend in with the urban landscape, but its very contemporary and minimalist design strike a distinctive note. It was built opposite the La Muette housing estate, although not in exact symmetry as it is positioned slightly out of line.

“The chosen approach, the Diener approach, does not use architectural features to recall the history of the genocide. The power and significance of the Drancy Memorial come from its close proximity to the historical site of the

34 Ibid.
37 From the firm Diener & Diener in Basel, created by his father in 1942.
Neither expressive nor figurative, the memorial building is “sober and proper”. It is from inside the building that the Memorial looks out onto La Muette, with the glazed front of the top floor providing a panoramic view of the original camp building. This view gives rhythm to the narration of the permanent exhibition, providing the essential punctuation. Resembling a protected artefact inside a display case, the view frames La Muette as a monumental object and allows the viewer to contemplate it as a landscape. The viewer who wants to see a camp sees a residential building instead, and vice versa. The paradox of perception is that the two images collide:

38 Excerpt from “Le projet architectural”, the dossier presenting the Shoah Memorial in September 2012. On file with author.
one has the impression of seeing a lively residential site and a former camp at the same time. La Muette, on display from a distance, can be viewed without intruding into the setting of the residents’ day-to-day lives. A model of the camp is on display next to the window so that visitors can see what it looked like without having to involve the estate and clothe it in the past again. According to the explanation given by the Shoah Memorial director Jacques Fredj on its opening day, the face-to-face positioning of the two buildings sought to shift the memorial burden away from the residents, who did not choose to live there and had nothing to do with the history of the site. The architecture of the museum depends fully on the presence of La Muette, which is listed and required to remain in its role as a historical site in spite of being a housing estate at the same time.

The permanent exhibition

A visitor will notice that the light from the windows illuminates the exhibition, and the rest of the space is entirely white, creating a harmonious clarity in which inlaid screens show chronological and thematic films by documentary filmmaker Patrick Rotman. These films tell the story of the camp’s three years in operation and show a

Figure 6. The panoramic view onto La Muette from inside the Drancy Shoah Memorial. Photograph © Vincent Pfrunner.
sharp contrast to the photos, most of which were taken under German supervision. This meant that the settings were chosen, even staged, for the photos, to give a certain impression and make them suitable for dissemination in the collaborationist press. Reality is brought into focus by showing these photos alongside others from different sources, accompanied by eyewitness accounts, drawings by camp inmates and comments from historians. This history of the camp shown on the screens is put into a wider context with a timeline showing events in Drancy, France and Europe. This is necessary to appreciate the ebb and flow of the war and its repercussions on the continent and to understand the role of Nazi Germany, to which little reference is made elsewhere in the exhibition. There is also a section on the bureaucratic procedures for deportations, consisting of copies of telex messages that show communications relating to decisions from Germany and their implementation in France.

An interactive digital map called “Table of Fates” shows the journey of Jewish people who were arrested and transported across France to Drancy. At

39 The photos taken in the camp are from five news reports. The first is from 10 September 1941, by a number of journalists from the collaborationist press (Paris-Soir, Le Petit Parisien and Le Matin); it focused on lawyers held in the camp, showing people with “Jewish features”. The second report was carried out on 3 September 1942 during the visit of a German photographer, Wagner, from the French section of the German Propaganda Ministry. The third comprises 56 photos taken by the International Committee of the Red Cross during the visit of Dr Jacques Morsier on 10 May 1944, under the supervision of Alois Brunner. The fourth set of photos, known as the Strasser collection, was taken by Nazi officers and found by inmate Adalbert Strasser in the final days of the camp. The last report contains thirteen secretly taken photos dating from the winter of 1942.
each stage, the persecution is renewed and confirmed by administrative and logistical procedures. One of the names that appears on the map of France, divided into departments, is Mordka Michalowicz in Rhône. Michalowicz was arrested in Lyon in early 1943 and was sent to an internment camp in Gurs, and then to prison in Tarbes. He arrived in Drancy in February and was then transported to Maidanek on 4 March 1943. Visitors can read and follow his journey, illustrated by archive records from different sources, including a letter from the internee and a document signed by the police authorities.

Testimonies of former camp inmates have been recorded for the exhibition. These testimonies highlight their different fates: some were deported, some were released and others escaped. The memories they recount when asked about the camp vary depending on their experience there. From 1942 onwards, Drancy operated as a transit camp, which meant that some of the inmates were there for just a week, while others stayed for more than a year, depending on whether or not they were considered to belong to a deportable category, for which the criteria were constantly changing. Inmates’ memories of Drancy are coloured by what happened to them afterwards as well as by the length of their stay. Marceline Loridan-Ivens, who was interned in the camp in April 1944 and deported two weeks after her arrival at Auschwitz-Birkenau, said in her testimony: “I don’t remember it now. My time at Drancy is something that I have forgotten …. Compared to what I experienced afterwards, for me, it was a paradise because there were no gas chambers.”

When she thinks back, her recollection of Drancy is eclipsed by what happened next, cast into the shadows of her memories of Auschwitz, which were more traumatic in comparison. The main paradox of an internment camp, conceptually, is the stillness of a life in transition between arrest and deportation. How should we interpret Drancy in light of the subsequent extermination?

2005: The Paris Shoah Memorial

On 27 January 2005, the day on which the Paris Shoah Memorial was opened, French president Jacques Chirac walked the length of the Wall of Names (see Fig. 8) with Simone Veil, looking sombrely at the long alphabetic list of 76,000 names engraved in stone brought from Jerusalem – the names of those who died after being deported from France, and the very few who survived, like Simone Jacob. On this occasion, Chirac once again acknowledged France’s responsibility in the deportation of the Jews, as he had done twenty years earlier, and strongly condemned anti-Semitism and Holocaust denial. The Wall of

40 National Audiovisual Institute and FMS, testimony recorded by Antoine Vitkine, 2009.
41 The great impact of the film Shoah by Claude Lanzmann, released in 1985, led to the adoption of the term to refer to the genocide of European Jews.
42 The maiden name of Simone Veil, which is engraved on the Wall.
43 In his speech delivered for the inauguration, President Chirac said: “Anti-Semitism is not an opinion. It’s a perversion. A perversion that kills. The government does and will do everything in its power against anti-Semitism” (author’s translation).
Names embodies the intersection between History with a capital “H” and private family history. The poignancy of these biographies overtaken by History had already been highlighted in 1978, when Serge Klarsfeld published the lists of the convoys with the names of the Jews deported from France in his *Memorial to the Jews Deported from France*. More than just a book, it was also a work of research and an object of remembrance for the families. The “Jewish file”, exposed in a basement known as the “crypt” and compiled mainly by the Prefecture of Police between 1941 and 1944, also contains this symbolic charge, beyond its value as a primary source document. The museum was a new addition to the historical site and its two existing functions, research and remembrance, that were fulfilled by the CDJC archives and the 1956 Tomb of the Unknown Jewish Martyr. Moreover, the whole site was renamed a “Memorial” in 1974. In 2006, shortly after it opened, the Paris Shoah Memorial staged a temporary exhibition entitled “50 Years Ago, the Origins of the Shoah Memorial.”

Isaac Schneersohn, the founder of the CDJC, surrounded himself with people able to help him with this work – Justin Godart, Georges Wellers, Joseph Billig and Léon Poliakov. These individuals would become pioneers in the historic task of ensuring that justice was done, which got under way with the Nuremberg Trials. Their work involved compiling records and testimonies, making them available to researchers and publishing them even though “the publications only reached the hands of 2,000 to 3,000 subscribers, almost all of them engaged Jews. They could not be sold in bookshops or mentioned in reviews.” In order to provide a place for the ashes of the victims to be buried in an “appropriate and dignified” fashion, for families to pay their respects, for official remembrance ceremonies to be held in France and for exhibitions to be staged, Schneersohn set up a committee to create a monument to be erected in Rue Geoffroy l’Asnier, the current location of the Paris Shoah Memorial, on a plot of land donated by the city.

As noted by Annette Wieviorka: “The Memorial to the Unknown Jewish Martyr occupies a prominent place. It is highly original, and its conception and the fact that it was ahead of its time made it a national and international anachronism of sorts.” Although sometimes questioned by his fellow

44 An appeal was launched for donations in 2018 so that the Wall can be altered in 2020 to add names and correct errors noted by families.
47 Under the direction of Annette Wieviorka, the exhibition ran from 17 September 2006 to 7 January 2007.
51 These are the words of the great Rabbi Kaplan, who officiated the service for the burial of the ashes.
Jews,\textsuperscript{53} Schneersohn was determined to treat the symbolic, political and religious aspects of the monument from a secular perspective in the same way as the “Unknown Soldier”. He succeeded in persuading Nahum Goldmann, founder of the World Jewish Congress, of the need for a tomb in Paris, “the capital of the Revolution, the Commune, the Liberation, which has seen so many Jewish fighters fall”.\textsuperscript{54} The tomb is a two-level stone architectural ensemble designed by

\textsuperscript{53} In her article “1992: Réflexions sur une commémoration”, \textit{Annales}, Vol. 48, No. 3, 1993, pp. 703–704, Annette Wieviorka quotes the letter from Dr Engelson to Isaac Schneersohn: “It is entirely contrary to the spirit of Judaism to build monuments to spiritual principles, whether relating to God, the soul or the dead. The monument is merely a replica of the monument to the Unknown Jewish Soldier. It does not come close to representing what constitutes the Jewish spirit.”

\textsuperscript{54} Letter from Isaac Schneersohn to Nahum Goldmann, 9 September 1953, CDJC Archives.
architects Alexandre Persitz and Georges Goldberg. A black marble Star of David with an eternal flame in the centre is ensconced in the dim stillness of a crypt. Around the black tomb there are six urns containing ashes, and above it a quotation taken from Lamentations in Hebrew. A shaft of light from above joins the crypt to the exterior. Above the crypt, a bronze cylinder is embossed with the names of twelve camps and the Warsaw ghetto. A high, light-coloured, stone-clad blind wall forms the facade of the Memorial, inviting passers-by to lift their eyes to the three inscriptions it bears:

- one in French by Justin Godart:55 “Before the Unknown Jewish Martyr, bow your head in piety and respect for all martyrs. Walk beside them in thought on their long and painful road. It will lead you to the highest pinnacle of justice and truth”;
- a poem in Hebrew by Zalman Schneour: “Remember what was done to you by the Amalek of our times, who exterminated the bodies and souls of six million people without there having been a war”; and
- “Do not forget” in Hebrew and Yiddish.

55 Justin Godart was the first president of the CDJC and of the Committee for the Establishment of the Tomb of the Unknown Jewish Martyr. He died two months after its inauguration in 1956. He was named Righteous Among the Nations in 2004.
Permanent exhibition: “The Jews of France in the Holocaust”

It was in 2005 that the permanent exhibition “The Jews of France in the Holocaust” was opened to the public. It is an underground exhibition, like the one in Berlin under the stelae of Peter Eisenman’s Memorial to the Murdered Jews of Europe, which was opened the same year. The permanent exhibition was established within existing facilities and is surrounded by a library, a multimedia centre and an area for temporary exhibitions.

The exhibition was designed over thirteen years ago, which is a relatively long time in museographic terms. The interactive and digital scenographic tools, including exhibition panels and touch screens, were developed recently—a modernizing feature also introduced at the Drancy site. There are plans to update the exhibition and add a section on other genocides in the near future.

As a background theme, the exhibition setting is dark and underground, supposedly in keeping with its subject, although its explicitness today seems dated. The exhibition progresses chronologically along a U-shaped corridor with a linear layout of rooms and divides that, taking visitors from side to side, establish a symmetry, such as in the face-to-face treatment of Nazi Germany and Vichy France. This division makes confrontation more visible than continuity. By way of a preamble, there is a room dedicated to the history of the Jews in France, telling the story of their expulsion and emancipation and of how hatred of Jews, based on religious and then racial discrimination, flared in Europe. This introductory section shows how the genocide was the continuation of a course of events that began long before anti-Jewish sentiment rose in Germany in the 1920s. The last section, created by artist Natacha Nisic, is called the Children’s Memorial (see Fig. 10), featuring a mosaic of photographs of deported children and adolescents. The lighting effects spotlight the presence of 3,000 faces, hinting at the absence and separation caused by the genocide. Between the two arms of the U-shaped building, eleven sections are displayed. As in an illustrated book in which the pictures carry the story along, the texts serve to bring the images into focus. This is supplemented by archive documents in display cases that illustrate and provide evidence for the story. One has a different experience when looking at the wall on which the names of those deported are engraved; this wall is in the open air but within the Memorial site and can be read by visitors and families.

As the visitors’ book reveals, the profusion of documents is worthy of note; it is impossible to see everything. The sheer volume and proximity of the documents arranged in rows is in itself a condensed and panoramic exhibit which denies the singularity of each image and emphasizes the most dramatic elements, as if all the other information contained in the pictures were merely an aesthetic background.

Like a Japanese panel that can be slid from one side of the wall to the other, La porte de Birkenau is shown on a wall acting as a large screen adjoining the French part of the room. This film, shot by Natacha Nisic, closes one section and announces

56 This scenographic choice wasn’t applied to the Drancy exhibition, which is full of light, and where it is assumed that clarity isn’t an obstacle to the understanding of such an emotionally charged subject.
the next. It introduces the beginning of the story of Nazism and collaboration. Visitors entering the room are immediately struck by the image of Birkenau (Auschwitz II) on the far wall. The seemingly still image creeps slowly forwards without ever getting closer to what appears to be an entrance or an exit. The deportees were usually taken off the train at the Judenrampe, or Jewish platform, located close by. The projected shot is an image that visitors have to pass by before moving on to the next part of the exhibition, entirely dedicated to Auschwitz. Beyond the work of Natacha Nisic, hanging at the far end on a bare concrete wall with no additional scenographic features are three of the four secret Sonderkommando photos of Birkenau’s crematorium V.57 These are the only existing photos of the extermination of the Jews showing the open-air cremation of bodies and naked women being pushed into the gas chamber. These large-scale prints have not been incorporated into the narrative told by the photos from the Auschwitz Album.58 The prints are displayed separately, as warranted by their special status.

At the end of the “U”, in a corridor enveloped in darkness, filmed testimonies are shown. This area provides visitors with somewhere to sit down,

57 The fourth photo is not framed properly and shows no human figures. The four original photos are in the Auschwitz-Birkenau State Museum.
58 The Auschwitz Album consists of a collection of almost 200 photographs, taken by members of the SS in May and June 1944 during the massive deportation of Hungarian Jews to Birkenau. Discovered by a young Jewish survivor, Lily Jacob, in the Dora-Mittelbau camp, this unique document showing the process leading to the mass murder was donated to Yad Vashem.
where, isolated from their neighbours by the darkness, they find themselves alone, face to face with someone who tells them their story. When hearing these testimonies, the history seems to be contained within the person telling it. They become a beacon amidst the profusion of documents, and all attention is focused on the teller.

We are reaching the end of the so called “witness era” and entering a period during which the transmission of knowledge to the younger generations can no longer be achieved through encounters, which are the best way to leave a trace in the memory. It is thus necessary to modernize the pedagogical approach, first of all to arouse the interest of pupils but also to measure the weight of the history of the Shoah and the time that separates us from it. Designed in the early 2000s before the digital jump that gave rise to innovative scenographies, interactive installations and immersive experiences in museums, the Memorial exhibition plans to include new technologies and make the voices of witnesses present.

**Conclusion**

Isaac Schneersohn did not wait for the history of the persecution of French Jews under the occupation – not yet known as the Shoah – to enter the collective consciousness in order to establish a place of remembrance. Subsequent developments showed that the foundations of the Paris Shoah Memorial were sufficiently solid for the extensive and polymorphic structure to withstand the test of time and expand further, with the addition of the Drancy site and the Memorial Museum to the Children of Vel d’Hiv59 in Orléans, which became part of the Memorial in 2017. The Paris and Drancy Shoah Memorials are the result of an initiative dating from the time of the war. It was first run by a small group that started research into the history of the Holocaust, and over the years developed in response to current debates. Although the history of the Memorials is hardly represented in respective exhibitions, the spirit of its determined and independent pioneers is strongly present there.

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59 The Memorial Museum to the Children of Vel d’Hiv opened in 2011 in Orléans. Run by the Study and Research Centre on the Internment Camps in Loiret, which was founded in 1991, it has been absorbed by the Memorial in order to ensure its continued existence.
Dark tourism: The “heritagization” of sites of suffering, with an emphasis on memorials of the genocide perpetrated against the Tutsi of Rwanda

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Abstract
Nowadays, there exists an international movement towards the extensive recognition as cultural heritage, or “heritagization”, of areas where wars, genocides and massacres have taken place. The phenomenon of “seeing” mass death, called “dark tourism” or the “tourism of desolation”, has become both an aim and a destination for visitors. The article examines this heritagization, with an emphasis on the memorials of the genocide perpetrated against the Tutsi of Rwanda.

Keywords: dark tourism, memorials, genocide, cultural heritage, mass violence.

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Introduction

In a prescient 1909 manifesto, Italian poet Filippo Tommaso Marinetti wrote:

Museums: cemeteries! … Identical, surely, in the sinister promiscuity of so many bodies unknown to one another. … In truth I tell you that daily visits to museums, libraries, and academies … are, for artists, as damaging as the prolonged supervision by parents of certain young people drunk with their talent and their ambitious wills. … So let them come, the gay incendiaries with charred fingers! … Set fire to the library shelves! Turn aside the canals to flood the museums!¹

A few lines earlier, he wrote: “We will glorify war – the world’s only hygiene – militarism, patriotism, the destructive gesture of freedom-bringers.” History has proven that artists such as Marinetti should always be taken seriously: Marinetti’s “no-future”, which became almost an anarchist gesture, was turned into a future of wars and tragedies as early as 1904 with the extermination of the Herero and Nama and then the Libyan war of 1911, among others.

The word “tragedy” in Marinetti’s text indicates a situation where the protagonists together construct a scene in which the horrors follow a narrative logic, while a “catastrophe” is a future in which meaning has totally broken down. His writings predicted the rhythm of the twentieth and twenty-first centuries: from 1914, and particularly from 1918, cemeteries and other traces of World War I, on all fronts, were turned into memorials and museums. Marinetti had been proven right, by a tragedy with 10 million dead soldiers and undoubtedly the same number of civilians. It was a tragedy that included the extermination of the Armenians (today called genocide, after the word was coined in 1943 by Raphael Lemkin) and which continued with violence, revolutions, counter-revolutions and an increase in radical nationalism, with all the associated destruction and exodus. The ultimate catastrophe of World War II followed, leaving at least 50 million dead.

Heritagization of sites of suffering and the phenomenon of dark tourism

The Italians have recently developed the concept of museum all’aperto, or open-air museums, to describe areas where traces of war, repression or mass death have turned into places of commemoration and mourning, where despair is anchored.² We could also refer to them as “landscapes after battle” as the filmmaker Andrzej

² Sten Rentzhog, Open Air Museums: The History and Future of a Visionary Idea, Kristianstad, Carlssons, 2007. “Open-air museums” are broader than sites of war and catastrophe transformed into museums, but the term expresses the general idea.
Wajda does. There has been an upturn in the process of “heritagization” since the 1990s, with more memorials appearing both because of the need for remembrance of the two World Wars and the Holocaust in Western countries, Eastern Europe, the United States, Australia and Asia (particularly in China and Japan), and because of the end of the Soviet Union.

Around the world, ruins (whether restored or left as they were found), cemeteries (whether visible or not), former concentration camps and forced work camps, prisons, extermination sites, and mass graves from massacres have become museums where objects, remains, photographs and films are displayed. Sometimes the opposite happens – they are forgotten, whether voluntarily or not. History is hidden and new stories are written.

These places exist primarily in the minds of those whose past causes them suffering, both individuals and groups. They may have no grave where they can pay their respects, no photographs to look at and no voices to listen to. These places are sites of tears and prayers, bodies and remains of bodies, and landscapes and topography that may be legendary or not, to use Maurice Halbwachs’s expression. They are a kind of interpretation of trauma that is also a representation and a transfer of sacredness, from death to survival or revival. And through the eyes of visitors, we may ask ourselves how people’s lives can be made to reappear, when so much was done to extinguish them.

Such memorial museums are part of what is now often referred to as “dark tourism”, which combines a certain voyeurism for appalling objects with a search for emotion. Most of these museums have two parts: the site itself, which may have been adapted to make it suitable for visiting, and a section exploring the history. The degree of academic investigation and the use made of the site by the authorities for political purposes vary widely. These museums may be created in new buildings, such as the POLIN Museum of the History of Polish Jews, which fills the empty space of the former Warsaw ghetto, destroyed by the Nazis in 1943; the Drancy Memorial, which is opposite the site of the internment camp; and the 9/11 Memorial and Museum at the site of the World Trade Center’s twin towers.

3 Landscape after the Battle (Krajobraz po bitwie) is a 1970 film by a Polish film director Andrzej Wajda, depicting the story of a Nazi concentration camp survivor.
Alternatively, they may be in one of the site’s original buildings, transformed from its function at the time of the catastrophe to become both museum and exhibit, such as the blocks of Auschwitz I, the Birkenau Sauna and the gatehouse of the destroyed village of Belchite, a symbol of the Spanish Civil War.\(^7\)

Having a strong potential to elicit memories and emotions, these places undergo a sort of reclassification, becoming sites of sacrality and pilgrimage. In this vein, Révérien Rurangwa, a survivor of the genocide of the Tutsi of Rwanda, describes his trip to Auschwitz-Birkenau in January 2004:

Going to Auschwitz is not tourism … it is an inner journey confronting the scene of Evil, the symbol of Genocide, the paradigm of Crimes Against Humanity … A place where all the survivors find themselves in some way at home, I dare say. It is this strange brotherhood that I have just shared with other survivors of genocide … Our group includes old Armenians, aged Jews, young Tutsi, Hereros from Mozambique. But survivors have no age … It is impossible not to superimpose the images that I carry within myself … These are not huts on a gloomy plain but laughing hills where colours burst under a clear sky. Come closer … A whole country transformed into a killing field. Methodical, open-air barbarism … This trip to Auschwitz plunges me into a painful reflection. Each thought wakes a sensitive memory, a flesh wound. I could not manage to distance myself.\(^8\)

Whether survivor or not, one might ask how it is possible to “distance oneself” when faced with sites that are “unlimited: at the same time both at the heart of historical analysis, limited to a certain time and place, and a work of memory and therefore unlimited, prolonged, disappearing and returning, in spectres that are politicized and sometimes instrumentalized by those who work to preserve them”.\(^9\)

As early as World War I, people wondered whether the Reims Cathedral should be rebuilt or whether the ruins should be left as a demonstration of the enemy’s “barbarity”.\(^10\) In Hiroshima, while a modern museum designed by Kenzo Tange was inaugurated in 1954, the skeletal dome was left as a reminder of the catastrophe and has remained a constant feature in the shifting landscape of the Hiroshima Peace Memorial. Should reconstruction be favoured or should ruins be displayed? Nowadays, the logic of Oradour-sur-Glane is more rarely followed, with its accusatory ruins giving the impression of being frozen in time.

The aim of these memorials is to symbolically bring people from the past back to life. That is the translation of Yad Vashem, the name of the huge World Holocaust Remembrance Center in Jerusalem. The phrase is borrowed from the Book of Isaiah: “And to them will I give in my house and within my walls a

\(^7\) Stéphane Michonneau, “Belchite ou l’impossible Dark Tourism de la guerre civile espagnole”, Mémoires en Jeu/Memories at Stake, No. 3, April 2017.

\(^8\) Révérien Rurangwa, Génocidé, Presses de la Renaissance, 2006, p. 47 (Review’s translation).


memorial and a name.” The photographs that are used across museum sites often give these people faces. At former extermination sites, photographs of children are chosen on purpose, not only because emotions are stronger when we are faced with young lives that have been lost, but also because the extermination of children is central to the concept of genocide: it was through children that aggressors wanted to remove the Armenians, the Jews and the Rwanda Tutsi from the face of the Earth. Likewise, they are not objects that have been discarded, but are remembered as human beings. Memorials and museums give the dead an identity again.

Visiting these sites of catastrophe is not only a matter of clarifying the experiences of survivors and victims or their families, it is also a matter of trying to understand the different roles of everyone within the conflict. Not looking at the interactions between enslavers/executioners, slaves/deportees and those who found themselves in the affected area – whether directly involved or not – would lead to a one-dimensional view of history. The reflex is always to identify with the victims, but that can be problematic. Sometimes victims have been forgotten, or there is a sense of competition between the different victims, and the different memories. But other times victims can find an element of redress, of being given back their past. There are sites where optimistic “heritage entrepreneurs” offer an oxymoron to entice visitors to these “peace sites”, which were in fact created by war.

People visit such places when they want to see the suffering of their own people, or of others, and to get closer to it. Otherwise, how can the vast numbers of South Korean visitors to Auschwitz-Birkenau be explained? The camp, especially Auschwitz I – a key place for Polish remembrance and one that has come to symbolize the whole deportation and extermination of the Jews – has too many visitors nowadays, despite the efforts of the museum management, with the support of the international survivors’ association, to manage the flow of tourists. Mass tourism fails to guard the silence and the necessary respect owed to such sites, and puts at risk the fragile marshy soil and wooden structures of these locations.

At the intersection of the history of military, political, social and cultural violence against people, and the role of memory and trauma, researchers in “memorial tourism” create an intellectual sphere where history is written during the short term of destruction and the long term of remembering or forgetting, and thus form narratives between amnesia, anamnesis and hypermnesia. The intellectuals who study these sites decode at the same time as the visitor the “symbolic constructions” of museums and memorials, which attempt to raise awareness of the fact that the body, spirit and landscape are vulnerable, in the etymological sense of the word. How have the most painful, extraordinary wounds and devastations of the past been experienced, perceived, prolonged and unceasingly represented – “distilled”, as geographer and writer Julien Gracq

11 Isaiah 56:5. For more information on the importance of Yad Vashem, the World Holocaust Remembrance Center, and the United States Holocaust Memorial Museum, see Annette Becker, Messagers du désastre: Raphaël Lemkin, Jan Karski et les génocides, Fayard, Paris, 2018.
said? Gracq invented the notions of the *esprit de l’histoire* (spirit of history) and *paysage-histoire* (history-landscape) – the idea that landscapes are shaped by people.12 This article will focus on the remarkable heritage landscape of the post-genocide of the Tutsi of Rwanda, with comparison to other world memorials.

**What appears on site: Beyond the taboo of death**

In site museums, one is at the heart of the notion of “sites of memory” developed by Pierre Nora: they are a kind of “melting pot” where meaning is created, from the past to the present.13 For their creators and visitors, these places offer re-enactment, sometimes with a sense of reparation, of restitution of the past, and certainly with a vivid sense of conjuring up the victims and their fear. There is a re-appropriation of places that have become real or substitute cemeteries: people make pilgrimages to them because these memorial museums are very emotional, sacred places. More than anything, genocide has destroyed and killed, and the people who visit these museums are either victims or identify with the victims, hence the term “place of victim remembrance”.14

In Rwanda, the horror of the suffering and death inflicted on the Tutsi in 1994 is everywhere. It is communicated through surviving witnesses, escaped witnesses, eyewitnesses who have become guides at memorial sites. It has become their job – “they tell their story every day”.15 But they are more than simply guides, having become what Avishai Margalit calls moral witnesses: those who have known evil, suffered and taken risks to bear witness, in an ethic of remembering.16 One of these guides at Bisesero, whose face bears a long machete scar, says: “I am a guide because I am a survivor but also because I can do it.”17 The guides at the memorial sites in Rwanda embody the genocide: some of them tell their own stories of death and survival, while others, often younger, relate to the official regional or national version. “They are the region’s truth.”18 The guide at Nyange shows his own archive, a piece of paper that has been folded and unfolded thousands of times, and that speaks of his pain at seeing his truck requisitioned by the killers while his family were crushed and then burned in

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15 Interview with Magnifique Neza, April 2014. On file with author.
17 Interview with A. B., April 2014. On file with author.
18 Interview with Martin Musoha, April 1994. On file with author. Musoha survived the genocide at age 14 and later became a member of the National Commission for the Fight against Genocide (Commission Nationale de Lutte contre le Génocide, CNLG), where he was in charge of exhumations.
their own church following the orders of their own priest. It is their bones that are displayed in the glass cabinet behind the guide.

In most genocide museums, the bodies themselves are not displayed, either because this would violate a strict taboo or because the bodies were burned, as in Auschwitz-Birkenau, where only traces of ashes were left. Marceline Loridan-Ivens, who survived Birkenau, writes to her father:

I imagine you looked just like all the corpses I saw scattered along the road as I returned. I can picture your arms outspread, your eyes wide open. A body who’d seen death and then watched himself die. A body no one would ever return to us. When your official document arrived, three years later, we were still hoping you’d come back, but without really expecting you to… If we’d had a grave, somewhere we could cry over you, perhaps things would have been easier.

Is it easier? Are the survivors in Rwanda less haunted? Because in that country bodies of victims are shown, and even more than that, there is a veritable display of death.

This is the case in Kinazi, Kibeho and Murambi, where bodies are preserved with powdered lime, frozen forever in the position of their awful death in the classrooms where they thought they could hide. Murambi still smells of death, only a little less than when the mass graves were reopened so that the exhumed remains could be interred with dignity over twenty years later. One of the survivors, Élise Rida Musomandera, shares her impressions:

In Murambi, I smelled the smell of Rwanda in 1994, the smell of dead people. Murambi is the only place that still really smells of Rwanda in 1994. The smell of dead people is still there despite the twenty years that have passed.

The work undertaken at sites like Murambi is on the border between forensic science and forensic archaeology, beginning with the forensic investigations requested by the International Criminal Tribunal for Rwanda with the aim of gathering evidence. As the laboratory for the conservation of the bodies in

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20 In September 2018, a huge new memorial was inaugurated by the CNLG in Nyange, next to the rebuilt church. The church is a new step in commemoration, as it completely replaces the original site of suffering. On the new church is written in French and Kinyarwanda: “This church replaces the former one which was deliberately destroyed during the genocide perpetrated against the Tutsi in 1994. Their memory will never fade. We will always carry them in our prayers” (Review’s translation).
21 Marceline Loridan-Ivens, Et tu n’es pas revenu, Grasset, Paris, 2015, pp. 48, 59 (Review’s translation). This is the example used by Valérie Rosoux in her excellent chapter “Drames humains et réconciliations: Une mémoire commune est-elle-possible?”, in Annette Becker and Stéphane Tison (eds.), Un siècle de sites funéraires: De l’histoire à la valorisation patrimoniale, Presses de l’Université de Nanterre, Nanterre, 2018.
Murambi shows, this is a place for study and research. The museum part of the site needs to encompass everything that happened to victims, to sum it all up in a *mise en abyme*, from death to proof of the cause of death. Although remains can no longer be identified because the resources required for DNA analysis are not available in Rwanda, studying the bodies means gaining a better understanding of how they were killed. It is survivors who go down into the mass graves to “raise” the bodies, a religious expression that comes quite naturally to the Rwandans, who are predominantly Catholic. In their understanding, bodies and spirits “rise”. Often, women who are a fragile living proof of the genocide because of rape and AIDS work together to sort the remains of their people. Will they ever find those whom they have lost?

In Kinazi, for example, in 2014, there were still bags overflowing with soil mixed with rotting flesh, bones and dirty clothes; the smell of putrefaction was sickly sweet and vile. Does engaging in “memorial tourism” mean smelling the odour of death? In the new, white memorial, skulls, bodies and clothes are displayed in a manner reminiscent of a baroque *mise en scène*, an act of warning, or even an exorcism, in a country possessed by its dead. Visitors literally descend among the dead, into cellars. It is the role of the witness-guides and the cleaning staff (those who sweep in Murambi and Nyamata are survivors too) to embody the death of their people and the difficulty of surviving. They bear extremely visible scars themselves (like the scarred man in Bisesero, whose explanations were so meticulous), not to mention the psychological scars that will be with them forever. The physical scars bring the past into the present, and the mental scars take the present into the past.

Bullet wounds, machete mutilation, severed limbs. The Hutus thought the Tutsi were too tall, and resented their tallness – they had risen too high. They had to be “brought down”, killed. Pleading positions – hands attempting to protect the face – represent a scene of humanity when there was no trace of it left in the executioner. “Bodies speak.”

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24 Dozens of Australians killed at the 1916 Battle of Fromelles were identified by comparing their DNA with that of their descendants. They were reburied in marked graves in a military cemetery. See Bruce Scates, Annette Becker and Lucy Noakes, *Afterlives of War: Grief, Incarceration, Memorialisation and Repatriation*, research project on Fromelles, National Committee investigating the missing of Fromelles and Australian National University, Canberra.

25 At site museums, especially but not only in the United States, re-enactments or reconstructions are common, with guides in period costumes. Although these guides are sometimes costumed actors, many of them are passionate about the history, which they know from archives. This is the case for the Napoleonic War, the American Civil War and even the Second World War in Poland, where there is still widespread Holocaust denial. This is not necessary in Rwanda, where guides and cleaning staff are themselves survivors of the genocide.

26 Of course, anthropological explanations for the genocide can be sought, as Nigel Eltringham does in “Exhibition, dissimulation et ‘culture’: Le traitement des corps dans le génocide des Tutsi du Rwanda”, in Élisabeth Ansett and Jean-Marc Dreyfus, *Cadavres impensables, cadavres impensés: Approches méthodologiques du traitement des corps dans les violences de masse et les génocides*, Editions Petra, Paris, 2012. During genocides, perpetrators either show or hide their crimes. During the time of memorialization, showing is predominant.

27 Interview with Martin Musoza, April 2014. On file with author.
The children’s bodies stand out, some of them still covered by scraps of their school uniforms. As noted above, children were at the centre of the genocide, because it was by killing them that the Tutsi would be wiped from the Earth. In the words of one survivor:

The memorials of Nyamata and Ntarama … I will never get used to seeing the bodies and skulls. In Ntarama, I can’t find the strength to take a step towards the wall that they hit children against, which is still stained with their blood. In Nyamata, the stairs that go down to the basement where the bodies are laid out on the table, I can’t cope with that.28

Photographs from the time of the genocide are displayed on the walls of galleries: the memorials make it possible for visitors to visualize the time of the genocide and show the struggle against forgetting the death that occurred. This is the work of “internment with dignity” done by the National Commission for the Fight against Genocide (Commission Nationale de Lutte contre le Génocide, CNLG), which is responsible for all the memorial sites in Rwanda and is striving to coordinate them. There could be a memorial site every 100 metres, but to increase the impact – and to allow life to resume in a country that has suffered so much – just a few have been preserved. Not just educational but also political, they are both a display of death and an accusation, aimed at Hutu killers, neighbours who were involved in the genocide, or the French officials at the time and the mistakes of Operation Turquoise, as in Murambi.29

These ruins-museums are at the same time places of prayer, mourning and condemnation, even more so when they are churches, schools and hospitals. Places of education, healing and faith became places of butchery, because genocide embodies the inversion of human values. In Kibeho – a highly sacred place where there was once an apparition of the Virgin – the church has been reconsecrated. The back of the church is a memorial, separated only by a curtain. There is a vengeful inscription in purple, the liturgical colour of mourning, in front of the skulls and bones, relics of the time of the genocide: “We ask that the perpetrators of genocide be punished and that it be forbidden to erase the evidence.” There is another inscription in front of the adjacent ossuary: “The people who died here demand that it never happens again.” As guides open the curtain so that visitors can see the bodies hidden behind it and better understand the inscription, it seems that arms are moving as if aiming to grab them. Statues of saints are also exhibited, with their limbs pulled off and their noses cut. The Virgin herself has been mutilated, brought to the same state as the people who believed she would protect them. The killers chose churches purposefully to show that their victims were no longer human.

28 E. Rida Musomandera, above note 22, p. 84 (Review’s translation).
29 Stéphane Audoin-Rouzeau, Une initiation, Rwanda, 1994–2016, Seuil, Paris, 2017. Operation Turquoise, conducted by the French military, took place in Rwanda in 1994. While the initial idea was to help the Tutsi, the military realized on the ground that they were mainly helping the perpetrators to escape. See Guillaume Ancel, Rwanda, la fin du silence: Le témoignage d’un officier français, Les Belles Lettres, Paris, 2018.
Archives and objects in museums of catastrophe

Claude Lévi-Strauss reminds us:

The virtue of archives is to put us in contact with pure historicity. … [O]n the one hand they constitute events in their radical contingency (since only interpretation, which forms no part of them, can ground them in reason), and, on the other, they give a physical existence to history, for in them alone is the contradiction of a completed past and a present in which it survives, surmounted. Archives are the embodied essence of the event.30

The numerous genocide museums around the world, like the few existing slavery museums, are usually complete sensory spaces, with the explicit aim of shocking visitors.31 They are placed in the hands of professional museum curators who know how to organize written documents, drawings, photographs and objects.

The two museums organized in a Western manner in Rwanda, in Kigali and Murambi, were created by the Aegis Trust, which was set up by two brothers, James and Stephen Smith.32 The Aegis Trust is a British NGO that develops museums with the mission of using education to prevent genocide and crimes against humanity.33 The Smith brothers began their activities in 1995 with a reflection on the genocide of the Jews through Beth Shalom, the National Holocaust Centre and Museum in the UK, which was created without the contribution of other researchers or curators working on the topic in the country, unlike the remarkable permanent exhibition on the Holocaust at the Imperial War Museum. Drawing on this experience, they became interested in Kosovo and then Rwanda. The Holocaust model of memorials is very present in Kigali and Murambi: all museum materials were produced in the UK by the Aegis Trust and sent to Rwanda, where the exhibits were put together. Tour operators do not miss a chance to send visitors to the memorial site before or after they visit the National Parks to see the great apes.34 These visitors are Westerners, like the museum curators, although many, especially high schools groups, also come from Rwanda and other African countries. Large numbers of Western tourists raise

31 One example of this is the remarkable audio-visual display recreating the Middle Passage at the International Slavery Museum in Liverpool. In this exhibit, the chained-up bodies at the bottom of a slave ship in a storm can be seen in their awful physical and mental suffering, huge, on three screens that make visitors feel physically and mentally sick.
32 There is a lot to write about the work of the Aegis Trust, but such a discussion is outside of the scope of this paper. For more information, see Aegis Trust, “Our Starting Point”, available at: www.aegistrust.org/what-we-do/our-starting-point/ (all internet references were accessed in March 2019). For further insights, see the work of Rémy Korman on his website, rwanda.hypotheses.org, and in his upcoming thesis, La construction de la mémoire du génocide des Tutsi du Rwanda: Etude des processus de mémorialisation.
34 The online advertisement for the Kigali memorial states: “The Kigali Genocide Memorial is the best known and most visited memorial site in Rwanda because of its easy accessibility. Tourists arriving at the Kigali International Airport will find the site an easy drive from the airport or from one of the many hotels located in and around Kigali.” See “Kigali Genocide Memorial”, Genocide Archive Rwanda, available at: rga1.lib.utexas.edu/index.php/Kigali_Genocide_Memorial.
questions about the mechanisms of Europeanization, and the clear-sighted, well-informed observer may experience a certain degree of shame: after colonization and complicity in genocide, has the West moved on to domination in historical and memorial representation?\textsuperscript{35}

The Aegis Trust’s museums are set out to provide a coherent account of the genocide under the patronage of the new Rwanda since 1994. The aim is also to provide an exhibition focusing on the fate of the victims, particularly through their personal possessions, which one might call “history through the senses”.\textsuperscript{36}

First, the dead are evoked by using metaphors, the clothes and objects that made them individuals; then by using photographs, as can be found in many genocide memorials around the world, particularly the Holocaust ones. The photographs presented are from prior to the catastrophe, depicting life “before”. The children murdered in Kigali because they were Tutsi resemble the children murdered because they were Jews depicted at memorials in Paris or Sydney.

In Kigali, as in Mechelen (the last Belgian transit camp before Birkenau), objects, such as tricycles or bicycles, are displayed just the way they were used. They tell stories of the individuals who used them, loved them, lost them, found them. In humankind’s eternal battle with death, genocide is a victory for death. These surviving objects bring back life. The simpler they are, the closer they are to the people. Children’s drawings give the impression of proximity to the deceased, through the marks they left on the object, which is both a historical inspiration and a trigger for the imagination. If too much is said about these objects, it deprives them of their voices. Too much staging makes them disappear – they must be left to speak for themselves.

These personal objects belonged to different people, and each of them tells a different story. Yet at the same time the objects are so ordinary that everyone in a group owned the same thing – for example, schoolchildren and their uniforms. They are similar yet different, displaying the collective through the individual and \textit{vice versa}. This sharing of the personal, of objects that were otherwise part of an ordinary life, conjures up the immediacy of the horror. Ordinary objects are marked by the catastrophe, which gives them new meaning and speaks to the visitors. There are school shirts and sandals, hoes and identity cards, rosaries, pipes and sickles, watches, glasses and shoes – leather and plastic last better than cloth. These objects provide rough sketches of the people who were caught up in the machinery of death: they were Christians, like their killers; farmers, like their killers; and loved their families, like their killers.

These displays conjure up individuals and personalities beyond the stock of objects. They are not just things that have been cast away. They are people. A pair of glasses, a doll, a photograph – each unique. The cumulative effect of these objects does far more than merely describe; it brings the dead back to life. The same is

\textsuperscript{35} Matthew Boswell, “Reading Genocide Memorial Sites in Rwanda: Eurocentrism, Sensory Secondary Witnessing and Shame”, \textit{Mémoires en Jeu/Memories at Stake}, No. 3, April 2017.

\textsuperscript{36} This is similar to the methods used by the curators and historians at the Buchenwald museum. See Buchenwald and Mittelbau-Dora Memorials Foundation, “Concept and Design”, available at: \url{www.buchenwald.de/en/1455/}. 
true of the ubiquitous identity cards which showed that people belonged to the group to be killed and which now give them back their names and faces. We are close to the notion of “aura” that was so dear to Walter Benjamin:

If we designate as aura the associations which, at home in the mémoire involontaire, tend to cluster around the object of a perception, then its analogue in the case of a utilitarian object is the experience which has left traces of the practiced hand.37

At the International Red Cross and Red Crescent Museum in Geneva, the genocide of the Tutsi in Rwanda is represented by photos of children who survived. There is a case number on each photo of the children separated from their families: TRU 227, TRU 228, TRU 229. How much work went into bringing back together the separated families that are hidden behind these numbers? The humanitarian effort is also represented through an artwork made by prisoners, depicting former genocidal killers awaiting trial or already sentenced. We see the prison building, visited by the International Committee of the Red Cross, food stalls, a medical centre and a school. Normal life comes afterwards: sentencing, helping, teaching and healing.

Yet, after having seen the memorials and mass graves, one cannot help but think how sanitized most museums are. The display cases do more than merely protect the artefacts; they also protect the visitors from the awful reality of the events. In Kigali National Memorial, the clothes are hung up artfully. They have been washed. There are no smells, no blood. It is a far cry from the force of the site memorials at Kinazi and Murambi.

This is all the more true when the instruments of death are displayed, be they weapons or radios that broadcast calls for murder on the Libre des Mille Collines radio station.38 These objects have another function – to communicate a message that summarizes and symbolizes the collective. This can also be seen at the Museo Memoria y Tolerancia in Mexico, where the Aegis Trust was called upon to set up the section on the genocide against the Tutsi. The exhibition focuses on long-running propaganda – the radio and the caricatures in the magazine Kangura. There, we see the French presence: François Mitterrand, who was friendly with the Hutu regime which perpetuated the genocide; Operation Turquoise; and a large portrait of Maurice Papon, representing France’s complicity in another genocide, the Holocaust.39

38 Radio Télévision Libre des Mille Collines was a Rwandan radio station which, along with Kangura magazine, played a significant role in the genocide. For more information see Russell Smith, “The Impact of Hate Media in Rwanda”, BBC News, 3 December 2003, available at: http://news.bbc.co.uk/2/hi/afrika/3257748.stm.
39 Maurice Papon was a French civil servant convicted of aiding and abetting crimes against humanity (responsible for the deportation of Jews between 1942 and 1944). For more information, see Trial International, “Maurice Papon”, available at: https://trialinternational.org/latest-post/maurice-papon/.
From genocide to world heritage

Today the CNLG is applying for UNESCO World Heritage Site status for the memorials in Nyamata, Murambi, Bisesero and Gisozi-Kigali. To do so, it needs to prove the sites’ oxymoronic “outstanding universal value”. What will UNESCO classify? Death, the smell of death, blood, weapons, decay, surviving objects? UNESCO is calling such traces of genocide “negative memory” and is reluctant to add these remarkable witnesses of horror to its World Heritage List. As Auschwitz-Birkenau is on this list, we can only wonder about UNESCO’s criteria. At the same time, the sites and their presentation of cruelty also need to meet certain criteria for visiting. After mass death comes mass tourism, protecting sites, classifying them as “cultural property” and often sanitizing them through restoration. The system of heritage protection should garner international attention for an exceptional history, but it simultaneously forces that history into a mould which is acceptable to everyone. Seeing “their” site included on the UNESCO World Heritage List is, in a way, the ultimate aim of the survivors and their descendants who have allied themselves with the memorial tourism businesses. The death of their relatives or their extreme suffering could, they believe, become an internationally recognized “destination”, without ceasing to be enshrined and stored in them. Such a destination would be a cultural one, revealing the human and historic nature of the events, offering a sometimes challenging experience and adding to our historical knowledge of the genocide.

Inclusion of a site on the UNESCO World Heritage List involves a very complicated application process. Political or diplomatic factors often play as big of a role as cultural ones. The resulting insistence on modern conservation methods and the need to deal with increasing numbers of tourists can lead to technical changes which may alter the traces that were originally preserved, as is currently feared with the huge number of visitors in Auschwitz, for example.

Elsewhere, denial is a terrible factor. For example, the Republic of Armenia registered some heritage sites, but those that were in Anatolia were destroyed during or after the genocide of Armenians and obviously denied by Turkey. As for recognized sites that are destroyed by war and the murder of memory, as seen with Palmyra, the Buddhas in the Bamiyan Valley or the shrines in Timbuktu, UNESCO can only express protest. The process of memorial tourism can be

40 Extract from the preliminary report: “The sites of Nyamata, Murambi, Bisesero and Gisozi are serial properties including sites of memory that constitute unique and exceptional historical testimonies of the history of humanity. Each site represents the value of the memorial elements that express the unique and exceptional history of Rwanda and the modern world” (Review’s translation). On file with author.
41 Informal conversations between UNESCO officials and the author.
seen at work here: thousands of years created these works of art, and they were then destroyed by war, making them modern destinations for dark tourism – as if war, including religious war, added something by erasing that which came before it.

**Conclusion**

At the museum in Kigali, the visit ends with a reflection on the long-term consequences of war and genocide, such as refugees and trauma, and with some historical context for the different markers of extermination, including the Herero, Armenians, Jews, Cambodians and Bosniaks. Objects have been chosen that show shared experiences: German identity cards indicating that the bearer was a Jew, drawing a parallel with the Tutsi identity cards, where the word “Hutu”, which saved people during the genocide, is crossed out; piles of bones belonging to Herero, or Cambodians assassinated by the Khmer Rouge. Minimal context is provided, but there is an emphasis throughout on the certainty of genocide, under the key figure of Raphael Lemkin, who coined the term in 1943: from *genos*, which means “race” in Greek, and *occidere*, “kill” in Latin – a linguistic barbarism to describe the most barbaric of acts. Lemkin also said that not only can one not survive a genocide unscathed, but one can never leave it behind:

> After a war, even if it’s lost, a nation can rebuild its technical and financial resources, start a new life. But those who have been destroyed in a genocide are lost forever. One can repair the losses of a war; the losses of a genocide are irreparable.43

Lemkin gave the example of surviving Armenians and Jews to justify his devastating thought: there is no future for the victims of genocide.44 Those Rwandan Tutsi who are not familiar with Lemkin’s works nevertheless speak of experiencing what he referred to as “the continuation of the psychological scar”. Sociologist Esther Mujawayo is one such example:

> The power of a genocide is just that: horror while it is going on and horror afterwards. Internally, there is no end to a genocide. The killing, the massacres and the pursuit all stop, but there is no end to the destruction.45

Claudine, a resident of Nyamata who survived the genocide, speaking at the time of her later wedding, says: “Thanks to the wedding, time wears a kind face at present. But only the present. Because I see clearly that the future has already been eaten up by what I have lived through.”46

The future has been “eaten” like the future of the survivors who have tried to live again in their region where genocide took place. The Jews in Poland and Ukraine post-1945 and the Tutsi in Rwanda post-1994 have faced denial and the continuation of the genocide due to the continuing presence of their neighbours who were killers, and the sense of impunity:

I am still living the genocide that started with you … But that does not intimidate me, it does not stop me from speaking for my dead, because in my opinion they surround me even if they will never speak again.47

As Élise Rida Musomandera said: “There are people who survived because the genocide stopped, but do survivors really exist?”48 She could have used the frightful expression that Soazig Aaron used when talking about the genocide of the Jews: sous-vivants49 – a play on the French word for survivor, survivant, but replacing the prefix sur- (over) with sous- (under). A parallel can be drawn to the expression “walking dead” (bapfuye buhagazi) that is often used in Rwanda to describe survivors.50 This is something that, without a doubt, no museum will ever be able to display.

48 E. Rida Musomandera, above note 22, p. 72 (Review’s translation).
Wired warfare 3.0: Protecting the civilian population during cyber operations

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Abstract

As a general matter, international humanitarian law is up to the task of providing the legal framework for cyber operations during an armed conflict. However, two debates persist in this regard, the resolution of which will determine the precise degree of protection the civilian population will enjoy during cyber operations. The first revolves around the meaning of the term “attack” in various conduct of hostilities rules, while the second addresses the issue of whether data may be considered an object such that operations destroying or altering it are subject to the prohibition on attacking civilian objects and that their effects need be considered when considering proportionality and the taking of precautions in attack. Even if these debates were to be resolved, the civilian population would still face risks from the unique capabilities of cyber operations. This article proposes two policies that parties to a conflict should consider adopting in order to ameliorate such risks. They are both based on the premise that military operations must reflect a balance between military concerns and the interest of States in prevailing in the conflict.

* The views expressed in this article are those of the author in his personal capacity. The author is grateful to Lieutenant-Colonel Jeffrey Biller (USAF) for his invaluable comments.
The refusal by Russia, China and a number of other countries during the 2016–17 United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UN GGE) negotiations to expressly acknowledge the applicability of international humanitarian law (IHL) to cyber operations marked a major reversal in the effort to clarify how such operations are constrained by international law.1 This refusal was particularly stunning in light of the fact that two years earlier the previous UN GGE, which included both Russia and China as members, had characterized “the principles of humanity, necessity, proportionality and distinction” as “established international law principles”,2 a statement that can only be interpreted as agreement that IHL governs the conduct of cyber hostilities during armed conflicts.

As a matter of law, the refusal is puzzling. There is broad consensus that IHL applies to cyber operations during an armed conflict. This is the position of key countries wielding cyber capability, such as the United States;3 international organizations like NATO and the European Union;4 the International Committee of the Red Cross (ICRC);5 and most of the academic community.6 The consensus is based in part on State practice, which has long recognized that new means and methods of warfare are subject to the prohibitions, restrictions and requirements

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found in IHL’s weapons law and conduct of hostility rules. In its Nuclear Weapons Advisory Opinion, for instance, the International Court of Justice confirmed IHL’s applicability to new weapons. Furthermore, Article 36 of Additional Protocol I to the 1949 Geneva Conventions (AP I) requires parties to, “in the study, development, acquisition or adoption of a new weapon, means or method of warfare[,] … determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law”. Even States which are not party to AP I recognize the need to ensure that new weapons, including cyber weapons, meet the requirements of extant IHL norms. Finally, simple logic dictates that IHL must apply to novel ways of conducting hostilities, for almost every conflict brings with it new weapons, tactics and operational design. It would be absurd to hold that only means and methods of warfare which predated the adoption of a treaty or the crystallization of a customary law rule are subject to the principles and rules found therein.

The question, therefore, is not whether IHL applies to cyber operations conducted during an armed conflict, but how it does so. In most cases, application is straightforward. It is hardly a jurisprudential epiphany, for example, to conclude that a lethal, injurious or destructive cyber operation directed at civilians not only violates IHL but also constitutes a war crime during both international and non-international armed conflicts. Similarly, cyber-attacks are self-evidently limited by the rule of proportionality and the requirement to take precautions in attack.

A number of issues nevertheless remain unsettled. Lying at the heart of this grey area are two persistent debates, the resolution of which will have significant consequences for the civilian population. Both are definitional in character. The

8 International Court of Justice (ICJ), Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports 1996, paras 85–86.
9 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (AP I), Art. 36.
14 AP I, Arts 51(5)(b), 57(2)(a)(iii), 57(2)(b); ICRC Customary Law Study, above note 12, Rule 14; Tallinn Manual 2.0, above note 6, Rule 113.
first deals with the scope of the term “attack”. It is a determinative matter with respect to cyber operations because various IHL prohibitions, restrictions and requirements apply only to those meeting the definition of attack. The second debate surrounds the meaning of the term “object.” It bears on cyber operations by begging the question of whether a cyber operation which destroys or alters civilian data in a way that has no physical manifestation is a prohibited attack on a civilian object.

I have addressed these issues in two earlier Review articles, entitled “Wired Warfare” and “Rewired Warfare”. In the current piece, I move beyond the law itself in search of partial solutions to these quandaries. This requires a brief return visit to the debates. Therefore, in the first section of this article, I summarize the differing views as to where the threshold of “attack” lies, while in the second part I sketch out the current disagreement as to whether data is an object. It is not my intention to relitigate the sundry positions here; on the contrary, the discussion on these two issues is offered solely to illustrate that the law is unsettled in a way that either places civilians at risk or fails to address currently lawful cyber operations that could nevertheless prove highly detrimental to the civilian population.

Since this situation is unlikely to be resolved as a matter of law any time soon, in the third part of this article I offer two policy proposals to address the shortfalls in civilian protection vis-à-vis cyber operations. They are meant to be applied by the State conducting a cyber operation when that State concludes that the operation either does not qualify as an attack or is not subject to the prohibition on attacking civilian objects because data is being targeted and, in the State’s view, data is not an object. Although the proposals are intended to enhance the protection of the civilian population, they remain sensitive to the need of States to conduct their wartime operations effectively. Thus, the proposals

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17 AP I, Art. 52(1); ICRC Customary Law Study, above note 12, Rule 7; Tallinn Manual 2.0, above note 6, Rule 99.

are designed to reflect the balance between humanitarian considerations and military necessity that undergirds IHL and other norms of warfare.19

It must be cautioned that I am not asserting that the two proposals represent *lex lata*; in my view they do not, although I concede that others may disagree. Instead, I am proposing a policy-driven, militarily realistic humanitarian safety net that States can adopt for situations in which they conclude that an operation during an armed conflict falls outside the strictures of IHL. Over time, the legal issues that are described below may be resolved, thereby strengthening the influence of IHL over cyber operations. But in the interim, the international community needs a practical solution that addresses these grey areas in the law of cyber targeting.

**Issue one: Meaning of “attack”**

As noted, key IHL prohibitions, restrictions and requirements found in treaty and customary law, or both, are framed in terms of “attacks”.20 For instance, it is prohibited to directly attack civilians or civilian objects;21 conduct indiscriminate22 or perfidious attacks;23 or attack, with various exceptions and qualifications, specified persons or objects enjoying special protection (such as medical units;24 objects indispensable to the survival of the civilian population;25 the environment;26 works and installations containing dangerous forces, namely dams, dykes and nuclear power stations;27 non-defended localities;28 and combatants who are *hors de combat*).29 Attacks are subject to the rule of proportionality, which prohibits “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to concrete and direct military advantage anticipated”.30 Additionally, a party to the conflict that is

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20 An attack in the context of IHL is not to be confused with the *jus ad bellum* term “armed attack” found in Article 51 of the UN Charter. The analysis set forth in this article is limited to the former.

21 AP I, Arts 51(2), 52(1). On their customary status, see ICRC Customary Law Study, above note 12, Rules 1, 7.

22 AP I, Art. 51(4); ICRC Customary Law Study, above note 12, Rule 11.


24 AP I, above note 9, Art. 12(1); ICRC Customary Law Study, above note 12, Rule 28. On the use of the term with respect to attacking medical aircraft, see AP I, Arts 27(2), 31(2).

25 AP I, Art. 54(2); ICRC Customary Law Study, above note 12, Rule 54.

26 AP I, Art. 55(2). The customary status of this rule is unsettled.

27 AP I, Art. 56(1). The customary status of this rule is unsettled.

28 AP I, Art. 59(1); ICRC Customary Law Study, above note 12, Rule 37.

29 AP I, Art. 41(1); ICRC Customary Law Study, above note 12, Rule 47. On the prohibition against attacking persons parachuting from aircraft in distress, see AP I, Art. 42.

30 AP I, Arts 51(5)(b), 57(2)(a)(iii), 57(2)(b); ICRC Customary Law Study, above note 12, Rules 14, 19.
mounting an attack must take certain feasible precautions to minimize harm to the
civilian population.31

The interpretation and customary status of some of these rules, especially
with respect to cyber operations, are the subject of controversy. The point,
however, is that whether they apply in the cyber context depends on the scope of
the term “attack”.32 Should a cyber operation not qualify as such, the rules are
inapplicable, although other rules of IHL may nevertheless prohibit or restrict the
cyber operation.33

Article 49(1) of AP I defines attacks as “acts of violence against the
adversary, whether in offence or in defence”. It is well accepted that conducting
an act of violence against civilians or civilian objects also qualifies as an attack.34
Drawing on this definition, the experts who produced the Tallinn Manual 2.0 on
the International Law Applicable to Cyber Operations (Tallinn Manual 2.0)
concluded that a cyber attack includes any “cyber operation, whether offensive or
defensive, that is reasonably expected to cause injury or death to persons or
damage or destruction to objects”.35 This is so irrespective of whether the harm is
casted to the target of the attack or collaterally.36 There would appear to be no
meaningful objection to characterizing cyber operations having these results as
attacks.

What is often missed is that the experts did not limit the concept of “cyber-
attack” to physically destructive or injurious cyber operations. A majority of them
concurred that “interference with functionality qualifies as damage if restoration
of functionality requires replacement of physical components”.37 Thus, a cyber
operation resulting in cyber infrastructure’s loss of functionality would amount to
a cyber-attack.

At that point, consensus among the experts broke down, as they took
various positions with respect to the meaning of “loss of functionality”. Whereas
some would limit loss of functionality to situations in which physical components
of targeted cyber infrastructure need to be repaired or replaced, others were
willing to extend the notion to those in which regaining functionality requires
reinstallation of the operating system or of bespoke data upon which the system
relies to perform its intended function. A number of them went so far as to argue
that it is immaterial how the loss of functionality occurs – the mere fact that the
system no longer works as designed is sufficient.38

32 For an excellent summary regarding the issue of cyber attacks, see William H. Boothby, The Law of
34 Nils Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International
35 Tallinn Manual 2.0, above note 6, Rule 92.
36 Ibid., p. 419.
37 Ibid., p. 417. See also C. Droege, above note 11, pp. 560–561.
38 Tallinn Manual 2.0, above note 6, pp. 417–418. On the loss of functionality, see W. Boothby, above note
32, pp. 386–387.
A further grey area of the law involves cyber operations that do not result in injury or damage but nevertheless cause adverse consequences for the civilian population, such as “disrupting all email communications throughout the country”.39 Most of the Tallinn Manual experts, despite recognizing the extent to which cyber operations of this nature might disrupt civilian life, were of the view that there is as yet no legal basis for treating such operations as an attack.40 All of the experts agreed that cyber operations causing mere inconvenience or irritation do not rise to the level of a cyber-attack.41

The ICRC addressed the issue in both its 2011 and 2015 International Humanitarian Law and the Challenges of Contemporary Armed Conflicts reports (Challenges Reports).42 In the latter, the organization noted that “the manner in which the notion of cyber ‘attack’ is defined under the rules governing the conduct of hostilities … will greatly influence the protection that IHL affords to essential civilian infrastructure”.43 It then zeroed in on the decisive question of the point at which loss of functionality renders a cyber operation an attack. In particular, the ICRC concluded that “an operation designed to disable an object – for example a computer or a computer network – constitutes an attack under the rules on the conduct of hostilities, whether or not the object is disabled through kinetic or cyber means”.44 The 2015 Challenges Report correctly observed that

an overly restrictive understanding of the notion of attack would be difficult to reconcile with the object and purpose of the rules on the conduct of hostilities, which is to ensure the protection of the civilian population and civilian objects against the effects of hostilities.45

Sagaciously, the ICRC used the report to highlight the ambiguity in the concepts surrounding qualification as an attack. For example, with respect to the exclusion of cyber operations that merely cause inconvenience, the ICRC pointed out that “what is covered by ‘inconvenience’ is not defined and this terminology is not used in IHL”.46 But like the Tallinn Manual experts, the ICRC recognizes that, to an extent, the nature of consequences, and not necessarily their severity, matters when qualifying a cyber operation as an attack. In particular, the 2015 Challenges Report excluded espionage _per se_ as an attack and noted that “the jamming of

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39 Tallinn Manual 2.0, above note 6, p. 418.
40 Ibid.
44 Ibid.
45 Ibid.
46 Ibid., p. 42.
radio communications or television broadcasts has not traditionally been considered an attack in the sense of IHL”.47

By these mainstream approaches, it is possible to definitively characterize destructive or injurious cyber operations as attacks and exclude those at the low end of the effects spectrum. Yet, most cyber operations are unlikely to be physically destructive or injurious, and many will not affect the targeted cyber infrastructure’s functionality in a manner that would clearly cross whatever the appropriate threshold might be for loss of functionality.

This is troubling on two accounts. First, many cyber operations that might be directed at civilian infrastructure or otherwise have serious adverse consequences for the civilian population would arguably not qualify as cyber-attacks, and would accordingly lie beyond the reach of IHL’s rules on attack. Second, uncertainty with respect to the loss of functionality threshold leaves the legal characterization of certain cyber operations directed at or affecting the civilian population ambiguous. A party to the conflict could exploit such uncertainty to avoid consensus condemnation as unlawful of cyber operations that are directed at or otherwise affect civilian cyber infrastructure. From a humanitarian perspective, this situation is untenable.

**Issue two: Data as objects**

A second dilemma posing particular risk for the civilian population surrounds the question of whether the notion of “objects” extends to data, such that civilian data would enjoy the protection of the prohibition on attacking civilian objects.48 This question is independent of the issue of the definition of attack, for if data is an object, the deletion or alteration of the targeted data would plainly comprise the damage that is necessary to qualify the cyber operation as an attack. And if data is not an object, the prohibition does not attach.49

Two views dominate the discourse. A majority of the Tallinn Manual experts agreed that the term “object” should not be interpreted as encompassing data.50 They based their conclusion on the fact that data neither falls within the “ordinary meaning”51 of the term “object” since it is intangible, nor “comports

47 Ibid., pp. 41–42.
48 It must be cautioned that the debate does not extend to a cyber operation directed at data when that operation has knock-on destructive or injurious effects. Consider a cyber operation that deletes or manipulates data in an air traffic control system and thereby risks the crash of aircraft. There is broad consensus that such an operation would be an attack. The data issue only arises in situations in which a cyber operation against data does not risk having consequences that otherwise would qualify it as an attack.
49 Operations directed against certain data are prohibited by other IHL rules. See, e.g., Tallinn Manual 2.0, above note 6, Rule 132 and discussion at p. 515 (medical data), and Rule 142 and discussion at pp. 535–536 (some experts extend protection to cultural property in data form).
50 Ibid., p. 437.
with the explanation of it offered in the ICRC Additional Protocols 1987 commentary”.52

The other experts replied that adopting this approach would mean that even the deletion of essential civilian datasets such as Social Security data, tax records, and bank accounts would potentially escape the regulatory reach of the law of armed conflict, thereby running counter to the principle that the civilian population enjoys general protection from the effects of hostilities.

They looked to the object and purpose of the prohibition on attacking civilian objects to conclude that the essential factor is the “severity of the operation’s consequences, not the nature of harm”. For these experts, “civilian data that is ‘essential’ to the well-being of the civilian population is encompassed in the notion of civilian objects and protected as such”.53

In its 2015 Challenges Report, the ICRC made a similar observation. Noting that “deleting or tampering with [certain] data could quickly bring government services and private businesses to a complete standstill, and could cause more harm to civilians than the destruction of physical objects”,54 the organization opined:

The conclusion that this type of operation would not be prohibited by IHL in today’s evermore cyber-reliant world – either because deleting or tampering with such data would not constitute an attack in the sense of IHL or because such data would not be seen as an object that would bring into operation the prohibition of attacks on civilian objects – seems difficult to reconcile with the object and purpose of this body of norms.55

I agree in principle with this assessment.

Various other approaches have been suggested to deal with the matter. One differentiates between so-called operational- and content-level data.56 The former denotes data upon which the functioning of cyber infrastructure is reliant, whereas the latter simply represents information in data form, such as the text data used to create this article. Dealing only with operational-level data, this approach rejects the criterion of tangibility and instead concentrates its attention

52 Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds), Commentary on the Additional Protocols, ICRC, Geneva, 1987 (ICRC Commentary on APs), paras 2007–2008: “The English text uses the word ‘objects’, which means ‘something placed before the eyes, or presented to the sight or other sense, an individual thing seen, or perceived, or that may be seen or perceived; a material thing’. … The French … text uses the word ‘biens’, which means ‘chose tangible, susceptible d’appropriation’. It is clear that in both English and French the word means something that is visible and tangible.” It must be acknowledged that the context in which this explanation was offered is not directly applicable, but the Tallinn Manual experts nevertheless found it helpful in their deliberations.

53 Tallinn Manual 2.0, above note 6, pp. 437.

54 2015 Challenges Report, above note 41, p. 43.

55 Ibid.

on whether the data qualifies as a military objective.57 In doing so, it implicitly adopts an absolutist view of operational-level data as an object. A somewhat broader approach is to simply treat data as an object. In one example thereof, the proponent supports doing so by “means of a textual, systematic and teleological interpretation of the definition of military objectives found in treaty and customary law”.58 He concludes:

Both civilian life and military operations depend to a growing degree on information and activities confined to cyberspace, with little to no ramifications in the physical world. If the law of armed conflict is to retain its relevance, it ought to reflect this change. That is why, it is submitted, … computer data are objects under international humanitarian law.59

None of the aforementioned approaches is entirely satisfactory. The restrictive approach adopted by the majority of the Tallinn Manual experts is under-inclusive in a practical sense, for it leaves data open to destruction or alteration that could have extremely serious, even if not destructive or injurious, consequences for the civilian population. This would, as its critics allege, run counter to the object and purpose of IHL.

By contrast, the argument (however it is arrived at) that data per se qualifies as an object is over-inclusive. Militaries have long conducted information operations against the enemy population, for instance to undercut support for the government or its policies.60 Doing so is especially alluring during counter-insurgencies.61 With the advent of cyber capabilities, such operations have been carried out by cyber means.62 Cyber psychological operations, as an example, can include the destruction or alteration of data, as with disrupting civilian media activities.

The severity approach advocated by the minority during the Tallinn Manual process, as well as by the ICRC, is the most viscerally appealing. Unfortunately, no legal justification beyond the rather general claim of compliance with object and purpose has been offered to support it. Nor has useful, granular guidance explicating its implementation been set out. Moreover, such an approach glosses over the fact that the issue at hand is a definitional one. This begs the question of the normative logic of characterizing certain data as an object based on severity of the consequences, but not doing so vis-à-vis other

57 Ibid., pp. 41–49.
59 K. Mačák, above note 58, p. 80.
60 See generally, e.g., US Joint Chiefs of Staff, Information Operations, Joint Publication 3-13, as amended 20 November 2014.
data when the consequences of damaging or altering it are less serious. It might make sense to draw a transactional legal line on the basis of consequences caused, as is done with the rule of proportionality, but the same reasoning does not apply when merely defining a term.

The debate will not be resolved in the near future, for adopting an approach by which data either is or is not an object leads to results that are unsatisfactory and impractical. And although considering the severity of consequences for the civilian population seems to reflect the foundational purposes of IHL, the lack of a clear legal basis for the position renders it *lex ferenda*, rather than *lex lata*.

**What is to be done?**

What is to be done in the face of this troubling situation? In my view, the answer lies in looking to the spirit of IHL – since the letter falls short – to inform policy choice. I therefore offer two policy recommendations in that spirit, both of which focus on the severity of effects caused for the civilian population, rather than the type (as in physical damage) of harm resulting.

The spirit of IHL is found in its delicate balancing act between the interests of States in effectively conducting military operations and the suffering that such operations cause to both combatants and the civilian population. This balance has been repeatedly recognized in the key IHL treaties and State guidance. For instance, the 1863 Lieber Code, which set forth instructions for the Union Army during the American Civil War, provided:

> Military necessity does not admit of cruelty – that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.63

Five years later, the St Petersburg Declaration similarly emphasized the need to “fix[] the technical limits at which the necessities of war ought to yield to the requirements of humanity”.64 The need for balance also animated the 1907 Hague Peace Conference, as is apparent in Hague Convention IV, which noted that the instrument, one that since has been recognized as having a customary character,65 was “inspired by the desire to diminish the evils of war, as far as

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64 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, *Martens Nouveau Recueil*, Series 1, Vol. 18, 29 November 1868, Preamble.
military requirements permit”.

The Convention likewise set out the Martens Clause, which reappeared seven decades later in AP I:

*Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.*

These statements and provisions exemplify the International Court of Justice’s (ICJ) observation in *Corfu Channel*, its first case, that “elementary considerations of humanity” infuse international law.

Cyber operations are a game changer in terms of achieving the sought-after balance informing IHL. International humanitarian law was crafted in the context of means and methods of warfare, the effects of which were to damage, destroy, injure or kill. While the civilian population might have suffered as a result of military operations that did not cause these consequences, the threat of harm was overwhelmingly from such effects. Thus, IHL rules are grounded in the need to shield civilians and civilian objects from them, at least to the extent possible without depriving States of their ability to conduct essential military operations.

Unlike kinetic means and methods of warfare, however, cyber operations can severely disrupt civilian life without necessarily running afoul of such physicality-based rules. Thus, because the vast majority of these operations are neither damaging nor injurious, they do not fit neatly into the extant normative architecture meant to protect the civilian population. This predicament cannot be alleviated by simply treating civilian data as a protected civilian object, for doing so

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66 Convention (IV) Respecting the Laws and Customs of War on Land, 36 Stat. 2277, 207 Consol. T.S. 277, 18 October 1907 (Hague Convention IV), Preamble. See also Convention (II) with Respect to the Laws and Customs of War on Land, 32 Stat. 1803, Martens Nouveau Recueil, Series 2, Vol. 26, 29 July 1899, Preamble. The 1899 and 1907 Hague Regulations, in Article 22 of the Annex to both treaties, also note: “The right of belligerents to adopt means of injuring the enemy is not unlimited.” For the modern expression of this principle, see AP I, Art. 35(1) (adding a reference to “methods” of warfare).

67 Hague Convention IV, Preamble; AP I, Art. 1(2). The clause has been cited by in ICJ, Nuclear Weapons, above note 8, p. 257.


69 This cognitive paradigm of physicality finds expression, for example, in the general principle that the “civilian population and individual civilians shall enjoy general protection against dangers arising from military operations” (AP I, Art. 51(1), emphasis added); the reference to *violence* in the definition of attack (Art. 49(1)); the limitation in the application of the rule proportionality and certain precautions in attack to “incidental loss of civilian life, injury to civilians, [and] damage to civilian objects” (Arts 51 (5)(b), 57(2)(a)(ii), 51(2)(a)(iii), 51(2)(b), emphasis added); and the prohibition of “acts or threats of *violence* the primary purpose of which is to spread terror among the civilian population” (Art. 51(2), emphasis added). Indeed, in explicating the principle of distinction, which requires that parties to a conflict “at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly … direct their operations only against military objectives” (Art. 48), the ICRC Commentary to the Additional Protocols defines military operations as those “during which *violence* is used” (ICRC Commentary on APs, above note 52, para. 1875, emphasis added).
so would at best be legally controversial, as explained above, and would almost certainly prove unacceptable to many States.

The first step in remedying the situation is to recognize that, as illustrated, the international community generally accepts the principle that the suffering afflicted on the civilian population by warfare should be minimized to the extent possible in the attendant circumstances. There is no reason to limit application of this humanitarian principle to the province of hard law. On the contrary, most IHL norms were either adopted in treaty form or crystallized into customary law only after the international community found the actions to which they apply unacceptable or inappropriate in the circumstances. Humanitarian policies and perspectives have often matured into law over time.

Therefore, I propose that States adopt two humanitarian policy norms to address the gaps and uncertainty identified above. Some States may be of the view that elements thereof already reflect IHL. However, because consensus is lacking, it is necessary to style them as policy mandates.

### Policy one: Essential civilian functions

The first proposal is to *accord special protection to certain “essential civilian functions or services” by committing to refrain from conducting cyber operations against civilian infrastructure or data that interfere with them*. I raised this notion in a 2014 article, where I suggested that over time States might “simply begin to treat operations against essential civilian services and data as attacks by refraining from conducting them and condemning those who do, thereby creating the State practice upon which an evolution in meaning can [in part] be based”. That proposal was misguided in the sense that I confused adaptation of the meaning of a term – “attack” – with what is effectively a special protection. Therefore, I am now recasting the idea in the guise of a special protection based in policy to be adopted by States that do not already see it as a legal requirement.

Note that the proposal is to safeguard functions and services rather than specified categories of civilian (that is, not qualifying as a military objective) cyber infrastructure or data. This is meant to avoid disagreement over whether specific infrastructure or data falls within the protected category. By focusing on functions or services, protection is extended to any infrastructure or data that

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71 Ibid., p. 296.
72 For an early proposal along these lines, see Adam Segal, “Cyber Space Governance: The Next Step”, Council on Foreign Relations, Policy Innovation Memorandum No. 2, 14 November 2011, p. 3, available at: www.cfr.org/cybersecurity/cyberspace-governance-next-step/p24397. A number of authors have expressed scepticism about the prospects of this proposal: see C. Droege, above note 11, p. 577; Robin Geiss and Henning Lahmann, “Cyber Warfare: Applying the Principle of Distinction in an Interconnected Space”, *Israel Law Review*, Vol. 45, No. 3, 2012, p. 394. I am less pessimistic than these authors about the prospect of States issuing such declarations or policies regarding so-called “digital safe havens”, but believe the proposal, which encompassed both *jus ad bellum* and *jus in bello* issues, requires greater legal granularity.
might degrade them irrespective of the nature or category of infrastructure or data involved. Such an approach is not unprecedented in IHL – for instance, interference by cyber means with medical functions\textsuperscript{73} or, under certain circumstances, the provision of humanitarian assistance\textsuperscript{74} is prohibited. My proposal takes the same tack, albeit from a policy perspective.

In its 2015 Challenges Report, the ICRC similarly highlighted the need for protection of essential civilian infrastructure and civilian data, particularly in light of uncertainty in the law.\textsuperscript{75} It observed:

With regard to data belonging to certain categories of objects that enjoy specific protection under IHL, the protective rules are comprehensive. For example, the obligation to respect and protect medical facilities must be understood as extending to medical data belonging to those facilities. However, it would be important to clarify the extent to which civilian data that does not benefit from such specific protection, such as social security data, tax records, bank accounts, companies’ client files or election lists or records, is already protected by the existing general rules on the conduct of hostilities.\textsuperscript{76}

While I agree with the ICRC, clarification could result in a finding that IHL does not fully protect key data affecting the civilian population. The proposed policy would lower that risk, for if clarification found data not to be protected by IHL, the data would nevertheless enjoy protection based on the policy. Additionally, the policy could operate until the matter of data, as well as the threshold of attack, is settled.

The devil is in the details, specifically, identifying the functions and services that qualify as essential. There is certain to be disagreement in this regard, as already evidenced by the long-running debates over designating systems as “critical infrastructure”.\textsuperscript{77} As an example of possible disagreement, note how the ICRC highlighted data affiliated with bank accounts and election records in the extract above. I suspect that many States would be unwilling to completely take such data off the table. To illustrate, a cyber operation blocking access to the bank accounts of an enemy dictator’s cronies or senior members of his or her political party might well be an attractive option during an armed conflict, and, similarly,

\textsuperscript{73} Tallinn Manual 2.0, above note 6, Rule 131 (the duty to “respect” is “breached by actions that impede or prevent medical or religious personnel, units, or medical transports from performing their medical or religious functions”: ibid., p. 514). For the obligations generally, see Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Arts 19, 24, 25, 35–36; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Arts 22, 24, 25, 27, 36–39; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 33; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Arts 18–22; AP I, Arts 12, 15, 21–24, 26; AP II, Art. 9.

\textsuperscript{74} Tallinn Manual 2.0, above note 6, Rule 145. For the obligation generally, see GC IV, Arts 23, 59; AP I, Arts 69–70.

\textsuperscript{75} 2015 Challenges Report, above note 41, pp. 42–43.

\textsuperscript{76} Ibid., p. 43.

disrupting his or her re-election by manipulating election returns might appeal to the enemy State. This point is made not to express disagreement, but rather to underline that it will be difficult to forge broad consensus as to which civilian functions and services are essential and merit protection.

Nevertheless, certain functions would seem to clearly fall within the category’s boundaries. For instance, the delivery of social services to the disabled, young, poor and elderly would do so. So too would primary and secondary education. Indicators of the propriety of inclusion of a function or service in the category could include the fact that interference therewith would likely cause significant mental anguish amongst the civilian population. To illustrate, I have suggested elsewhere that “the integrity of data of financial institutions and the availability of critical financial systems” should be afforded special protection as a matter of policy.78

Another indicator might be that a cyber operation affecting a particular function of a service would have consequences extending well beyond the close of hostilities. A prime example would be impeding the overall functioning of a country’s university system, although this protection would not extend to individual cyber infrastructure at a university qualifying as a military objective, as in the case of that used to conduct weapons or other military-related research.

Policy two: Balancing negative civilian effects and benefits related to the conflict

The second proposed policy would apply in situations not encompassed in the first (or until agreement is reached regarding designated functions and services). Unlike the first, which is absolute in character, this commitment is relative in that it is based on a balance between humanitarian considerations and a State’s interest in prevailing in the armed conflict. By this second option, States would commit, as a matter of policy, to refraining from conducting cyber operations to which the IHL rules governing attacks do not apply when the expected concrete negative effects on individual civilians or the civilian population are excessive relative to the concrete benefit related to the conflict that is anticipated to be gained through the operation.79


79 IHL’s focus on physicality poses particular challenges with respect to cyber operations that do amount to an attack. In particular, the collateral damage that factors into the proportionality analysis and the requirement to take feasible precautions in attack is textually limited to injury, death or damage. Although damage can reasonably be understood to include loss of functionality (wherever that threshold might lie), it does not include other forms of harm. For example, a proportionality analysis of an attack on dual-use cyber infrastructure would not, as a matter of law, need to account for the temporary disruption or loss of civilian services that depend on it unless that loss placed civilians at risk of physical harm or civilian objects at risk of damage. While this is also the case with kinetic strikes, as with an attack on a store that is being used to stash weapons, networking and other forms of connectivity exacerbate the knock-on non-destructive or non-injurious effects of cyber-attacks. This
Drawing on the controversies set forth above, IHL inapplicability could result from a State’s conclusion that the operation is not an attack under IHL or by its taking of a position that data is not an object. Importantly, the perspective on the applicable interpretation of the law would be that of the State conducting the operation. In other words, by this proposal a State would agree to apply the policy whenever it concludes that an operation is not subject to the IHL rules on the conduct of hostilities. Another State might come to a different conclusion with respect to an analogous operation; in that case, it would follow guidance found in that law.

The commitment merits careful parsing. To begin with, it encompasses operations targeting cyber infrastructure and data that are either military objectives or civilian objects. An interesting point in this regard highlighted by the ICRC’s 2015 Challenges Report involves so-called “dual-use” objects – that is, those used for both military and civilian purposes. The prevailing position among IHL experts is that any military use of a civilian object, including cyber infrastructure, renders the object a military objective, with the exception of those aspects thereof that are clearly separate and distinct components.80 The Challenges Report expresses apprehension about this standard should it be applied in the cyber context:

A strict application of this understanding could lead to the conclusion that many objects forming part of the cyberspace infrastructure would constitute military objectives and would not be protected against attack, whether cyber or kinetic. This would be a matter of serious concern because of the ensuing impact that such a loss of protection could have in terms of disruption of the ever-increasing concomitant civilian usage of cyber space.81

I share the concern. Whether such cyber infrastructure should be considered a military objective is an issue that is beyond the scope of this article; I take the prevailing view. But even if this stance was to shift over time and certain dual-use cyber infrastructure began to be characterized as civilian in character, it would nevertheless be lawful to conduct cyber operations against it, including operations having severe consequences for the civilian population, so long as those operations did not rise to the level of an attack, in particular by being destructive or injurious. The proposed policy would in part ameliorate this dilemma.

Certain terms contained in the policy were cautiously selected to make particular points and hopefully will serve as the fulcrum around which article does not address that reality as it is limited to cyber operations falling beyond the reach of IHL, but it is a cyber-specific phenomenon that merits serious attention.


81 2015 Challenges report, above note 41, p. 42.
subsequent discussions occur. “Negative effects” is meant to be all-encompassing. It includes any effect on the civilian population that does not qualify the cyber operation as an attack and therefore subject it to application of the rules on attack. Although limited to effects on persons as distinct from objects, it extends to those consequences for civilians that result from an operation’s effect on the targeted infrastructure. To take a simple example, a denial of service (DoS) attack on a bank’s computer system would deprive customers of their ability to withdraw currency; the customers have been affected and the policy applies.

The focus on effects also signals that the type of a cyber operation has no bearing on the applicability of the proposal. For instance, a DoS attack or an operation that causes a cyber system to slow would be no less governed by the policy than one resulting in the system operating improperly. Instead, the key factor is that the civilian population is somehow affected in a manner that is not addressed, at least in the opinion of the State conducting the operation, by the rules of IHL.

Although the Tallinn Manual experts agreed that inconvenience is not sufficiently severe to reach the attack threshold, there is no reason to draw a line of that nature in the case of the proposed policy. This is because it would only prohibit a cyber operation when the negative civilian effects thereof are excessive relative to the conflict-related benefits that are anticipated to result. As a matter of policy, there is a rationale for excluding inconvenience or irritation as a prohibitive consequence if the party conducting the cyber operation cannot proffer a sufficient reason to outweigh it. Expecting to cause inconvenience or irritation that would be excessive in light of the anticipated benefits of the cyber operation, which would presumably be trifling, would smack of mere maliciousness. The US Department of Defense commendably appears to have accepted this approach as a matter of policy.82

In terms of balancing humanitarian considerations with a State’s conflict-related interests, the proposed policy adopts the rule of proportionality’s excessiveness test. The HPCR Manual on the International Law Applicable to Air and Missile Warfare (Harvard Manual), prepared by a distinguished group of international law practitioners and scholars, took the reasonable position that excessiveness is characterized by a situation in which “there is a significant imbalance between the military advantage anticipated, on the one hand, and the expected collateral damage to civilians and civilian objects, on the other.”83 This standard accommodates IHL’s foundational principle of military necessity. After all, it would be impractical to apply a strict “51-49” balancing test with respect to two values – collateral damage and military advantage – that are so dissimilar, especially when the consequence of a slight perceived imbalance in favour of the

82 See US Law of War Manual, above note 10, para. 16.5.2: “For example, even if a cyber operation is not an ‘attack’ or does not cause any injury or damage that would need to be considered under the principle of proportionality in conducting attacks, that cyber operation still should not be conducted in a way that unnecessarily causes inconvenience to civilians or neutral persons.”

former would be an absolute bar to striking a valid military objective. Sensitivity to this dynamic is also reflected in the Rome Statute’s application of the proportionality rule only when expected collateral damage is “clearly” excessive to the anticipated “overall” military advantage.\textsuperscript{84}

Given that the cyber operations encompassed by the policy include those directed against military objectives, albeit in situations that do not rise to the level of an attack, it would make no sense to lower the excessiveness bar. If a lower bar were to be suggested, States would harbour the same concern that animated the decision to adopt the excessiveness standard vis-à-vis proportionality. Indeed, the argument for a high threshold is actually stronger with respect to the policy because the harm, which is generally non-destructive and non-injurious, is of a less severe nature.

The term “concrete benefit related to the conflict” in the proposed policy must be distinguished from “concrete and direct military advantage” found in the rule of proportionality. All of the adjectives reflect the military necessity component of the balancing that I contend should inform every military decision affecting the civilian population. However, as will be explained, the deletion of the word direct is meant to broaden the scope of the policy beyond that which applies in the case of proportionality.

According to the ICRC Commentary to the Additional Protocols, “the expression ‘concrete and direct’ was intended to show that the advantage concerned should be substantial and relatively close, and that advantages which are hardly perceptible and those which would only appear in the long term should be disregarded.”\textsuperscript{85} The term was also explained in the unofficial, though authoritative (in light of the authors’ participation in the Diplomatic Conference that produced the Additional Protocols) commentary on the Protocols by Bothe, Partsch and Solf. It notes that “concrete” means “specific, not general; perceptible to the senses”, and equated the term with “definite” in the definition of military objective, which denotes an advantage that is not hypothetical or speculative.\textsuperscript{86} By contrast, the authors explained “direct” as meaning “without intervening condition of agency”.\textsuperscript{87}

There is no logical basis for holding that the benefits to be considered when applying the proposed policy need not be concrete. To suggest that speculative benefits related to the conflict would ever suffice to justify actual negative expected consequences for the civilian population would effectively be to ignore humanitarian considerations altogether. However, the same logic does not apply to the qualifier “direct”. States would likely object to imposing the proportionality requirement of direct causal nexus between the operation and benefit that applies

\textsuperscript{84} Rome Statute, above note 13, Art. 8(2)(b)(iv).
\textsuperscript{85} ICRC Commentary on APs, above note 52, para. 2209.
\textsuperscript{87} M. Bothe, K. J. Partsch and W. A. Solf, above note 86, p. 407.
to cyber or other forms of attack. Consider the case of operations designed to undercut civilian support for involvement in a conflict. Such influence campaigns typically involve a chain of causation consisting of more than a single step. The information operation in question may be designed to shift civilian attitudes towards the government and to the conflict over time, perhaps by encouraging engagement by civil society or the media. As long as there is a causal nexus that is not so attenuated that it becomes speculative, it would, under the proposal, be appropriate for consideration in the balancing process.

Precisely the same logic, albeit turned on its head, supports the limitation of negative effects for the civilian population to those that are concrete. To suggest that a party to the conflict should have to forego an operation which would likely yield valid benefits related to the conflict on the basis of speculation as to possible negative effects on the civilian population would be to inappropriately skew the desired balance in the opposite direction.

The other significant difference between the proposed policy and the rule of proportionality is substitution of the term “military advantage” with the phrase “benefit related to the conflict”. Military advantage is a concept that is narrowly construed in IHL. For instance, the Harvard Manual provides:

Military advantage refers only to advantage which is directly related to military operations and does not refer to other forms of advantage which may in some way relate to the conflict more generally. Military advantage does not refer to advantage which is solely political, psychological, economic, financial, social, or moral in nature. Thus, forcing a change in the negotiating position of the enemy only by affecting civilian morale does not qualify as military advantage.\(^88\)

The policy would not limit the advantage attained by cyber operations to that which is purely military. Taking the example cited above, it would be acceptable to consider conducting cyber operations intended to alter the enemy’s negotiating position, even by affecting civilian morale. States already plan cyber operations not amounting to an attack, including those altering or deleting data, that have effects which are not strictly military. In light of the predictable resistance from them to imposing a standard that requires a military benefit, the proposal dispenses with the term “military”.\(^89\)

It must be emphasized that “advantage” typically refers to an attacking party’s military gain at the tactical or operational levels of war, but not at the strategic – in the sense of political – level.\(^90\) In other words, the advantage must

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88 Harvard Manual above note 80, p. 36.
89 As noted in the UK declaration on ratification of AP I, “the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack as a whole and not only from isolated or particular parts of the attack”. UK Additional Protocol Ratification Statement, para. (i), available at: https://tinyurl.com/yct795ch.
90 “Tactical level of warfare — The level of warfare at which battles and engagements are planned and executed to achieve military objectives assigned to tactical units or task forces”: US Department of Defense, Dictionary of Military and Associated Terms, current as of March 2018, p. 226; “Operational level of warfare — The level of warfare at which campaigns and major operations are planned, conducted, and sustained to achieve strategic objectives within theaters or other operational areas”: Wired warfare 3.0: Protecting the civilian population during cyber operations 351.
have an impact on the battlefield or the campaign in question that is not overly attenuated. For example, the advantage of causing enemy military leaders to rethink involvement in the conflict, as in the case of attacks against their personal property or investments, would not qualify those targets as military objectives or justify collateral damage to them when engaging in the proportionality analysis.

However, States do seek strategic-level advantage that does not bear on battlefield operations, and under IHL they are permitted to conduct military operations falling short of an attack in order to attain it. Thus, to be palatable to States, the proposed policy permits concrete benefits at any level of war to be factored into the assessment of whether the cyber operation may be launched. By way of illustration, blocking the ability of the enemy to disseminate conflict-related propaganda to the population through DoS operations against media facilities would qualify as a benefit to be weighed in the balance.

Despite this widening of scope relative to the proportionality rule’s standard, the policy limits benefits to those regarding which a clear nexus to the conflict exists. Although this might spark allegations of being overly restrictive, the intent of the policy is to enhance protection against disruption of the civilian population during what is likely to already be a dreadful situation – armed conflict. Malicious or vindictive cyber operations directed at civilians or the civilian population should be prohibited.

This requirement must not be confused with application of the principle of military necessity. According to some interpretations of the principle, “only that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure”, is permitted. Applying this principle would not suffice to address the problems at hand. Firstly, as set forth, the principle of military necessity only applies to a use of force; the proposed policy addresses cyber operations that are not easily described as such. Secondly, while it is addressed to necessity based on “military” considerations, the term “related to the armed conflict” in the policy is broader. Thirdly, and most significantly, there is opposition to treating the principle of military necessity as a primary rule of international law that operates independently of other primary rules of international law. This issue was in part responsible for opposition to the ICRC’s Interpretive Guidance on the Notion of Direct Participation, and is viewed with

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91 UK Law of War Manual, above note 86, para. 5.33.5; Harvard Manual, above note 80, pp. 36–37; Tallinn Manual 2.0, above note 6, p. 442. See also Ian Henderson, The Contemporary Law of Targeting, Martinus Nijhoff, Boston, MA, 2009, pp. 199–202, providing a more detailed discussion of why military advantage may be measured at the operational as opposed to the tactical level, and why measuring military advantage at the strategic level is generally not appropriate.

92 UK Law of War Manual, above note 86, para. 2.2.

93 Opposition to Chapter IX of the ICRC Interpretive Guidance, above note 34, arose when some experts participating in the project objected to what they considered to be use of the principle as a primary
suspicion by some in the field. My own view is that military necessity is a foundational principle of IHL, but not a primary rule. Whatever the correct interpretation, the principle of military necessity cannot accomplish the ends sought through adoption of the proposed policy.

Finally, like the rule of proportionality, the test proposed in the policy is applied *ex ante*, not *post factum*; this is apparent from the use of the terms “anticipated” and “expected”. Thus, those applying the policy will be judged against the facts as they reasonably believed them to be at the time the cyber operation was planned, approved and executed.

**Concluding reflections**

The current state of IHL governing cyber operations is not fully satisfactory. Lack of clarity as to which cyber operations qualify as an attack at best leaves civilians at risk when they otherwise should not be, and at worst opens the door to States wishing to exploit the ambiguity in order to mount highly disruptive cyber operations against the civilian population. Moreover, some cyber operations that would clearly not qualify as an attack could nevertheless create chaos among the civilian population.

The issue of whether data is an object complicates this situation. On the one hand, if it is, many cyber operations presently conducted by States would be barred. Laudable though their intent may be, advocates of this view are naive in believing the interpretation will prove acceptable to States that wield cyber capabilities. But on the other hand, failing to treat some civilian data as a civilian object that benefits from IHL’s protective umbrella undervalues the humanitarian considerations that underpin the prohibition on attacking civilian objects. In terms of finding an appropriate balance of humanitarian considerations and military necessity, arguments on both sides of the fence fall short.

The proposed policies are designed to address these realities. Initially, States may react negatively to them. This often occurs when academics and non-governmental organizations seek to limit States’ discretion on the battlefield, and
in many such cases, the reaction is justified. However, in these cases, States should bear the following considerations in mind.

First, in my discussion with cyber operators, it would appear that some elements of the policies already take the form of rules of engagement, other guidance or simply accepted practice. More importantly, Article 57(1) of AP I requires parties to a conflict to take the possibility of negative consequences for the civilian population and/or civilian objects into consideration during military operations, including but not limited to attacks. I believe this requirement is reflective of customary IHL, and groups of experts and military manuals confirm that this “constant care” provision is meant to impose an affirmative duty, albeit one that is general and poorly defined. All the proposed policies do is provide some guidance as to measures to be taken in response to that assessment.

In this regard, it might be suggested that the work of the policies is already accomplished through application of the Martens Clause, because the situations highlighted are ones that should be subject to the “laws of humanity” and the “dictates of the public conscience”. Yet, States and experts disagree over the means by which the clause is to be implemented and whether it imposes specific binding rules of law on the parties to the conflict. Irrespective of where one stands on these issues, the Martens Clause is notable for its vagueness and its paucity of application in practice. This being so, the proposed policies offer a degree of practical clarity and direction that can operate to provide actual protection to the civilian population.

Second, prohibiting attacks against cyber infrastructure or data that would interfere with essential civilian functions or services is consistent with the general premise that there are certain activities, functions and objects that deserve special protection from the harmful effects of warfare. The proposed policies merely acknowledge that the existing universe thereof should expand in response to the unique and sometimes severe risks for the civilian population that are associated with cyber operations. Moreover, the policies leave it to States to determine which functions and services qualify as essential and are accordingly deserving of special protection, at least as a matter of policy.

Third, perceptive readers will have noticed that the second policy mandating balancing is more restrictive with respect to operations not qualifying as attacks against military objectives than those that qualify as attacks. The rule of proportionality applicable in cyber attacks only requires consideration of damage (including, presumably, loss of functionality), injury or death. By contrast, the proposed policy encompasses all negative effects on the civilian population. This

97 See UK Law of War Manual, above note 86, para. 5.32.1 (“So the commander will have to bear in mind the effect on the civilian population of what he is planning to do and take steps to reduce that effect as much as possible”); Harvard Manual, above note 80, p. 142 (“‘Constant care’ means that there are no exceptions from the duty to seek to spare the civilian population, civilians and civilian objects”); Tallinn Manual 2.0, above note 6, p. 477 (noting the “broad general duty to ‘respect’ the civilian population, that is to consider deleterious effects of military operations on civilians”). Further, the Tallinn Manual 2.0 states that “the duty of constant care requires commanders and all others involved in the operations to be continuously sensitive to the effects of their activities on the civilian population and civilian objects, and to seek to avoid any unnecessary effects thereon” (p. 477).
might seem counterintuitive, but the result is compensated for by the fact that the policy is more permissive in terms of what the party conducting the cyber operation may consider when balancing against those negative effects. The rule of proportionality is limited to concrete and direct military advantage. By contrast, the proposed policy allows consideration of benefits that are neither direct nor military in character, and those benefits may accrue at the strategic level of warfare. Thus, the policy achieves a fair balance between humanitarian considerations and the interests of the State. States can find further solace in the policy’s adoption of the excessiveness standard, which affords parties to the conflict a significant margin of appreciation when applying the policy.

The proposals are not panaceas with respect to non-destructive and non-injurious harm to individual civilians or the civilian population from cyber operations. Much of such harm would remain unaddressed, as in the case of application of the proportionality rule to cyber attacks, for that rule only applies to collateral damage, injury or death. Nevertheless, the time for States and the international community to address humanitarian issues is always before they have manifested tragically on the battlefield. In this case, that time is now.
Amnesties and international humanitarian law: Purpose and scope

ICRC Advisory Service on International Humanitarian Law

States party to the 1949 Geneva Conventions and Additional Protocol I of 1977 have an obligation to take measures necessary to suppress all acts contrary to their provisions. Moreover, States must investigate war crimes allegedly committed by their nationals or on their territory, and other war crimes over which they have jurisdiction, such as on the basis of universal jurisdiction, and, if appropriate, prosecute the suspects. In accordance with these obligations and the limits they impose, States may adopt certain measures during and in the aftermath of armed conflicts to promote reconciliation and peace, one of which is amnesties. International humanitarian law (IHL) contains rules pertaining to the granting and scope of amnesties. Specifically, Article 6(5) of Protocol II additional to the Geneva Conventions relating to non-international armed conflicts (NIACs) provides that, at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict. Importantly, under customary IHL (as identified in Rule 159 of the ICRC customary IHL study1), this excludes persons suspected of, accused of, or sentenced for war crimes in NIACs.
Definition of amnesty

There is no legal definition of amnesty in international law but it can be understood as an official legislative or executive act whereby criminal investigation or prosecution of an individual, a group or class of persons and/or certain offences is prospectively or retroactively barred, and any penalties cancelled. In such cases, an amnesty can halt imminent or ongoing prosecutions, quash convictions already handed down and/or lift sentences already imposed. Amnesties may also take the form of a treaty or political agreement.  

An amnesty is generally distinguished from a pardon. A pardon occurs post-prosecution and revokes the penalty without absolving the individual(s) concerned of responsibility for the crime. In other words, a pardon does not extinguish penal responsibility but exempts those convicted of an offence from serving all or part of their sentence.

Purposes of amnesties

In relation to a situation of armed conflict, the aim of an amnesty is to encourage reconciliation and contribute to restoring normal relations in the life of a nation affected by such a situation. As a tool of transitional justice they serve many functions, including (but not limited to) encouraging the establishment of the truth and/or preventing resurgence or protraction of an armed conflict.

Provided that they are not extended to war crimes, amnesties can be an important incentive to respect IHL – in particular for non-State armed groups in the context of NIACs.

The UN Security Council, UN General Assembly, UN Commission on Human Rights (Res. 1996/71 and Res. 1996/73), NATO and the European Union have all encouraged the granting of amnesties to those who have merely participated in hostilities.

1 See https://ihl-databases.icrc.org/customary-ihl/eng/docs/home.
4 Idem.
5 For more information, see “Related Practice” under Rule 159 of the ICRC customary IHL study.
Obligation of States to investigate and prosecute war crimes committed in international and non-international armed conflicts

Under the system of grave breaches set out in the four Geneva Conventions of 1949 (Arts. 49, 50, 129 and 146, respectively) and Additional Protocol I of 1977 (Art. 85) States Parties are obliged to impose effective penal sanctions for persons committing, or ordering to be committed, any of those grave breaches during an international armed conflict (IAC). They must search for persons alleged to have committed, or to have ordered to be committed, grave breaches and bring such persons, regardless of their nationality, before their own courts, or extradite them. In addition, States Parties must take measures necessary for the suppression of all acts contrary to the Conventions other than the grave breaches.

Furthermore, in both IACs and NIACs, it has been established under customary IHL that States must investigate all war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.6

Granting of amnesties under IHL

In NIACs, Article 6(5) of Additional Protocol II of 1977 provides that at “the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”.

Importantly, the corresponding customary IHL rule applicable in NIAC clarifies that persons suspected of, accused of, or sentenced for war crimes are excluded from such an amnesty.7

IHL does not address amnesties in IACs. However, combatant immunity would preclude the prosecution of persons who are entitled to prisoner-of-war status for merely participating in hostilities.

Amnesties, or any other measures that would, in effect, preclude any genuine investigation and prosecution cannot be extended to those suspected of having committed war crimes or ordering them to be committed. This would be incompatible with States’ obligation to investigate and, if appropriate, prosecute alleged offenders.8

6 See Rule 158 of the ICRC customary IHL study: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158.
7 See Rule 159 of the ICRC customary IHL study: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159.
8 See ICRC, Commentary on the First Geneva Convention, 2nd edition, 2016, para. 2845: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=3ED0B7D33BF425F3C1257F7D00589C84. Also, for example, the European Court of Human Rights (ECHR) held, via the Grand Chamber decision in Marguš v. Croatia (27 May 2014), that criminal proceedings for charges of torture and ill-treatment should not be time-barred or subject to an amnesty and that an amnesty is generally incompatible with the duty to investigate and prosecute serious crimes, including war crimes.
The issue of amnesties for war crimes has been addressed by various international courts, which have generally supported the proposition that war crimes may not be the object of an amnesty.\(^9\)

**Relationship between peace processes, transitional justice and amnesties**

Transitional justice can be defined as the range of processes and mechanisms that seek to address the legacy of a violent past linked to an armed conflict or other situations of violence, and thus bring about major political changes in post-conflict societies. These processes comprise both judicial and non-judicial mechanisms, the particular aims of which are to:

(i) establish the truth about gross violations of human rights and war crimes that occurred in the past;
(ii) strengthen the rule of law;
(iii) ensure reparation for victims; and (iv) impose sanctions on the perpetrators.

The investigation and prosecution of war crimes are therefore essential components of transitional justice processes and mechanisms.

The granting of partial or conditional amnesties may be considered as part of a negotiated settlement to end a NIAC, or in the broader context of any transitional justice process. However, they must not bar or hamper the investigation of war crimes, or the prosecution of alleged perpetrators.

Regional courts have dealt with this issue in various decisions. For example, the *Masacre del Mozote* case was the first in which a court analysed an amnesty law for war crimes committed in a NIAC. The Inter-American Court of Human Rights (IACHR) held that “the enactment of amnesty laws on the conclusion of hostilities in non-international armed conflicts are sometimes justified to pave the way to a return to peace”.\(^{10}\) However, the IACHR interpreted Article 6(5) of Additional Protocol II to exclude amnesties that preclude the investigation and prosecution of war crimes.

This case (as well as others mentioned above) illustrates that the right balance must be struck between the pursuit of peace and ensuring accountability.

\(^9\) For example: i) the Special Court for Sierra Leone, in the *Decision on Challenge to jurisdiction: Lomé Accord Amnesty* (2003), stated that the granting of amnesties by a State did not rule out prosecution for war crimes and other international crimes before an international tribunal; ii) the *Furundžija* judgment (1998) of the International Criminal Tribunal for the former Yugoslavia, which dealt with the war crime of torture, outlined that an amnesty covering crimes whose prohibition had attained the status of *jus cogens* was invalid; and iii) the Extraordinary Chambers in the Courts of Cambodia (in 2011) affirmed that an amnesty by royal decree could not relieve Cambodia of its “absolute obligation to ensure the prosecution or punishment of perpetrators of grave breaches of the 1949 Geneva Conventions, genocide and torture”.

Resulting limitations on amnesties for war crimes

As noted above, amnesties, or any other measures that would, in effect, preclude any genuine investigation and prosecution cannot be extended to those suspected of having committed war crimes or ordering them to be committed. This would be incompatible with States’ obligation to investigate and, if appropriate, prosecute alleged offenders.11

In addition, commanders and other superiors can be held criminally responsible for war crimes committed pursuant to their orders, or owing to their failure to prevent, repress or report such acts.12 If they are suspected or found guilty of the commission of a war crime under one of these forms of liability, then they may not benefit from an amnesty.

Extension to crimes against humanity, genocide and other international crimes

In addition to war crimes, amnesties cannot apply to genocide, crimes against humanity, torture and other gross violations of international human rights law.

Regional courts have held that an amnesty cannot cover crimes against humanity generally,13 nor prevent the investigation and punishment of those responsible for gross violations of human rights, such as torture,14 abduction, forced imprisonment, arson, destruction of property, kidnapping,15 extrajudicial, summary or arbitrary execution, and forced disappearance.16

Such decisions are based on obligations under international law, including existing regional human rights obligations.17

Furthermore, international and regional human rights bodies, such as the UN Human Rights Committee and the Inter-American Commission on Human Rights, have stated that amnesties are incompatible with the duty of States to

13 In Almonacid-Arellano et al v. Chile (2006), the Inter-American Court of Human Rights held that an amnesty could not cover crimes against humanity.
14 In Abdülsemet Yaman v. Turkey (2004), the ECHR highlighted that where a State agent is charged with crimes involving torture or ill-treatment, an amnesty or pardon should not be permissible.
16 See the Barrios Altos case (2001), Inter-American Court of Human Rights.
17 For example: i) in Malawi African Association and Others v. Mauritania (2000), the African Commission on Human and Peoples’ Rights held that an amnesty law adopted with the aim of nullifying suits or other actions cannot shield the country from fulfilling its international obligations under the African Charter on Human and Peoples’ Rights; and ii) in Yeter v. Turkey (2009), the ECHR reaffirmed that when an agent of the State is accused of crimes that violate Article 3 of the European Convention on Human Rights, the granting of an amnesty or pardon should not be permissible.
investigate serious crimes under international law and violations of non-derogable human rights law.\textsuperscript{18}

**Amnesties and statutes of international criminal tribunals**

Statutes of various international criminal tribunals have explicitly declared that amnesties granted under national law to any person falling within the tribunal’s jurisdiction shall not be a bar to prosecution.\textsuperscript{19}

With respect to the International Criminal Court (ICC) and the principle of complementarity under the ICC Statute, the effect of an amnesty law will be assessed in light of Article 17 of the Statute, especially with regard to a State’s unwillingness to prosecute.

**Legality/constitutionality of amnesties (before national courts)**

At the national level, courts in various jurisdictions have declared amnesties void or inapplicable in the case of various international crimes.\textsuperscript{20} In addition, many amnesty laws specifically exclude from their scope persons suspected of having committed war crimes under international law.\textsuperscript{21}

**Crimes committed by children who have taken part in hostilities**

IHL establishes the obligation for States to investigate and punish those responsible for committing war crimes. In general, this obligation applies to all persons who commit such acts, and there is no exception for children. However, it is essential to consider special treatment for children who may face criminal prosecution for acts committed while taking part in hostilities, given their age and limited capacity to make decisions in armed conflict.

The ICRC’s *Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups* (2009) outline that children who are alleged to have committed war crimes should be considered primarily as victims and treated as such.

The *Paris Principles: Principles and Guidelines on Children Associated with Armed Forces and Armed Groups* (2007) reflect a similar point: Paragraph 3.6


\textsuperscript{19} See Article 10 of the Statute of the Special Tribunal for Sierra Leone, and Article 6 of the Statute of the Special Tribunal for Lebanon.

\textsuperscript{20} For more information, see “Related Practice” under Rule 159 of the ICRC customary IHL study: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159).

\textsuperscript{21} For example, see Act No. 2003-309 of 8 August 2003, Côte d’Ivoire; Act No. 08-020 of 13 October 2008, Central African Republic; Act No. 014/006 of 11 February 2014, Democratic Republic of the Congo; and Law 1820 of 30 December 2016, Colombia.
outlines that children “must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”.

In addition, the Special Representative of the UN Secretary-General for Children and Armed Conflict has called on States to consider alternatives to prosecution and detention of children on the grounds of their alleged or actual association with armed groups.22

It is therefore necessary to consider alternatives to criminal justice when dealing with children who have taken part in hostilities and are accused of having committed war crimes.

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22 See Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/HRC/28/54), Human Rights Council, twenty-eighth session, 29 December 2014.
What’s new in law and case law around the world?

Biannual update on national implementation of international humanitarian law*
July–December 2017

The biannual update on national legislation and case law is a tool to promote the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to ratification and accession of IHL treaties and other related instruments, and to developments regarding national committees or similar entities on IHL.

ICRC Advisory Service

The ICRC’s Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of international humanitarian law. Working worldwide, through a network of legal advisers, to supplement and support governments’ own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with specialized legal advice and the technical expertise required to incorporate IHL into their domestic legal frameworks; (iii) to collect and facilitate the exchange of information on national implementation measures and case law; and (iv) to support the work of committees on IHL and other entities established to facilitate the IHL implementation process.

* This selection of national legislation and case law has been prepared by Kevin Karlen, Legal Attaché at the ICRC Advisory Service on International Humanitarian Law.
Update on the ratification and accession of IHL and other related international instruments

Universal participation in IHL treaties and other related instruments is a first vital step toward the respect for life and human dignity in situations of armed conflict. In the period under review, nineteen IHL treaties or other relevant instruments (or amendments to them) were ratified or acceded to by eleven States, amounting to a total of twenty-nine ratifications. A notable novelty were the first instruments of ratification deposited for the Treaty on the Prohibition of Nuclear Weapons of 7 July 2017. Three States have ratified the treaty in the second half of 2017. It will only enter into force ninety days after the 50th instrument of ratification, acceptance, approval or accession has been deposited. It is also interesting to note that Afghanistan has acceded to eight treaties or protocols during the period in question.

Other international treaties ratified or acceded to during the period under review are also of relevance for improved protection under IHL, such as the 1954 Hague Convention and its two Protocols for the Protection of Cultural Property.

The following table outlines the total number of ratifications of and accessions to IHL treaties and other relevant international instruments, as of the end of December 2017.

Ratifications and accessions, July–December 2017

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1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits, model laws and checklists, as well as reports from expert meetings, all available at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in October 2019).

2 For information on national implementation measures and case law, please visit the ICRC National Implementation Database, available at: www.icrc.org/ihl-nat.

3 To view the full list of IHL-related treaties, please visit the ICRC Treaties, States Parties and Commentaries database, available at: www.icrc.org/ihl.
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<td>2010 Amendment to the Rome Statute of the International Criminal</td>
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National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the second half of 2017. They cover a variety of topics linked to IHL, such as the criminal repression of war crimes, the protection of missing persons and their families, and the establishment of national committees or similar bodies on IHL.

This compilation is not meant to be exhaustive; it represents a selection of relevant developments relating to IHL implementation and related issues based on information collected by the ICRC. The full texts of these laws and case law can be found in the ICRC’s Database on National Implementation of IHL.4

A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (July–December 2017). Countries covered are Bolivia, Burkina Faso, Chile, Lebanon, Mexico, Nigeria, Palestine and Peru.

Bolivia

Administrative Resolution No. 0266/2017, Manual for Police Operations of Maintenance and Restoration of Public Order5

The Manual for Police Operations of Maintenance and Restoration of Public Order (Manual para operaciones policiales de mantenimiento y restablecimiento del orden público) establishes rules, procedures and techniques to ensure that the use of force is exercised gradually by the Bolivian Police, in compliance with international standards on the use of force by law enforcement officials.

For instance, the Manual requires police officers to undergo thorough physical, tactical and technical training, along with psychological and theoretical preparation, to carry out their activities in accordance with international standards on the use of force.6 It also highlights the obligation of law enforcement officials to adjust the use of force to the level of aggression or resistance exercised by the alleged offender.7 It outlines a procedure to be followed that applies the concept of “escalation of force”, providing five different levels of force that can be reached by police officers depending on the corresponding levels of aggression or resistance exercised by the alleged offender.

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5 Available at: https://tinyurl.com/y2tjv7gt.
6 Administrative Resolution No. 0266/2017, above note 5, Part 1, Chap. 3, Section III.1.3.1.
7 Ibid., Part 2, Chap. 1, Section I.2.
The Manual states that the use of force shall be directed to accomplish a legitimate aim and that the means and methods used towards that aim shall comply with the standing regulations. Furthermore, it highlights the obligation to respect the principle of necessity, according to which the use of force shall always be a measure of last resort for a police officer, to be used only when other persuasive techniques have shown to be ineffective. It also recalls the principle of proportionality, requiring that a careful balance be struck between the severity of the threat posed by the alleged offender and the degree of force used to achieve the desired legitimate aim.

Finally, the Manual establishes control, supervision and “lessons learned” as integral stages of the execution of operations of maintenance of public order, allowing police officers to identify and share lessons based on the causes of success or failure of an operation.

In Part 2, Chapter 4, Section IV.5.1, “control” is defined as the process guaranteeing that the execution of operations is in line with their planning. Part 2, Chapter 4, Section IV.5.2 defines “supervision” as the mechanism ensuring that police officers are following the regulatory procedures established in the Manual, as well as other legal provisions, to their full extent.

**Burkina Faso**


This law amends the former Code of Military Justice. Of particular interest is the second chapter of the second part (Titre 2), which establishes the jurisdiction of the military courts in time of war (Articles 45 and 46). The second book (Livre II) is about the applicable military criminal procedure. The third book (Livre III) establishes the different sentences and military infractions.

**Chile**

*Law No. 21.021 on Reparation and Assistance in Rehabilitation to Victims of Mine Explosion and Other Explosive Remnants of War, 2017*12

After obtaining approval from Chile’s National Congress, on 25 July 2017 the president of Chile promulgated Law No. 21.021 on Reparation and Assistance in Rehabilitation to Victims of Mine Explosion and Other Explosive Remnants of War (Ley No. 21.021 que Proporciona Reparación y Asistencia en Rehabilitación...
a las Víctimas de Explosión de Minas u Otros Artefactos Explosivos Militares Abandonados o sin Estallar).


In addition, Article 5 of Law No. 21.021 establishes the economic and medical benefits that this law grants to such victims, and the subsequent sections provide the procedure for its implementation. Finally, Article 11 appoints the Ministry of National Defence as the entity in charge of establishing the beneficiaries and maintaining a Beneficiary Registry.

**Lebanon**

*Law No. 65 on the Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2017*

This law amends the already existing Article 401 of the Penal Code, which criminalizes “violent practices” aimed at extracting confessions, and punishes those responsible with penalties ranging from three months to three years in prison. It does so by providing a definition of torture and adding provisions on orders of torture, the statute of limitations (*al-taqadum*), evidence, procedures of investigations, and the date of the Law’s entry into effect.

**Mexico**

*2017 General Law on the Enforced Disappearance of Persons, Disappearances Committed by Individuals and the National Search System for Persons, 16 November 2017*

On 17 November 2017, the General Law on Missing Persons was published in the *Federal Official Gazette*. It addresses enforced disappearances and disappearances committed by individuals and establishes the creation of a National Search System for Missing Persons (NSSMP). Within the NSSMP, different authorities and institutions – from the federal and state levels – involved in the search for missing persons must coordinate to improve search task forces, and to share and process high-quality information regarding unidentified dead bodies and the possible whereabouts of remains.

13 Available at: https://tinyurl.com/y3buhwtr.
14 Available at: https://tinyurl.com/y2zx4qvk.
Additionally, the General Law on Missing Persons creates a National Search Commission. The Commission will coordinate the search at the federal level, administer the National Registry of Missing Persons and work jointly with the local search commissions, which every state should create according to the Law. The Law further provides for the creation of a National Registry of Unidentified Dead Bodies operated by the Prosecutor’s Office.

Regarding data management, the Law also establishes a system, named the Sistema Único de Información Tecnológica e Informática, which enables a proper and immediate exchange of information between different authorities. Also, the Law seeks to guarantee the protection of the rights of missing persons and their relatives and regulates the Special Declaration of Absence for Missing Persons.

**Nigeria**

*Act to Make Provisions for the Compulsory Treatment and Care of Victims of Gunshots and for Other Matters Connected Therewith*\(^\text{15}\)

On 11 July 2017, the Treatment and Care for Victims of Gunshots Act was passed by the Nigerian Senate. The Act ensures that such victims receive immediate and adequate treatment in public or private hospitals, as well as assistance from security agencies.

Section 1 establishes the right of every person with gunshot wounds to be treated immediately and adequately. Section 2(1) provides for the duty of every person, including security agents, to assist persons with gunshot wounds. In addition, Section 2(2)(b) prohibits the infliction on such persons by any person or authority of any form of inhumane or degrading treatment or torture.

Section 3(1) of the Act provides for the duty of a receiving hospital to notify the police, and Section 10 provides for an obligation to notify family members. Section 3(2) establishes the obligation of the police to investigate the circumstances under which the person was shot.

Finally, various sections of the Act prescribe the penalties for offences related to the duties mentioned above. Penalties can also be imposed on a corporate body under Section 13, while Section 14 provides for an obligation to make restitution to the victim.

**Palestine**

*Decree No. 8 of 2017 on the Establishment of a Task Force on Crimes within the Jurisdiction of the International Criminal Court*\(^\text{16}\)

15 Available at: [https://tinyurl.com/yyu4qk3h](https://tinyurl.com/yyu4qk3h).

16 Available at: [https://tinyurl.com/y4puh2ep](https://tinyurl.com/y4puh2ep).
In the frame of Palestine’s accession to the Rome Statute and the acceptance of the International Criminal Court’s (ICC) jurisdiction, Palestine has established internal mechanisms to advance ICC proceedings and preliminary examinations at the Office of the Prosecutor. Decree No. 8 of 2017, adopted on 30 December 2017, establishes a task force on crimes within the jurisdiction of the ICC, as an internal mechanism covering both the West Bank and the Gaza Strip.

The national task force is to collect evidence of violations and document crimes allegedly committed by the Israeli authorities in the frame of occupation of the Palestinian territories, and which would fall under the jurisdiction of the ICC. It shall report periodically to the Palestinian Ministry of Foreign Affairs on the progress of the task force and any relevant information that could be required for the proceedings at the ICC. The task force will be working closely with a Permanent National Committee established in 2015, which is in charge of follow-up with the ICC on related matters.

**Peru**

*Directive No. 001-2017-JUS/VMDHAJ-DGBPDEstablishing Rules for the Process of Searching for Missing Persons*\(^\text{17}\)

This directive intends to develop the measures provided by in the National Plan on the Search for Peru’s Missing Persons (1980–2000) of 2016, including through the establishment of a search process for missing persons. The process comprises three stages:

- “Humanitarian investigation”, related to the compilation and registration of information by the concerned department.
- “Joint intervention”, establishing a mandatory collaboration between the Ministry of Justice and Human Rights and the National Prosecutor’s Office on an integrated report with information provided by forensic experts (Art. 6.3).
- “Closure of the search process”, producing a final report that will be provided to the family members with the resulting information.

Restitutions of human remains will be undertaken ensuring respect for human dignity, religious beliefs, and cultural and community practices (Art. 6.4.4).

Finally, psychological and logistical assistance is to be provided and attuned to the needs of families of the missing and their communities throughout the process and in the native language of those receiving it (Art. 6.1.1).

**B. National committees or similar entities on IHL**

For IHL rules and principles effectively to afford protection in armed conflict, they need to be recognized, known, implemented and complied with, when and where

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\(^{17}\) Available at: [https://tinyurl.com/y635jaz8](https://tinyurl.com/y635jaz8).
they apply. While compliance with IHL is the primary responsibility of parties to an armed conflict—both States and non-State entities, including armed groups involved in a non-international armed conflict—the responsibility for ensuring its full implementation primarily rests with States. This responsibility is emphasized in Article 1 common to the four Geneva Conventions and Article 1(1) of Additional Protocol I of 8 June 1977, which provide that High Contracting Parties are bound to “respect and to ensure respect” for their provisions “in all circumstances”.18

Accordingly, States must take action domestically to incorporate IHL into laws, regulations and policy directives, ensure that armed forces and other national stakeholders understand and respect the rules, and establish mechanisms that will ensure respect for the law and appropriate handling of violations when they occur. Given the broad range of issues associated with this responsibility, coordination between different government agencies and sectors, the armed forces and civil society is essential.

To facilitate this process, it can be useful to create a dedicated working or expert group, or similar body—often called a national IHL committee or commission. The work and contribution of such a committee can be relevant in a variety of circumstances, whether a country is at peace, emerging from conflict, still affected by historical conflict or involved in one or more current armed conflicts. Many successful national structures are proof that if they function efficiently and have the required capacities, they can be of considerable help to States in implementing their commitments under IHL and achieving policy objectives in this area.19

**Oman**

*Ministerial Decision No. 330/2017 Establishing the Omani National International Humanitarian Law Committee*20

On 10 October 2017, the Ministry of Foreign Affairs of Oman issued Ministerial Decision No. 330/2017 establishing the Omani National International Humanitarian Law Committee. The Committee shall spearhead Oman’s initiatives in IHL and shall be headed by a representative of the Ministry of Foreign Affairs, who will be appointed to the post of director-general of the Committee. Per Article 4 of the Ministerial Decision, the main objective of the Committee is to implement IHL at a national level.

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20 Available at: [https://tinyurl.com/y68ghpk9](https://tinyurl.com/y68ghpk9).
Members of the Committee shall be representatives of the Ministries of Defence, Justice, Legal Affairs, Education, Higher Education, Labour, and Heritage and Culture, as well as of the Royal Oman Police, the Public Authority for Civil Defence and Ambulance, Sultan Qaboos University and the Omani Authority for Charitable Organizations.

The Ministerial Decision also identifies the mandate of the Committee and establishes administrative and financial regulations related to its organization.

C. Case law

Bangladesh


This decision has been passed by the International Crimes Tribunal, a first-instance forum, and is subject to appeal in the Appellate Division of the Supreme Court of Bangladesh.

The Tribunal has the authority and jurisdiction to prosecute persons responsible for offences enumerated in Section 3(2) of the International Crimes (Tribunals) Act of 1973 committed in violation of IHL in the territory of Bangladesh in 1971, during the war of liberation.

The Tribunal, in this case, decided that the offences for which the accused persons stood trial were “system crimes” and not isolated crimes as they were committed in the context of “armed conflict”.

Hence, the Tribunal found the accused guilty of all the charges of abduction, confinement, torture, murder and other inhumane acts as crimes against humanity. The accused were convicted and condemned to sentences of imprisonment for life until natural death.

21 Available at: https://tinyurl.com/yyu4mvol.
22 Available at: https://tinyurl.com/y3jc7t3c.
Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law

Tilman Rodenhauser*

Book review by Daragh Murray, Senior Lecturer at the University of Essex School of Law and Human Rights Centre.

Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law makes a key contribution to the scholarship addressing modern situations of conflict and acute crisis. It traces the evolution of international humanitarian law (IHL), international human rights law (IHRL) and international criminal law as relevant to the organization of non-State armed groups, and presents clear and accessible conclusions as to the current state of the law in these areas. The focus on these three interrelated areas of public international law is a key strength of the book. An analysis of contemporary armed conflicts and other situations of violence is unlikely to occur in legal silos, and practitioners will therefore be required to adopt a multidimensional, cross-cutting approach in order to identify armed groups, determine the applicable laws and unpack the legal obligations regulating armed

* Published by Oxford University Press, Oxford, 2018.
groups’ behaviour. Dr Rodenhauser’s book should be a vital resource for all those working on these issues – the quality of research, the diversity of sources and the author’s clarity of thought make it an essential starting point for any legal analysis relating to non-State armed groups.

Modern situations of conflict and acute crisis are increasingly characterized by the emergence and active participation of new and diverse non-State actors. This has led to difficulty in determining the organizational structure of these actors, a factor that is decisive to the legal regulation of the situation as a whole. Relevant questions in this regard include determining who constitutes the membership of a particular non-State actor, how different elements within an armed group interact (or whether they are, in fact, distinct groups sharing a common cause), and which group is responsible for particular acts or outcomes. This was not always the case: traditionally, the participants in an armed conflict were relatively uniform and easy to recognize. State armed forces were the most common parties to an armed conflict, while other relevant actors – such as insurgents and belligerent groups – were largely modelled on State military structures.¹

This reality began to change in the aftermath of the Second World War, however, and today the actors involved in situations of conflict and crisis – and the ways in which they act – are markedly diverse. This is illustrated through the actions and organizational modes of a number of armed groups active in recent years. In Sri Lanka, the Liberation Tigers of Tamil Eelam exercised stable control over considerable territory in which they established almost State-like governmental structures and institutions. In Afghanistan, the Taliban have established a shadow parallel State, directly competing with government institutions. In the Central African Republic, loosely organized Seleka and Anti-Balaka groups have engaged in widespread violence against the local population. In Mexico, drug cartels have disrupted State authority and now exert direct influence over a significant percentage of the local population. The Islamic State group, primarily headquartered in Iraq and Syria, has affiliated entities in Nigeria, Libya, Afghanistan, the Philippines and Egypt, and has also been involved in, or associated with, attacks in Europe and the United States. In Syria, the Free Syrian Army is a collection of groups united against the Assad regime, while in cyberspace, different collectives such as Anonymous come together to carry out particular attacks, or to conduct longer-term campaigns against organizations such as the Islamic State.

Ultimately, this diversity with respect to both the actors involved in armed conflicts and other situations of violence, and their modus operandi, gives rise to significant difficulty in determining what entities qualify as armed groups regulated by international law,² which bodies of international law apply to non-State armed groups in different contexts, and what international law expects of

¹ Examples in this regard include the Confederate forces during the American Civil War, the Boers fighting British forces in South Africa, and the nationalist forces under General Franco in the Spanish Civil War.

² This is typically examined by reference to whether an armed group can be considered “organized” as defined in the body of international law under consideration.
those groups. In response, a body of academic literature has emerged to tackle different aspects of this problem. Topics addressed have included the concept of non-international armed conflict,\(^3\) the geographic scope of armed conflict,\(^4\) the law applicable in non-international armed conflict,\(^5\) if and how armed groups can be bound by IHRL,\(^6\) the law relevant to cyber operations,\(^7\) and conflict classification.\(^8\)

While these and other works have made valuable contributions and are important in their own right, to date, no single work has looked specifically at the degree of organization required for armed groups to be subject to legal obligations under each of these bodies of international law. This is a particularly important task, as it is precisely this question that must be answered in practice. Practitioners must routinely examine modern conflicts and crises, as they are, in order to identify legally relevant armed groups,\(^9\) and to determine the extent of any international legal obligations imposed on these actors. Dr Rodenhauser’s book makes a valuable contribution in this regard. He brings together the above-mentioned academic debates and complements them with extensive research, particularly with respect to the case law of international tribunals and the findings of United Nations (UN) investigative bodies.

The book is divided into three key parts, examining the organization criterion associated with armed groups from the perspective of IHL, human rights law and international criminal law. The key strength of this work is its accessibility and structured approach. Each part is modelled along broadly similar lines, beginning with the particular field of law’s conceptual and historical origins, then tracing the evolution of legal principles through case law and practice, before presenting a conclusion as to the current state of the law. This approach ensures that the reader comes away with a rounded understanding of the law as it (currently) is, thereby facilitating the application of the law to contemporary or emerging situations. When combined with the extensive research presented in each part, this makes the book incredibly useful as a starting point for those seeking to apply the law to new and emerging situations.

In Part I, the focus is on the degree of organization required of non-State armed groups in order to bring into play the applicability of IHL. A key proposal,
and one with considerable merit, is that the organization criterion (a prerequisite for an armed group to be considered a party to an armed conflict) can not only be understood in terms of a typical military hierarchy (similar to that of State armed forces), but can also be established on the basis of two cumulative criteria: “operational coordination”, which refers to the ability to coordinate military activities and to distribute logistics, and “strategic authority”, which refers to the leadership’s ability to determine the overall military objectives and to promulgate internal rules that are followed by all sub-groups.¹⁰

This approach appears appropriate in light of the realities of modern conflict, as it can take into account situations where command and control are decentralized, and individual units (etc.) are responsible for internal discipline. In guerrilla warfare, for instance, factors such as geographic dispersal and State counter-insurgency efforts inevitably make continuous communications difficult. This was the situation with respect to the FARC in Colombia, where a centralized command structure (responsible for operational coordination and setting the strategic agenda) exercised authority over decentralized regional Fronts, with each Front being responsible for setting regional objectives and ensuring internal discipline. It also seems an appropriate lens through which to examine complex structures such as the Free Syrian Army, or the relationship between different components of a transnational armed group, such as Al Qaeda.¹¹ Importantly, while flexible and cognizant of modern realities, this approach does not open the door to becoming a party to an armed conflict too wide by inappropriately applying IHL obligations to actors that are incapable of meeting them. Satisfaction of the organization criterion still requires that fundamental humanitarian principles be fulfilled at all levels of the organization, and that the leadership exercise some form of authority over all the components of the organization.¹²

Part I concludes with a specific focus on transnational armed groups and cyber operations, directly addressing two key challenges vis-à-vis the application of the organization criterion in contemporary IHL. Issues arise as a result of the distributed nature of these entities, and their often loose – or at least uncertain – organizational structure. For instance, armed groups such as Al Qaeda may operate on the basis of distributed franchises. In this context, the actual organizational relationship – beyond a broadly shared ideology – between, for example, Al Qaeda in Afghanistan and Al Qaeda in the Islamic Maghreb is unclear. Equally, cyber operations often occur when individuals come together to perform a particular activity, and as such, while these operations may be incredibly effective, they raise questions as to whether those involved can be considered an “organization” in any legal sense.

¹⁰ Organizing Rebellion, p. 84.
¹¹ This would facilitate, for example, an analysis of whether Free Syrian Army units in Daraa and Homs – or Al Qaeda branches in Afghanistan, Iraq or the Islamic Maghreb – could be considered to form part of the same organization and thus be considered to be one party to an armed conflict.
¹² This requires, for example, that in the event of a conflict, rules promulgated by the central organization will take precedence.
Part II considers the degree of organization required to give rise to obligations under IHRL. It sets out the motivation underpinning the application of human rights law to non-State armed groups, drawing on relevant legal, philosophical and practical considerations. The overview of how human rights law can apply to armed groups is useful as an accessible reference point, and provides a clear elaboration as to why armed groups should be subject to human rights obligations. A notable added value is the detailed discussion regarding the findings of different UN investigative bodies. This analysis traces the evolution of different organizations and groups across recent situations of conflict and crisis, providing a wealth of practical, accessible examples. This provides depth to the legal reasoning and constitutes a valuable resource for future researchers.

Unlike Part I, however, the second part of Organizing Rebellion does not apply the legal analysis established therein to contemporary problems in great detail. Whereas Part I considers transnational gangs and cyber operations, Part II does not address specific case studies. There could have been significant added value, for example, in applying the proposals presented in Part II to cases such as that of the drug cartels in Latin America. Equally, given the focus of the book, it would have been interesting to have a more specific examination of the organizational structure of different armed groups, and how this affects their ability to be subject to – or to implement – human rights obligations in practice. For instance, while a three-part approach to the application of human rights obligations is presented, further refinement vis-à-vis the thresholds at which these obligations come into play would be useful.

Part III, entitled “The Required Degree of Organization of Non-State Entities to Commit International Crimes or to Create Contexts in which Individuals Commit Them”, looks at international criminal law, with a focus on crimes against humanity and genocide. It convincingly makes the case that the organization criterion should be determined in light of the ability to commit international crimes, as “derived from the crime’s definition and an assessment of what is functionally needed to create the required context”. This criterion would then take precedence over set but broadly applicable organizational aspects such as a particular command structure or the exercise of governmental authority. This seems a sensible approach given the specific nature of international criminal prohibitions, as distinct from the obligations arising in relation to IHL and IHRL. An example is the distinct difference in organizational structures necessary to commit the crime against humanity of murder, on the one hand, or the crime against humanity of persecution or apartheid, on the other. While the crime against humanity of murder can be committed on the basis of a relatively loose organizational structure, persecution or apartheid are premised upon the widespread or systematic denial of fundamental human rights, and will typically require government-like control over a population.

Altogether, this book is written in a clear and accessible manner, making it easy to engage with and to understand the quite complex legal concepts under

13 Organizing Rebellion, p. 303.
discussion. This accessibility is reinforced by the author’s decision to break down concepts into easily approachable categories. For example, in the discussion on international criminal law, the different circumstances under which crimes against humanity or genocide may be perpetrated are broken down, making it easier to unpack those factors relevant to the organization requirement and thus to identify the types of organizations capable of committing these international crimes.\textsuperscript{14} Ultimately, \textit{Organizing Rebellion} is recommended to all those working on complex modern conflicts, whether as practitioners, academics or students.

\textsuperscript{14} See, for instance, Sections 9.2 and 10.3.
Peter W. Singer and Emerson T. Brooking’s book *LikeWar: The Weaponization of Social Media* provides a concise and helpful summary of the origins of the internet and the development of social media. It explains the concept of weaponizing information, and illustrates key terms, such as memes, trolls and troll farms, bots, sock-puppets and neural networks. For anyone regularly following the news, the cases Singer and Brooking use to exemplify how information is weaponized are familiar, including the 2016 US election, the online recruitment methods of the Islamic State, and China’s social credit system. As the examples are so familiar, they enable Singer and Brooking to briefly sketch the events (providing enough information to orient the reader but not getting into the weeds) and then to concentrate on why these are archetypes demonstrating changes in how conflicts are being waged, as information is leveraged by certain parties for the purposes of amassing power.

The style and format of the book is readable and accessible, and is geared towards a policy and general public audience. As such, Singer and Brooking take
care to lay out the foundations of knowledge needed in a quick-moving and largely entertaining fashion, including an introduction to what they mean by the term “LikeWar” (Chapter 1), a short overview of the origins of the Internet (Chapter 2), and a brief recounting of the advent of social media (Chapter 3). From there, they chart the transition of the Internet from a sort of utopia where information is freely exchanged toward a dystopia: how authoritarians use censorship and disinformation to maintain power (Chapter 4) and how business rewards virality (what is getting the most attention) over veracity (what is true) (Chapter 5). They then focus on conflicts: the wars for attention and power (Chapter 6) and the conflicts that drive the web and the world (Chapter 7). The last chapters seek to define the current situation (“The New Rules and Rulers of LikeWar”, Chapter 8), and to propose ideas for a way forward (“What Do We Know, What Can We Do?”, Chapter 9). Throughout these chapters, the authors weave in examples from different contexts and conflicts.

Singer and Brooking lay out five core principles relating to how social media is being weaponized. The first principle is that the Internet is maturing and growing: it is global and instantaneous, embedded in the economic, social and political fabric of societies, but only half of the world is online. The second principle states that the Internet has become a battlefield: as much as it is used by businesses and individuals, it is also indispensable to militaries, governments and armed groups, who use it to further their interests against their adversaries. The third principle applies internet connectivity to social media, and considers how these mediums are changing the ways in which conflicts are fought. This goes hand in hand with lower rates of secrecy and an uptake in the virality of information; it seems that in the age of WikiLeaks, there is a diminishing capacity to keep information hidden, and once confidential information is dispersed, it can be disseminated widely and with wide-reaching consequences. In turn, this changes what war means, blurring the distinction between actions taken in the digital and physical realms – this is the fourth principle highlighted by the authors. The fifth principle contends that everyone is part of this new reality/new war: “If you are online, your attention is like a piece of contested territory.”

While propaganda, misinformation and disinformation have a long history, Singer and Brooking argue that the changes social media has wrought, in terms of speed and reach, are profound. Using an illustrative example from the Israeli–Palestinian conflict, the authors explore how each side uses and responds to online activity. Building on the work of Thomas Zeitzoff, they point out how social media trends are being used to at least partially determine the patterns of armed conflict. As they note:

In the case of Israel, a sudden spike of online sympathy for Hamas more than halved the pace of Israeli strikes and resulted in a similarly sized leap in Israel’s own propaganda efforts. If you charted the sentiment (pro-Israel or pro-Palestinian) of these tweets on a timeline, not only could you infer what was

1 *LikeWar*, p. 22.
happening on the ground, but you could also predict what Israel would do next.2

Such an ability to read, predict and influence your adversary is a significant advantage – and gives an incentive to develop better and better capabilities in this information sphere.

Along with speed and reach, Singer and Brooking highlight the utility of information in instilling doubt and confusion, dismissing, distorting, distracting, dismaying and/or dividing.3 As they point out, increasingly, the virality of information seems to supersede its veracity. Familiarity is a key component of the uptake of viral messages. Drawing from research on the spread of disinformation and misinformation, they write: “The more you hear a claim, the less likely you are to assess it critically.”4 The next, dangerous, step is adding outrage – against someone or something that you perceive has done damage, or may threaten, you, your community or something important to you. “Social media algorithms work by drawing attention to content and trends on their networks, even (and especially) when people are outraged by it.”5 It is this combination of virality, familiarity and outrage – especially when actors can build a compelling narrative and convey a sense of authenticity – that makes such a dangerous mix, and which may lead from online activity to offline violence.

In addition to the Israeli–Palestinian example described above, the authors provide an example focused on the role of information in relations between Russia and Ukraine. As they describe the events, Russian information operation tactics in Ukraine were allegedly used to help build the justification for the annexation of Crimea. The authors discuss the pro-Russian protests in Odessa, which led to violence, and the ensuing Russian “PR strategy”, which included publication of gory details of alleged atrocities, followed by strong statements by government officials, the infiltration of thousands of fighters, and then the annexation. The war of words and narratives led to a “violent, confusing, paralyzing mess – precisely as Russia intended”.6 These examples, coupled with the increased capacity to surveil populations through digital means, allow the authors to powerfully convey to readers how State and non-State actors exert control on populations, and instigate and shape conflicts.

Singer and Brooking also provide examples of how individual actors, motivated purely by economic incentives, can, in an uncoordinated way, complement and extend the operational information of one set of actors to or against another. A salient example is that of Macedonian teenagers who became millionaires by generating fake content which went viral in the United States around the 2016 elections, similar to what Russian operations seemed to be doing, but motivated only by profit.7

2 Ibid., p. 196.
3 Ibid., p. 206.
4 Ibid., p. 124.
5 Ibid., p. 209.
6 Ibid., p. 205.
One key takeaway from Singer and Brooking’s book is that the likelihood of information being weaponized will increase over time. As the Israeli–Palestinian case illustrates, States and non-State actors have a significant operational incentive to improve their capacity to utilize information in conflict. And as both the cases of Macedonia and the US election of Donald Trump show, individuals have a significant economic incentive to improve their capacity to generate viral (but not verifiable) information. Adding in the dimension of increasingly believable fake content (including images and videos), and the fact that half of the world is still to come online, the authors contend that the trend of weaponizing information is only going to become more pervasive.

While this trend-line analysis is fairly negative, Singer and Brooking do strive to present a neutral view of technology as a tool that can be used in both positive and negative ways. As they note:

Those who can manipulate this swirling tide, to steer its direction and flow, can accomplish incredible good. They can free people, expose crimes, save lives, seed far-reaching reforms. But, they can also accomplish astonishing evil. They can foment violence, stoke hate, sow falsehoods, incite wars, and even erode the pillars of democracy itself.8

Nevertheless, by the end of LikeWar, the reader is left with a relatively negative impression of where things are heading. Though that is also part of the ambition of the book: to make the reader see how big an impact the weaponization of information in the social media age can have on societies and conflicts, and thus to equip the reader to act. Thereafter, the reader can choose whether to act by simply better protecting themselves against how their information can be weaponized, and/or whether they can contribute to broader systematic changes to deal with the implications of this trend.

LikeWar is particularly important for the humanitarian sector. Even though Singer and Brooking are not looking at the issue of weaponization of social media through a predominantly humanitarian lens, they focus on security, politics and society, and in so doing make a convincing case for why anyone working in conflict settings needs to be able to understand and navigate the terrain of social media. It can be easy to dismiss social media as a purely online phenomenon, filled mainly with personal information (and cat memes). Many humanitarians will acknowledge that there are some troubling issues on social media linked to hate speech, but they may not feel this is something that should overly concern humanitarians in conflict zones dealing with life-and-death issues. The thinking may be that even if social media does impact conflict situations and humanitarian work, what can humanitarians do about it? It seems further investment is needed to explore and flesh out actionable solutions that the humanitarian sector can take on this front.

7 Ibid., pp. 118–121.
8 Ibid., p. 23.
In this way, *LikeWar* is similar to other works by Peter Singer, the book’s co-author. He has been writing for some time about issues that humanitarians should care about – these range from private military and security companies (*Corporate Warriors: The Rise of the Privatized Military Industry*, 2003) to child soldiers (*Children at War*, 2005) and technological advances in war (*Wired for War: The Robotics Revolution and Conflict in the 21st Century*, 2009).

While *LikeWar* focuses on the social, political and security-related domains, humanitarians should read the book because it sheds light on how the weaponization of social media and information is shaping conflicts today. The book provides some necessary background knowledge that will help humanitarians to better understand how these issues are impacting conflict-affected populations, and from there, to improve and/or create new programmes in order to prevent and/or mitigate the harm such changes inflict on affected populations.
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