

**ALL THINGS PASS
EXCEPT THE PAST**

Luc Huyse

*Aan O.,
voor alles en nog veel meer*

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PREFACE

A civil war, a brutal repression, apartheid: it never dies completely. The unanswered questions and the sadness these events leave behind live on in the minds of those who experienced them. They are perpetuated as a ‘phantom pain’ in the bodies of those who come later, their children and their children’s children.

The author of *All things pass, except the past* describes how people, from Afghanistan to Zimbabwe, come to terms with pain that refuses to pass. He observes the trial of the dictator Mengistu in Ethiopia, listens to the survivors of a massacre in the former Yugoslavia, watches as the remains of Franco are reburied in Spain, talks to members of the Truth and Reconciliation Commission in South Africa, explores the reasons for the success of the Mothers and Grandmothers of the Plaza de Mayo in Argentina. Taming the past: time and again, that is the crux. And if possible, bringing peace to the hearts and minds of those who live on, today and tomorrow. But what appears to have passed, does not fade away.

This book can also be read as the account of a personal expedition into unknown territory. The author takes as a starting point the experiences gained in the countries (specifically Belgium, France and the Netherlands) which wrestled after the Second World War with the painful legacy of the German occupation. With this history as a backdrop, he looks at the challenges facing so many communities elsewhere in the world today.

All things pass, except the past is not an academic work.

PROLOGUE

There are no footnotes; there is almost no jargon. The ambition is to present the report as a practical field guide to communities that find themselves having to deal with a past of war and repression. AWEPA, the Association of European Parliamentarians for Africa, will use this publication for capacity-building activities in Africa. The organisation works in conjunction with parliaments on that continent. It believes that strong parliaments are essential prerequisites for Africa's development and that they contribute to peace, stability and prosperity on the continent. Policies for dealing with the legacy of manifold atrocities have a direct impact on this search for peace, stability and prosperity. That is the reason for this book. It will be distributed free to Members of Parliament, civil-society leaders and journalists in Third World countries.

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How does someone come to spend roughly half a lifetime learning and writing about the aftermath of war and related miseries? That is a question that I hear regularly. The psychiatrist's couch can bring to the surface an event that took place in September 1944. The Belgian city where I lived had been liberated. My mother heard from the neighbours that people were plundering the homes of families that had collaborated with the Germans. Things were just there for the taking, they said: butter, coal, woollen jumpers. So my father took me - I must have been seven years old - with him to where the manna lay waiting for us. I remember that: a pavement full of furniture, books, pots and pans which had been thrown out on to the street. And the owners standing by, dazed, waiting for what would happen next. My father found two volumes of a French encyclopaedia. Books: As a typesetter by trade, they were more valuable to him than bacon or cheese. Back at home, my mother asked how she was supposed to cook all that paper. My very own liberation days and a couple of books; does that go some way to explaining my fascination?

Or is that fascination more deeply rooted? Sometimes I could hear the war in the midst of one of the lessons I taught at the university. It is the first Thursday of the month. Twelve o'clock. The Leuven Fire Brigade tests its sirens. The air is filled with the wailing of an air raid warning. Almost immediately I feel the young boy awakening in me who in May 1944, when my city was

being bombed by the Americans almost daily, fled weeping into the cellar. Where is my father's wooden workbench under which I could hide so safely? Halfway through a sentence my lesson falls silent. I see amazed faces and ask my students whether they know what the sound is that they can hear wafting in through the open windows. But not a single one of them had even heard the sirens.

Every war lives on in innumerable guises. In literature, films, monuments, museums, churchyards, memorial days. But even more important, it lives on in our senses, like the feeling that the wailing of the sirens so often aroused in me. And it lives on in the landscape, too, occasionally letting you know that it is still there. That is true for me, too; right next to my parents' home is a field where a remarkable phenomenon can be seen every summer: the patch somewhere in the middle of the field where the crops barely grow. It is as if they are lamenting. A bomb fell on that place more than 60 years ago. In the scorched earth the war still does its work, season after season.

In the first half of the twentieth century, wars were generally conflicts between states. That has changed; bloody conflicts today take place largely within the borders of a single country. Civil wars, in other words; since 1945 there have been around 130 of them. Each time, the price paid has been a terrible one: an average of 18,000 dead and who knows how many wounded. Some of the wars have been short and sharp, others have dragged on for decades. In some cases they marked the death throes of a colonial system; elsewhere, it was a re-

pressive regime which sparked off the internal conflict. In most cases the different sections of the population fought each other for raw materials, farmland, space. In the worst cases this led to genocide. And always, there is the great individual sadness. Always, whole communities have to try and come to terms with what has happened to them. Taming the past; that is always the aspiration. And, if possible, bringing quiet to the hearts and minds of those who live today and will live tomorrow. But what seems to be passed, does not disappear. That is the subject of this book.

My first foray into the world of an unresolved past was a study of the post-war trials of Belgians who collaborated with the German occupier during the Second World War. Somewhat later, the fate of their French and Dutch fellow-collaborators also came into the picture. The implosion of communism in Central and Eastern Europe some years later in turn generated new material. Then came Africa. First there was Ethiopia. Mengistu, the head of a brutal regime, had been driven out in May 1991. Three years later the trials of his supporters began. Thanks to the simultaneous translation from the Amharic, I was able to follow a number of those trials quite adequately. Later, I was able to observe the confrontation with the old wounds in yet other guises in South Africa, Burundi and Zimbabwe.

The result is that this book reads like an account of a personal expedition into largely unexplored territory. During this journey I am accompanied by four characters. They show how the confrontation with the heritage of a war or of a dictator can go off the rails. And they raise the questions that lie at the heart of all this: Why

are the efforts of tribunals, the road to retribution for past suffering, so full of risks? When does the organised storing of memories, the work of the truth and reconciliation commissions, bring more healing than pain for the victims? Is forgetting and forgiving, amnesty in other words, guaranteed to go wrong? Is there such a thing at all as a best option in all of this?

Paulina Salas is 40 years old and a victim of torture and rape. She is one of the three main characters in Ariel Dorfman's *Death and the Maiden*. The play, Dorfman wrote in 1992, is set in the present day, in a country that is probably Chile, but which could be any country that has evolved into a democracy after years of repression. The husband, Gerardo Escobar, is about to become a member of a newly formed truth and reconciliation commission. A chance meeting with her probable torturer sets the time bomb of the memories slumbering inside her ticking. Can she survive the reconstruction of what happened?

In November 1991, Vera M. was living in the besieged Croatian town of Vukovar. She was carried off by the Serbian soldiers who took the town, together with thousands of other residents. She survived detention in five camps. During this journey she lost her father, her brother and her fiancé. When I talk to her ten years later I notice how hurt she still feels. "Justice was not done", she says. "Serbia is dominated by a conspiracy of silence." As a result, her heart still raged with hatred towards her oppressors.

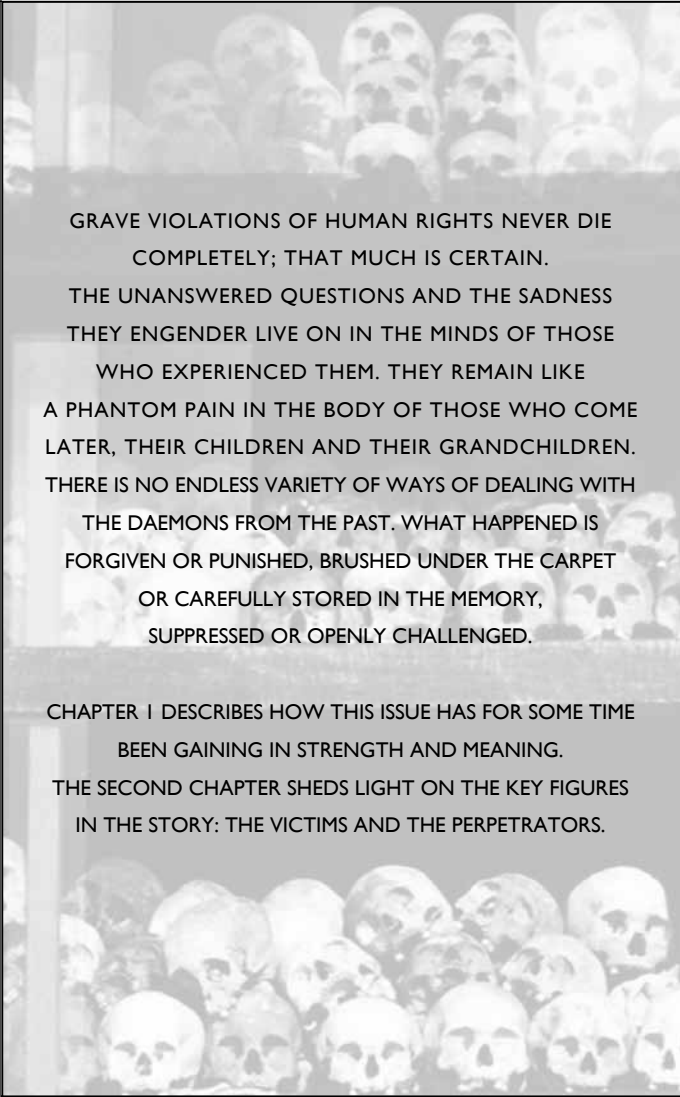
Gideon Johannes Nieuwoudt was 26 years old when he killed the anti-apartheid campaigner Steve Biko with a metal bar in a South African police station. In the

years that followed he went on a rampage of murder and torture in the name of the Bible and his superiors. When Nelson Mandela came to power, Nieuwoudt sought amnesty. The truth and reconciliation commission, which seeks to understand such crimes, asked him what drove him. He remained silent. No reconciliation for him, he seemed to be saying, unless it comes from the victims.

Mamo Wolde, an Ethiopian marathon runner, won medals at the 1968 and 1972 Olympic Games. Twenty years later, when his country was dealing with the crimes of a military junta, he too landed in prison. Wolde was accused of conspiracy in the murder of a young opponent. The new Ethiopia underestimated the task when organising trials intended to purge itself of a dictatorial past. There were virtually no judges, hardly any lawyers. Wolde languished in prison for nine years awaiting a decision, before being released. Nine months later he was dead.

Four characters. Two victims, one perpetrator and one doubtful case. Together, they span half a century of failure to deal with the ghosts of the past. They walk around on the pages of this book; usually behind the scenes, but occasionally at centre-stage. They explore with me what went wrong. But at the same time I try to gather evidence that things can be different, that there are also success stories. So that Paulina Salas, Vera M., Gideon Nieuwoudt and Mamo Wolde can be joined by very different protagonists.

PART I
LEST WE FORGET



GRAVE VIOLATIONS OF HUMAN RIGHTS NEVER DIE COMPLETELY; THAT MUCH IS CERTAIN. THE UNANSWERED QUESTIONS AND THE SADNESS THEY ENGENDER LIVE ON IN THE MINDS OF THOSE WHO EXPERIENCED THEM. THEY REMAIN LIKE A PHANTOM PAIN IN THE BODY OF THOSE WHO COME LATER, THEIR CHILDREN AND THEIR GRANDCHILDREN. THERE IS NO ENDLESS VARIETY OF WAYS OF DEALING WITH THE DAEMONS FROM THE PAST. WHAT HAPPENED IS FORGIVEN OR PUNISHED, BRUSHED UNDER THE CARPET OR CAREFULLY STORED IN THE MEMORY, SUPPRESSED OR OPENLY CHALLENGED.

CHAPTER 1 DESCRIBES HOW THIS ISSUE HAS FOR SOME TIME BEEN GAINING IN STRENGTH AND MEANING. THE SECOND CHAPTER SHEDS LIGHT ON THE KEY FIGURES IN THE STORY: THE VICTIMS AND THE PERPETRATORS.

LOOKING BACK IN BEWILDERMENT

For dictators, the past appears to be a light burden. They simply erase it, as Pol Pot did in Cambodia, or they rewrite it so that it provides a seamless link to the present. Stalin's forgers, for example, scrupulously and routinely rubbed out any inconvenient truths. Others impose forgetting the past by law. In Yugoslavia, for example, Josip Tito prohibited any discussion about what Serbs, Croats and Bosnians had done to each other during the Second World War. But despots only have real certainty once the gatekeepers of the past have also been silenced. It was for this reason that the Greek colonels who seized power in April 1967 immediately closed down history and sociology institutes. But despite all these attempts, the past comes back. Always. Sooner or later, abruptly or gradually. But it always comes back.

Things develop differently when democracy overcomes an authoritarian regime or peace brings an end to a civil war. In these situations, a lengthy struggle with what has passed begins: think of Chile and the Pinochet legacy; the Mothers and Grandmothers in the Argentinean Plaza de Mayo; the victims and the perpetrators of apartheid; the Serbian population in the former Yugoslavia; the child soldiers in Sierra Leone; the survivors of the Indonesian savagery in East Timor.

Fighting with a history that continues to cause pain is something that has gone on throughout history. Yet it has increased spectacularly in volume over the last 30

years. Hundreds of books and films show how difficult it is to come to terms with a tragic legacy. 'Dealing with a painful past' is the subject of university research and is giving rise to a new academic jargon. Holocaust museums have opened or are being built. Belgium ordered a commission to investigate whether the country shared any guilt for the murder of the Congolese Premier Patrice Lumumba more than forty years ago. Banks in Europe and North America searched through their vaults for 'forgotten' Jewish possessions. The Netherlands, more than half a century after the event, carried out an in-depth search of its conscience on its military actions in what is today Indonesia. After sixty years, Spain is exhuming the bodies of the murdered opponents of General Franco in order to give them a decent burial. Voices from the past have been heard in some thirty truth and reconciliation commissions. Genocide tribunals have been set up in The Hague and Arusha. The International Criminal Court, the jewel in the crown of the entire evolutionary process, has begun operations. It seems we cannot get enough of it.

This trend should not come as a surprise. A large number of totalitarian regimes disappeared from the stage in the last quarter of the twentieth century: Spain and Portugal in the 1970s; Chile and Argentina in the 1980s; followed slightly later by the countries from behind the Iron Curtain. Civil wars came to an end in Latin America, in Southern Africa and in parts of Asia. There was the genocide in Biafra, Cambodia, Iraq, Rwanda, Bosnia and Kosovo. Time and again, asked and unasked, the question arises of what we are to do with this painful legacy. Because the new remains fragile if it is

not possible to come to terms in some way with the old. The same period saw the end of the Cold War. Before then, many countries found it almost impossible to confront their past openly. There was always a reason, in both East and West, not to look back to the past. Perhaps out of fear that an alliance would be harmed as a result, or that the fragile balance between the superpowers could be upset. Those constraints now no longer exist.

At the same time, the way we view the past has changed. For a long time, the cult of the hero and of the victor dominated. This was also the case after the Second World War; all attention was focused on the triumphant armies, the resistance fighters, the refuseniks. For the Jews who had survived the slaughter there was only silence. That did not change until the 1960s. Since then, much more light has been shed on the victims of war and violence. Large NGOs have given them a loud voice. Public opinion is more willing to listen to their stories. It can be seen in the shape taken by war monuments since then; the Unknown Soldier has been replaced more and more by the Unknown Victim. This cultural sea-change is also palpable in the rediscovery of long past suffering: the fate of gypsies in the Holocaust; forced labourers in the Third Reich; the sex slaves of the Japanese army; the aborigines in Australia; the Native Americans in the United States; the black workers in the rubber plantations of Leopold II; the victims of slavery. The time has finally come, we hear people say, to talk about guilt and penance for what happened in the distant past. Or at the very least, to recognise and cherish the memory of all that pain.

And there is more. That ‘memory boom’ is also a form of democratisation, albeit in a very unusual sense. Together, we are today experiencing how uncertain the future of democracy has become. Globalisation and all manner of technological developments impede its further development. It is as if, confronted with the realisation of our powerlessness, we are no longer able to focus on tomorrow, but instead look back to yesterday and the day before that. Using the codes of today, we are reweighing the past. What we did as colonial powers was wrong, we think now; it was genocidal or at least in conflict with the values that we cherish today. And we admit our guilt. Democratisation of the past, as it were, as an alternative to the problematic democratisation of the future.

OF VICTIMS AND PERPETRATORS

Addis Abeba, 22 September 1998. For four years now I have been following the trials of the senior members of the Mengistu regime. That regime, acting in the names of Lenin and Mao, killed thousands of opponents in the Ethiopia of the 1970s and 80s. Witness number 522 is a 70 year-old woman. She tells the court about the murder of her daughter. I listen along with everyone else. The girl was first forced to crush dried peppers; she was then flogged and tied naked to a bed and covered in the caustic pepper dust; until she finally died from exhaustion. The Ethiopian tribunal which is trying the senior figures from Mengistu’s regime is sitting for the umpteenth time. There appears to be no end to the accounts of torture and executions. The psychological pain felt by the survivors also recurs in every account. Parents whose child was shot dead were expected to pay for the bullets. Public mourning was not permitted. That increased the sense of pain and loss enormously, because a funeral in Ethiopia is an event in which the whole neighbourhood takes part. A large tent is erected in the street where the dead person lived, and for three days long people weep, sometimes wailing loudly. Forbidding that process is like committing a second murder, this time against the soul of the dead person.

Witness 522 shows the many guises taken by victims: the dead person, their family, their neighbours, sometimes a whole community.

Guilt also comes in all shapes and sizes. Bill Clinton asked for forgiveness in Kigali for the lack of American intervention during the hundred days of genocide. Asking forgiveness for a crime of genocide which the Americans did not commit? In reality, however, this is not so strange. There are many ways of being responsible. The courts rule on behaviour that is regarded as wrong under the criminal law, on guilt in a legal sense. And indeed, on those who committed murder using machetes in Kigali. In addition, however, there is the notion – also a legal concept – of complicity; by being guilty of inaction, for example. And above all, there is what can be called political or moral responsibility; not doing what could have been done. The Netherlands also wrestled with this problem in the 1990s; on that occasion, it was the war in Bosnia which gave rise to the unease. Feelings rose to fever pitch when Srebrenica fell into the hands of Serbian troops. Were the Dutch UN soldiers, who were charged with protecting the enclave, partly responsible for the murders that followed? Or does the finger of guilt point more at the government in The Hague? Was it after all not the government which had failed to give the Dutchbat troops a proper mandate? Or was it the fault of the media which tempted the ministers, under heavy pressure, to improvise? The whole debate, however difficult and tortuous it may have been, made one thing very clear: guilt is a many-headed monster.

Time now for a rather more comprehensive group photo, first of the victims, then the perpetrators.

1 THE PREY

Who are the victims of civil war, of genocide, of repressive regimes? It seems a simple question, but it is anything but. Being acknowledged as a victim creates rights: the right to retribution, consolation, appreciation, perhaps to compensation. No wonder the question gives rise to heated discussions. The United Nations spent years producing a definition around which a fairly general consensus could be built. The first step was taken at the end of 1985, when the General Assembly issued a formal statement describing which persons could be regarded as victims of ‘abuse of power’. The text was full of vague phraseology. The definition was refined when the International Criminal Court was created; it now describes victims as anyone who has undergone physical or mental pain, emotional suffering or economic loss as a result of a crime that lies within the jurisdiction of the Court. People in the immediate vicinity of what are called the ‘direct victims’ are included in the definition; in the first place these will be family members. If the crime is against organisations, then there are collective victims. The Court document refers in this connection to institutions that are engaged in the fields of education, religion, charity, care for the sick, the arts and the sciences.

Wide diversity

What the United Nations or other official bodies set down on paper is extremely important. However, victims, politicians, religious leaders and academics regu-

larly go much further. For example, they frequently apply a very broad definition of family. A striking example of this can be found in South Africa, where the Truth and Reconciliation Commission took family members of direct victims to include the parents (or those who had taken the place of a parent); the spouse (including in the sense of customary law or in accordance with religious or indigenous laws), the children (born inside or outside marriage, and including adopted children), and anyone who fell under the protection of the victim under customary law or other legislation. That is the only way if one wishes to take account of the African reality of the extended family and polygamy.

Another extension dispels the idea that time heals all wounds. There is no expiry date for pain. The *Washington Post* of 22 August 2005 printed a remarkable article on this subject. The day before, several dozen Japanese Americans of advanced age had finally received their school certificates which had been withheld from them during the Second World War. The paper writes that there were tears in their eyes and jubilation among their children and grandchildren. Between 1942 and 1945 the American government had interned more than 120,000 ethnic Japanese, many of whom had been born in the United States. It was as if they were regarded as traitors. Toshiko Aiboshi, 77 years old and finally with a school certificate, told the journalist that she and many of her compatriots who had suffered the same fate had never fully come to terms with that period. The government did officially apologise in 1988 and survivors were paid compensation of USD 20,000. But the past continued to gnaw away at them. Often the suffering also worms

its way into those who come later and turns people who did not experience the original suffering into victims as well. The trauma that the Holocaust created in families is still present in the minds of the grandchildren, as if handed down in their genes.

In a civil war or under a brutal dictator, the fate of every victim is marked by tragedy. Yet the suffering of women and children has increased in recent times. This is not surprising; wars today take place much less on battlefields where soldiers – men – kill as many of their opponents as possible. Strategy and weapons technology have expanded the theatre of war exponentially. The civilian population has itself become a target. Where tribal warlords operate, as in many African countries, women and children are often the first victims.

Women

Martien Schotsmans is a Belgian lawyer. She has worked for Avocats Sans Frontières in Rwanda and interviewed victims of the dictator Hisssein Habré in Chad. In Sierra Leone she was head of the Legal and Reconciliation Unit of the Truth and Reconciliation Commission. She showed me a passage from the diary she kept when talking to defiled women there. “The girl is now around 20 years old. One day she was carried off by rebels. Carrying things, cooking, cleaning, being beaten and raped: that was her life. For months, perhaps years. Life in the bush is hard, but she survived it. To avoid any misunderstanding, the initials of the rebel group were carved into her breast: RUF. There is then no longer any chance of running away, because it is

guaranteed that you will be killed by the others. She sits there before me: strong and hard. Yes, she will come and give evidence; no, she won't bring anyone from her family to sit with her; yes, she feels strong enough; she will tell the Commission everything; no, she doesn't need to read through her statement again, she remembers every detail perfectly; no, she doesn't need any medical care; and yes, the initials have been removed from her breast and she shows me the raw scar, roughly three centimetres by six. That is what I can see. She doesn't show me the rest of her scars. At least not today."

Sexual abuse is the fate of many women during times of war and repression. Men rape for pleasure, in order to humiliate, in order to destroy a community. What sometimes prolongs the pain infinitely is that sexual abuse continues to have an effect long after the event. It is a stigma. Family, friends and neighbours often show little understanding, let alone help in coming to terms with it. That is also what rapists have in mind: permanently damaging a community. In a civil war, women are not even spared by close associates. A bitter demonstration of that can be found in Zimbabwe. In the 1970s, women fought as rebels in the battle against white authority. Sometimes they became the victims of sexual exploitation in the camps of the freedom movements. Only a good twenty years later did a few of them dare to complain. *Women of Resilience. The Voices of Women Ex-Combatants* (2000) tells the stories of nine of them.

War and related events disrupt family relationships. Women are often left as the only breadwinner. They and their families are then much more economically vulnerable. Sometimes this leads them into prostitution, in

turn bringing the risk of contracting AIDS. Where the husband is a former soldier or returns home after a period as a prisoner of war, he is confronted with a wife who has out of necessity come to think and act more independently; the result of this can be family violence, with the woman once again the victim.

In the past, virtually no attention was paid to the fate of women. That situation is now gradually changing; criminal courts attach greater importance to sexual abuse; UNIFEM (United Nations Development for Women) has on several occasions called for more specific attention for what happens to women when a conflict goes off the rails; recent Truth and Reconciliation Commissions have held special sessions.

Children

At the end of October 2005, youngsters in the Kalma refugee camp in Darfur 'kidnapped' thirty Sudanese and international aid workers for three days. Their message: children are both the first and the weakest victims of war; help us. The incident barely reached the media.

In Africa alone there are an estimated 18 million young people who have fled with or without relatives and who are trying to survive in refugee camps. Famine, a constant companion of civil wars, kills many children there and elsewhere. Yet more children die in minefields, both during and sometimes long after a conflict. Tribal warlords kidnap boys and girls and turn them into soldiers. In the north of Uganda, thousands of children travel daily from the countryside to the city: the night-time commuters. They go there to hide from the rebels of the

Lord's Resistance Army for fear of being kidnapped. Writing about the children of Sierra Leone, Martien Schotsmans says: "Children come back. Or they do not. Some of them are dead. Others have disappeared for good. Some of them were too young, no longer know which village they came from, what their name was. An eight year-old boy is sitting in my office. One of our counsellors is talking to him. He recounts how he was kidnapped when he was three years old, says what his father's name was. Can he remember that? He looks so fragile for a boy of eight. I ask him to make a drawing. Is this his house? Yes, he used to live there. This is his television, this is his watch. But he confuses the house of his father with the house of the rebel woman who took him in or with the house of his foster father. He confuses his fellow kidnappees with his brother. He would like to know if his parents are still alive. But he no longer knows which village he comes from, which region. There are all kinds of track and trace programmes, photographs, lists of names that have been distributed throughout the country. Who knows this child? No one has come forward. Perhaps his parents are dead. Yet perhaps there is still hope, because every day more refugees come back from Guinea; who knows, his parents may have fled there. He talks about his life with the rebels. He is now being looked after by a nice man and his wife, who send him to school, regard him a bit as a latecomer, spoil him; their own children have already left home and they would like to hold on to this little boy. He boy is all too aware of this, so he says nothing to his foster father - nothing about his past, about his wish to find his parents, torn by emotions of loyalty as

only children can be. And so it is necessary to talk to the foster father, carefully and for a long time, until he agrees that we can place the boy on the missing persons network again. No happy ending yet, then; we will have to wait and see. And who can say where this little boy will ultimately be the best off?"

The suffering of young victims goes on for a long time. The consequences are felt for many years; traumas which simply refuse to go away; the forced confrontation with violence which can later inject aggression into their own behaviour; lost educational opportunities which cause a disadvantage that can no longer be overcome. The battle with that past generally goes beyond the powers of communities that have already been badly affected. Though there are exceptions: in a few African and Asiatic countries, government and people have developed activities which prepare former child soldiers for as normal a life as possible. International help is another possibility. In Liberia, for example, the Christian Children's Fund, an American NGO (www.christian-childrenfund.org), has helped thousands of children come to terms with the miseries of war. At the heart of the programme lay and lies the training of local aid workers. The material they use is a mix of ancient rituals and Western techniques; traditional healers also play a role.

Who is a victim and who is not?

In 2000 four Irish journalists published a mind-blowing book. Its title is *Lost lives*. According to its authors, it tells "the stories of the men, women and children who

died as a result of the Northern Ireland troubles". Its power lies in its dry, unembellished portrayal of the victims. Number 1, a man of 28, died on 11 June 1966. Number 3638, a father of three children, was murdered on 10 January 2000. 1,600 pages of names, ages, deaths. Nothing more than that. It is a gruesome 'Who's Who', an encyclopaedia of senseless violence.

Like any list of victims, this inventory is the product of a selection. It shows who died, but not who was maimed. There are always choices to be made. Because victimhood is a two-stage process; first there is the assault on your physical integrity, your mental well-being or your material abilities; then there is the acknowledgement that you have suffered. The second phase is a complex and often unpredictable process. Any number of mechanisms, both political and cultural, affect it. The effect of this goes unimaginably deep. Some receive the acknowledgement they crave and are consequently able to acquire the rights this brings, though this is by no means automatic. Others are forced to remain in the shadows with their pain; unknown except to those close to them. There is a strong chance that their confrontation with the past will cause a great deal more pain.

The weight of political decisions

The report by the South African Truth and Reconciliation Commission runs to many thousands of pages. 967 of those pages can be found in volume 7 which contains the names of 21,523 men and women. They have been acknowledged as victims of the struggle against apartheid. However, behind those names are hidden many hundreds of thousands of black, coloured and white

people. Their injuries remain nameless. That is the result of political decisions. The Commission had a limited mandate; only serious violations of human rights were eligible for inclusion in the report: murder, torture, kidnapping and serious abuse. Arbitrary arrest, for example, was not included, even though the person concerned may have spent a long time in prison. The report itself states that at least 70,000 people went through this awful experience. The period that the Commission was allowed to look at lay between 1 March 1960 and 10 May 1994. This also ruled out many thousands of people. The Commission's mandate originally ran for two and a half years; that was later extended, but was still far too short to identify all victims of apartheid. Alex Boraine, number two in the Commission, wrote in his *A Country Unmasked. Inside South Africa's Truth and Reconciliation Commission* (2000) that identifying all of them would have required twenty to thirty years. Costs were another constraint, even though almost EUR 16 million was made available each year. Other truth and reconciliation commissions had even more limited scope than their South African counterpart, which meant they were able to identify even fewer victims. Programmes that recompense people for their suffering also require political decisions which act as a filter.

Dealing with a bitter past is a tragic business, but being forced to hide away victims is by no means the least expression of it.

Culture counts

Every civil war, every act of genocide, every dictatorial regime, has its own individual identity. Norms and val-

ues, culture in the broadest sense of the word, are a strong factor in determining how such an unpalatable heritage is dealt with. The consequences of this are very evident in the search for victims. Broad interpretations of what constitutes a family, usual in African societies, widen the circle within which sadness is recognised. Where sexual abuse is not regarded as a serious crime, the reverse occurs. This is why the list of the South African Truth and Reconciliation Commission contains fewer women than expected.

Owning up to being a victim, for example to an investigation committee, demands considerable social skills. You have to be able to describe adequately what happened to you ('naming'), you must know the perpetrator ('blaming') and you must know what is available by way of compensation ('claiming'). That is a serious obstacle. Trauma can lie so deep that people no longer believe in any form of redress. This makes them passive; or they seek out the shadows out of a sense of guilt, because they have survived while others have not.

At least as important is the view of victimhood. There are some who radically reject the term 'victim'. They see themselves as freedom fighters, martyrs, heroes and want to be called by these names. Others prefer the label 'survivor'. It makes them sound less in need of help, focused more on the future than on the past.

Competition

There is a great temptation to see all those who have suffered as natural allies, as members of a single harmonious family. That is not the reality, however. There is

lots of competition in the market for sympathy and understanding. There is a great deal at stake: compensation, positive discrimination in education and housing, appreciation in the form of monuments, medals, museums and commemorations, and a place in the collective memory.

After the Second World War, a fierce war of words was waged in Belgium, France and the Netherlands between the victims of the German occupation. Resistance fighters, forced labourers, political prisoners, communists and surviving Jews attempted to push their suffering ahead of that of the others. That debate still goes on today. Something similar is happening in Rwanda following the genocide. Several organisations representing the victims are fighting for priority; mutual solidarity is a long way off.

In another arena, groups fight for what the American historian Peter Novick has called the gold medal in the 'Olympics of genocides'. Some Jewish lobbies go very far in this; according to them, the Holocaust was so unique an example of genocide that other cases do not deserve that label.

What do the victims and their descendants want?

In 2006 an official commission examined the racist violence in Wilmington (US). Investigations such as this are not uncommon in America, but there is something strange about this one: more than a hundred years have elapsed between the events and the investigation. Because what has now being scrutinised took place in 1898. Sixty black people were murdered, and more than

2,000 forced to flee. Today, the commission is proposing paying compensation to the descendants of the victims.

My scrapbook of newspaper cuttings is crammed full of stories like this. I will pull out a few of the more recent ones. At one time, from 1884 to 1915, Namibia was a German colony. In 1904 the Herero people rose up against their colonial masters. Lothar von Trotha, the general in charge, gave the order to kill every Herero: men, women, children and all their livestock. It was the first massacre of what was to prove to become a bloody century. In 2004 the German government apologised and offered a great deal of money in compensation. But the case was still not closed. A Namibian NGO summonsed Germany and two companies, one of them Deutsche Bank, to appear before the courts. Compensation amounting to EUR 1.7 billion was claimed. Unpaid debt, it was called. In a second example, at the end of 2005 the Brazilian government released 1,200 boxes full of archive material about the military dictatorship (1964-1985). Tens of thousands of documents bearing witness to violations of human rights. Once again, the past was being brought back to life. Germany, for its part, granted in April 2009 free access to the Holocaust archives. These documents contain information on more than 17 million concentration camp prisoners, forced labourers and other victims of the Third Reich. The country had steadfastly refused this access for sixty years. For hundreds of thousands of survivors or relatives of those who died, this is a wide open window onto something that cannot be forgotten. Or take the case of the Norwegian Lebensborn children. The Nazis wished to breed a pure race during the Occupation: German fa-

ther, Norwegian mother. After the War the children were spat out. Now some of them are taking the Norwegian government to the European Court of Human Rights in Strasbourg. They argue that they were inadequately protected in the homes where they were dumped. The best-known Lebensborn child is Anni-Frid Lyngstad, the singer from the pop group ABBA. The same European Court was dealing with cases brought by Poles in April 2006; they were family members of officers who were murdered in 1940 on the orders of Jozef Stalin. After all this time, they want to know exactly where the responsibility lies. The Russian courts gave them short shrift, so they turned to Strasbourg. Australia still wrestles daily with the legacy of what it did to its aboriginals. The truth about this was hushed up for a long time. That silence was not without its consequences. Untroubled by any sense of guilt or remorse, white Australians tolerated all manner of forms of severe discrimination. It was for example not until the early 1970s that the practice ended of removing children from aboriginal families and placing them in white families or in homes. A disconcerting report was published on this in 1997, *Bringing Them Home*. The commotion this caused had not yet died down before yet another report caused yet another great stir. Money that had been intended for the aboriginals in the last quarter of the twentieth century had disappeared into the government black box and stayed there. During the Commonwealth Games in Melbourne in 2006, pamphlets were distributed calling them the Stolenwealth Games. In Australia, today, yesterday and the day before yesterday are very close bedfellows.

For many people, material compensation for past suffering is the number one demand. This is understandable in the event of recent loss which is still felt every day. But even very old wounds continue to give rise to demands for compensation for damage that is still felt today. In some cases it is moral satisfaction that is sought, simple recognition as a victim, for example. Or perhaps people want old cases to be reopened, so that they can finally learn what happened in the past. For others, receiving compensation, recognition and information are all equally important.

2 THE PREDATORS

There is Adolf Hitler and there is Arthur Neville Chamberlain, the British Prime Minister who failed to restrain the German dictator in 1938. There is Joseph Stalin and there are the Western supporters who defended the gulags. There is Saddam Hussein and there is the American government which in 1989, a couple of months after the gassing of hundreds of Kurds, doubled its aid to Iraq. There is Gideon Johannes Nieuwoudt, torturer of black and coloured people, and the foreign supporters of apartheid. There are the journalists from the hate radio station Mille Collines in Kigali, and there is the Pentagon which did not wish to disrupt the channel. There are the predators who kill and torture, and there are those who watch and applaud or close their eyes. All of them are responsible in some way or another.

Guilt is a many-headed monster

Every brutal conflict spawns a wide diversity of perpetrators. Men and women, official bodies and private individuals, local people and foreigners, generals and foot-soldiers. The weight of their guilt determines their place in the hierarchy of evil.

At the top are those who have sinned against the laws of the international community. Crimes against humanity, genocide, war crimes and grave violations of human rights are the categories which appeal most to the imagination, and which attract the most attention.

Much further removed, in an expansive grey area, lie the deeds that are not criminal, but political or moral in nature. In the dying days of apartheid, accusing eyes were often directed towards everyone who had profited from the system. They did not murder or torture anyone, but they were always at the front of the queue when it came to the handing out of jobs, health care, education, housing. Antjie Krog, an Afrikaans poet and journalist, has described them in her *Country of my Skull* (1998). In the preface to the Dutch translation of the book, Adriaan van Dis takes the need for feelings of guilt even further. "Much of what is happening in South Africa affects our future. The relationship between black and white stands as a symbol for the relationship between rich and poor, North and South. (...) Many of the questions that Antjie Krog asks herself are questions that we can also ask here: to what extent do I benefit from someone else's disadvantage? Am I personally responsible for it? What use is my guilt and my shame to those who are humiliated? What does the vic-

tim want from the perpetrator? Will the past still be borne by me and my children's children?" [author's translation]

Close to these 'silent beneficiaries', as they are called in the literature, is a second group: those who stand idly by looking in the other direction, who remain sitting on their hands. The American writer Samantha Power portrayed them in harsh words in *Bystanders in genocide*, an article that was published in the *Atlantic Monthly* in September 2001. In her article she weighs the responsibility of the United States (and *en passant* of Belgium and France) during the Rwandan genocide. Policymakers in those countries knew what was happening. They had the opportunity to intervene but chose to stand back and do nothing - probably because of domestic politics.

A final category is the most problematic, because it is not always certain whether there is any moral guilt at all. I will present the dilemma through an example. In the summer of 1994, hundreds of thousands of Hutus fled Rwanda. They ended up in camps in Eastern Congo. Some of the national sections of Médecins Sans Frontières played a prominent role there in caring for the sick and malnourished refugees. After a while, however, it became apparent that Hutu extremists were misusing the camps for the regrouping of the Interahamwe militias. The aid workers from Médecins Sans Frontières found themselves facing a difficult dilemma. If they left, this could mean a death sentence for innumerable refugees; staying could end up effectively make them accessories to the future actions of the Interahamwe. The Belgian team continued working for another year. They came under heavy criticism for this, in-

cluding from sister organisations. People can become the bearers of moral guilt, it seems, even unwillingly.

A multitude of motives

The ambition in tribunals and truth and reconciliation commissions is to prevent civil war, dictatorships or bloody repression in the future. To achieve this aspiration it is important to discover what drives those who plan and carry out such atrocities. Discovering their motives increases the chances of taking preventive action if new crises threaten.

A large library could be filled with publications about the causes of violent behaviour. Perpetrators, it is written, can be driven by biological, psychological, political and cultural stimuli. I will limit myself to a brief review of the literature on politics and culture as drivers.

1. Dictatorships, especially military dictatorships, have always and everywhere provided an obvious motive: orders are orders. This reasoning is if necessary reinforced through physical coercion against anyone who hesitates. Since the Nuremberg trials, however, 'merely following orders' is no longer accepted as a defence for a perpetrator. Notwithstanding, to this day 'orders are orders' is one of the strongest stimuli driving people to commit murder and torture.

2. In addition, almost every repressive regime fabricates laws which completely absolve crimes committed in the name of the state. That removes any hesitation among potential perpetrators, or imparts feelings of innocence

on those who have committed crimes. During the Second World War, France operated a system of *collaboration d'état*. An internal governance apparatus, the Vichy regime, introduced a political system provided by the German occupier. Many people, believing that 'Vichy' was a legitimate government, acted in accordance with its laws, even where this led to collaboration in the persecution of Jews. That is also a crucial problem in post-Communist Central and Eastern Europe. The secret police and their informants, the judges and censors, all worked according to the book. The behaviour that resulted was in their eyes not forbidden by the criminal law that applied at the time.

3. Adriaan Vlok, Minister of Law and Order in the last apartheid government of South Africa, demonstrated to the Truth and Reconciliation Commission how people were also persuaded to commit gruesome crimes via indirect means. The ambiguous use of language in political circles was designed to remove any obstacles. No precise definitions were given for words such as 'destruction', 'erase', 'root out', 'eliminate', 'neutralise', 'taking out', 'informal policing', 'methods other than detention' in discussions with the police and the army. That gave those organisations and their people a great deal of room for interpretation. They are words which commit murder.

4. Going a step further, there is recourse to terms which dehumanise the opponent. It is a technique which turns ordinary men and women into murderers. Rwanda provided a convincing demonstration of this in the spring

of 1994. Radio Mille Collines called the Tutsis cockroaches. For tens of thousands of Hutus this was *carte blanche* to get rid of their neighbours. Serbian militiamen called the Muslims dogs; that meant they could be shot down.

5. A motive *par excellence* is the idea that a deed or crime carries political/ideological support. Violence is then seen as morally justified. It is an instrument of the fight for freedom, for example. Or it is an answer to even worse violence carried out by a repressive state or the enemy.

6. A culture of lawlessness breeds perpetrators. This is the last but by no means the least major source of motives. If violations of human rights are tolerated year after year, conflict after conflict, few constraints on violent behaviour remain.

There are some perpetrators who combine all these motives. They populate the darkest heart of the violence caused by civil wars and repressive regimes. Even long afterwards they remain a stubborn inconvenience. A South African example.

Truth and lies (2001) is a photo book by Jillian Edelstein about the South African Truth and Reconciliation Commission. In the margins of the public hearings, it portrays perpetrators looking for amnesty and victims who are looking for acknowledgement. Michael Ignatieff, a Canadian historian, wrote the introduction. I look at one of the photographs through his eyes. It shows two men. One of them is a member of the security po-

lice; the other is Gideon Johannes Nieuwoudt, a notorious murderer and torturer, following his pleas for amnesty. Ignatieff says: "It is remarkable, of course, because of the directness of Nieuwoudt's gaze, the casual male way he holds his cigarette, the hand in his pocket, and above all, the hint of a smile. This man burns people with that cigarette so casually held between the fingers of his right hand. This man seems to enjoy the scrutiny of the camera, hence his own notoriety. The gaze seems to say: Yes, I am apartheid's secret. At the heart of it all, there was me. Without me, we wouldn't have kept paradise to ourselves. You can judge me all you like, I don't care." The photo shows what the Truth and Reconciliation Commission could not show: the self-assurance of someone who decided about life and death, of someone who continues to lie without embarrassment, of the apartheid after apartheid.

Nieuwoudt, an Afrikaner through and through, was 21 years old when he converted to become a born-again Christian. Five years later, by now an officer in the security police, he murdered Steve Biko. Not because he was a particularly dangerous opponent of apartheid, but because, according to Nieuwoudt, he was such an arrogant *kaffir*. Just imagine, he was not willing to stand up during his interrogation. Biko was the first in a long succession of liquidations in which Nieuwoudt had a hand. Before the Truth and Reconciliation Commission, when he explained his request for amnesty, he did not deny most of the murders. He did however remain silent about the true circumstances. Why those men had to die and how he set about killing them: he said little or nothing about this. He was not granted a general am-

nesty, was detained and was sentenced to twenty years in prison. He did not understand this. On his conviction he said to a journalist: "Now you see how small the desire for reconciliation is here." Nieuwoudt is the prototype of a perpetrator who believes completely that he is right. There is the religious component: the Bible within reach, a faithful member of the pro-apartheid Dutch Reformed Church. A communist-hater as well. His psychiatrist told the Truth and Reconciliation Commission that he was scarred for life by an event in his youth. At school a vicar who had fled from Romania came to talk about how he had been tortured for years. And Nieuwoudt was convinced of the supremacy of the white race. He killed, in his own words, for God and for white South Africa.

Self-pity is not unusual in people of this kind. In Nieuwoudt's request for amnesty it was claimed that he had been destroyed by post-traumatic stress. Or, in the words of his psychiatrist: "I think Mr Nieuwoudt just killed too many people and it just became too much for him". Empathy is something that is alien to him and his kind. Nieuwoudt murdered Siphiso Mtimkhulu, a black student leader, in the 1980s. He requested and received amnesty from the Truth and Reconciliation Commission for that crime in 1998 - even though, to the great distress of his victim's mother, he remained vague about the circumstances in which the boy was killed. Shortly afterwards he went with a camera crew to visit the Mtimkhulu family, ostensibly to ask for forgiveness. The whole country was able to witness how Siphiso's son hit him over the head with a vase. Perpetrators always look at what has happened very differently from

victims. With people such as Nieuwoudt the gulf is unbridgeable.

Gideon Johannes Nieuwoudt died at the end of August 2005, aged 54. He had lung cancer. The cigarettes with which he had tortured so many black and coloured people turned out to be his own executioner.

3 WHERE VICTIMS AND PERPETRATORS REGULARLY EXCHANGE ROLES

“Who are the good guys? That’s what every well-meaning European, left-wing European, intellectual European, liberal European always wants to know, first and foremost. Who are the good guys in the film and who are the bad guys. In this respect Vietnam was easy: The Vietnamese people were the victims, and the Americans were the bad guys. The same with apartheid: You could easily see that apartheid was a crime and that the struggle for civil rights, for liberation and equality, and for human dignity was right.” It is with these sentences that Amos Oz begins his *How to Cure a Fanatic* (2006). However, he tells us that things are less clear-cut in the Arab-Israeli conflict. It is impossible to tell who are the angels and who are the devils. The complex puzzle that is the Middle East is not exceptional. Mention genocide in Burundi and Hutus and Tutsis will begin talking about a different period in the bloody history of their country. They have become entangled in a spiral of mutual accusations. I experienced this in a special session on reconciliation in the Burundian parliament.

The former Yugoslavia is another striking example. Many Serbs find justification in a war fought against the Turks – in the 14th century! – for the fact that they still despise the Bosnian Muslims. And they have not forgotten that the Croats terrorised the Serbs in the name of the Nazis between 1940 and 1945. In this way, every population group in that region colonises an episode from the past in order to use and misuse it. Such cocktail of historical ingredients is explosive. Time and again, the memory focuses on periods in which people themselves were victims. It is in this context that Vera M., one of my four accompanying characters, joins my expedition into the land of an unresolved past.

Shared responsibility

The Croatian city of Vukovar was captured by troops from the Yugoslav People’s Army on 18 November 1991, after a three-month siege. More than 90% of the houses were destroyed. But the worst was yet to come. Two days later the victors removed 250 wounded people and nurses from the local hospital, took them to a pig farm in the nearby Ovcara, executed them and dumped their bodies in a mass grave. Around 5,000 inhabitants were gathered together in a shed just outside the city. Their final destination, for some of them literally, was one of the camps in the Serbian territory.

It is 18 November 2002. According to annual tradition, Vukovar commemorates the Serbian massacre at the end of 1991. I am taking part in a symposium on human rights. I talk with survivors of the Serbian camps, accompany them to look at what is still a devastated city

(just like one of the film sets from *Saving Private Ryan*, I can't help thinking), accompany them in a floral tribute at the monument in Ovcara. And I do all of these things with very mixed feelings, because I have evidently ended up in the middle of a nationalist ritual. In the evening, sitting in a restaurant, the stories about Serbian cruelties follow one after the other. There is brief silence when Vera M. talks about the murder of her father, her brother, her lover. The trauma runs very deep, as does the grudge and hate she feels towards the former occupiers. I have absolutely no desire to engage in discussion with her. I do by contrast seek out that confrontation around the table with historians and sociologists from Zagreb University. But they refuse to engage. Their viewpoint is simple: the Serbs have the monopoly on extreme violence. The atmosphere cools palpably when I raise the question of shared responsibility. Were there no atrocities carried out by the Croatian army in the Krajina where many Serbs lived? Diagonally across from me sits a man who calls himself a colonel. He fought here eleven years ago. In the afternoon he had taken me to his brother's grave, killed by a Serbian grenade. Now, his body language reveals his pent-up anger. What is that know-all from Belgium thinking? Hasn't he seen our sadness? I am briefly overcome by a feeling of shame. After the meal we walk with Vera M. and some of her friends through the streets of Vukovar. I see how one of them spits at the death notice of a neighbour - a Serb - written in Cyrillic letters.

When we part I am given a stone replica, 20 centimetres high, of the bullet-pocked Vukovar water tower, one of the symbols of the devastation. It looks very real-

istic. A last attempt to convince me? Later I will hear that two months earlier graves at a Serbian cemetery had been desecrated. It was the seventh such incident in Vukovar that year. An Orthodox Serbian church was also the target of vandals.

The football club Dinamo Zagreb donated the proceeds of its last league match in 2006 to a 'foundation for discovering the truth of the war in the fatherland'. The money was intended for Croats held in prison in The Hague, awaiting trial. Because those people are regarded as heroes. Especially General Ante Gotovina. He was an officer involved in Operation Storm, the bombardment offensive which enabled the Croats to defeat the Serbs in the Krajina region in August 1995. A Belgian journalist, Mon Vanderostyne, was the first foreign reporter to visit the region. An extract from his report reads as follows: "On both sides of the road, for a distance of more than fifty kilometres, every farm was ablaze. This was the scorched-earth tactic. One hundred and fifty thousand Serbs were driven out; the policy of razing everything to the ground was intended to ensure that they never returned." Vanderostyne saw a police unit from the Vukovar area, so a long way from home, "stealing cars and loading up trucks with TVs, hi-fis, boxes of shoes, heavy suitcases and large sacks with indefinable content." The official charge sheet against Gotovina refers to arbitrary executions and torture. His trial began in The Hague in March 2008. But for Vera M. and those who shared her fate, he remains a hero.

By chance I had found myself in Vukovar, in Croatia. It could equally well have been Knin, in Krajina; I would have heard similar stories there, but then in their Serbian version. Such a selective take on history makes it more difficult to come to terms with a dark past. Acknowledging each other's pain is a crucial but extremely difficult step in the healing process. Northern Ireland has demonstrated that for many years. Between them, troops sent there to maintain public order and Protestant paramilitaries killed more than a thousand Catholic civilians. The IRA and related militias, for their part, were responsible for around 60% of all deaths between 1966 and 1999. Both camps see themselves as victims and the others as perpetrators. Luckily, in the midst of a sea of confusion and lack of understanding, there are always islands of respect for what is a painful truth: perpetrators and victims have frequently changed places. In the spring of 2004 I saw the inhabitants of such an island at work. The event was a roundtable meeting to discuss reconciliation. People from the two different worlds that make up the city of Belfast came together to see if they could find what binds them together. The participants were arranged in alphabetical order, Catholic next to Protestant, republican next to loyalist. I spoke to Monica McWilliams there. She founded the Northern Ireland Women's Coalition in 1996 and sat in the Northern Irish Assembly. Women, she said, find it easier to build bridges. They also more readily acknowledge that there are victims and perpetrators on both sides. "We showed that during the negotiations that would eventually lead to the Good Friday Agreement, the first step towards real peace. The men often stormed

out of the room out of pure frustration. The women stayed and kept talking. We see compromise as a sign of strength, not weakness." A British negotiator said later in an interview: "While the men accused each other of crimes from the past, the women talked about their children, their sadness, their hope for a better life. It was that that opened up the discussions."

Child soldiers

In some cases it is very difficult to say whether people are perpetrators or victims. Child soldiers, the most heart-rending example, are a mix of the two. Sometimes they have taken part in the most gruesome forms of violence. At the same time they have in many cases been abducted, forced to kill and been repeatedly abused themselves. The past with which they have to come to terms is a very ambiguous one.

Many different reports are in circulation about the number of child soldiers. The figure that appears most often is three hundred thousand, all younger than 18 years. They are found in thirty countries. Until recently it was mainly Sierra Leone, Liberia and Uganda that were in the news - Africa, again. But there is just as much reason to look at what is happening in Asia. Afghanistan, India (specifically Kashmir), Indonesia (among the rebels in Aceh), Laos, Myanmar, the Philippines, Nepal, Sri Lanka (among the Tamil Tigers), Thailand and Yemen are all countries in which child soldiers have been used in recent years.

At the end of the Second World War, Germany pushed its own children into the firing line. In Belgium,

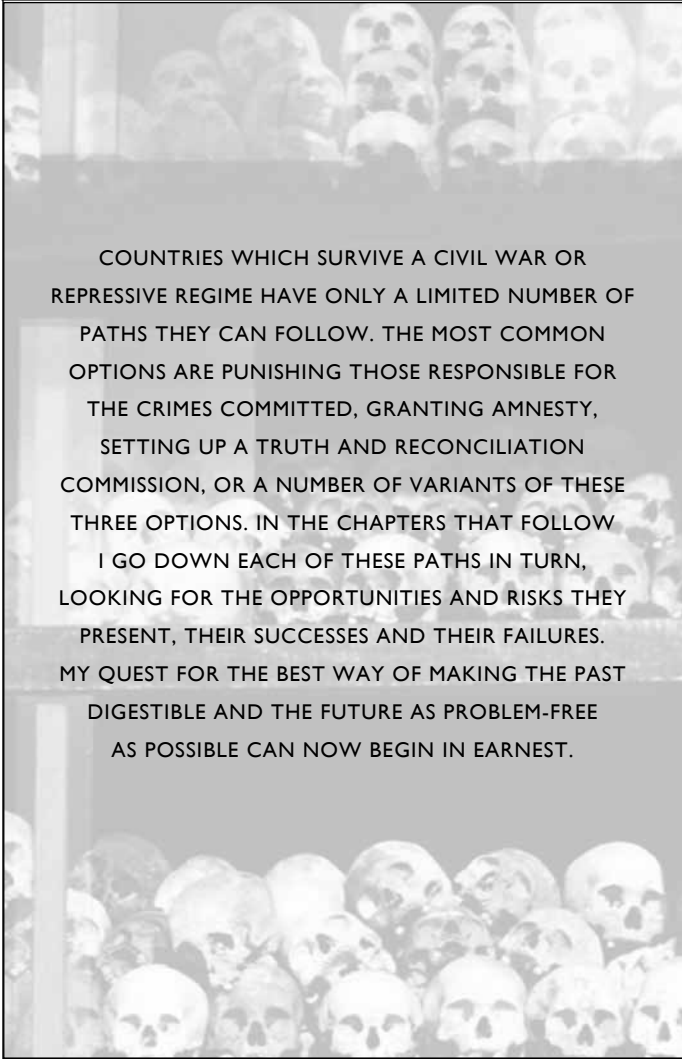
France and the Netherlands, thousands of men went to fight as volunteers on the Eastern Front. Some of them were much younger than 18. This is thus by no means a new phenomenon. Yet there has been a spectacular increase since the 1990s. Two developments play a role here. Small arms have become much lighter and can thus be handled more easily by children. And then there is the rise of tribal warlords and their followers. Unhindered as they are by codes such as the Geneva Convention or any code of honour, they see young people as an obvious prey.

In 1994 the United Nations asked Graça Machel, the widow of a former president of Mozambique, to write a report about children in the war. She published it in 1996. Eight years later she said that at the time the issue had attracted virtually no interest. Even the problem of child soldiers drew no attention. That changed a short time later. A number of international NGOs, including Human Rights Watch and Amnesty International, founded the Coalition to Stop the Use of Child Soldiers (www.child-soldiers.org) in 1998. In February 2002 a Protocol was added to the UN Convention on the Rights of the Child stipulating a minimum age of 18 for participation in armed conflicts. In November 2008 more than 120 states had ratified the Protocol. And for the International Criminal Court, recruiting children aged below 15 years is regarded as a war crime. Thomas Lubanga Dyilo, a former warlord from Eastern Congo, is currently on trial at the International Criminal Court, where he stands accused of recruiting child soldiers. That is an important development, but it is not enough

to bring the phenomenon to an end once and for all. In its report on the period 2004-2007, the Coalition wrote that since 2004 child soldiers had been liberated or demobilised in Afghanistan, Burundi, Ivory Coast, Liberia and Southern Sudan. Meanwhile, however, tens of thousands of new cases have been identified in the Central African Republic, Darfur, Iraq, Somalia and Chad. Even ratification of the Protocol does not stop countries, as the United States demonstrates: that country has deployed 17 year-olds in both Afghanistan and Iraq.

Graça Machel, now Mrs Nelson Mandela, also wrote the preface to the last Coalition report. Things are progressing much too slowly, she wrote. She criticised the 'silent partners' of those who use child soldiers. There are the companies in North America and Europe which provide them with weapons and military training, while countries such as Germany and Norway refuse to grant asylum to former child soldiers. Yet another example of moral guilt?

PART II
REMOVING THE PAIN
AND DEVASTATION



COUNTRIES WHICH SURVIVE A CIVIL WAR OR REPRESSIVE REGIME HAVE ONLY A LIMITED NUMBER OF PATHS THEY CAN FOLLOW. THE MOST COMMON OPTIONS ARE PUNISHING THOSE RESPONSIBLE FOR THE CRIMES COMMITTED, GRANTING AMNESTY, SETTING UP A TRUTH AND RECONCILIATION COMMISSION, OR A NUMBER OF VARIANTS OF THESE THREE OPTIONS. IN THE CHAPTERS THAT FOLLOW I GO DOWN EACH OF THESE PATHS IN TURN, LOOKING FOR THE OPPORTUNITIES AND RISKS THEY PRESENT, THEIR SUCCESSES AND THEIR FAILURES. MY QUEST FOR THE BEST WAY OF MAKING THE PAST DIGESTIBLE AND THE FUTURE AS PROBLEM-FREE AS POSSIBLE CAN NOW BEGIN IN EARNEST.

THE POLITICS OF HARSH RETRIBUTION

There are some words which can be interpreted in many different ways. Justice is one such word. It is a word whose meanings can be manifold. Truth and reconciliation commissions are built on the assumption that the human memory is the ultimate form of justice. The term also appears in discussions about compensating victims; its meaning then is close to that of 'fairness', that other *mot-valise*. However, the word most frequently refers to what the outcome is or should be of a criminal trial. This meaning is encapsulated very explicitly in the expression 'justice has been done'. It is under that flag that this chapter will sail.

But first, back to Ethiopia, to the trials against Mengistu and his collaborators. For me, a foreign observer at that tribunal, the whole event had something hallucinatory about it. My mind was full of images of the post-war trials of the collaborators in my country, Belgium. Loud rejection if the public felt the punishment was too light; applause when the death penalty was handed down. There was nothing like that here in Addis. Everyone listened intently, breathless. The accused were given every opportunity to speak. Above the head of the public prosecutor, near the ceiling, hung a gigantic shield with hammer and sickle, the symbols of the power that stands before its courts (it is as if, sixty years or so ago, the friends of the German occupier in Belgium,

France and the Netherlands had been sentenced beneath the sign of the swastika). During a brief power failure, the defendants and the public moved out into an adjacent garden. The sun was shining, tea was served and people strolled around. Only a couple of soldiers separated the victims from their executioners.

Thousands of kilometres away, in The Hague, history was meanwhile being written. In early August 2001 the International Tribunal for the Former Yugoslavia sentenced the Bosnian Serb General Radislav Krstic to 46 years imprisonment. The Tribunal regarded his part in the massacres in Srebrenica as genocidal behaviour. This was the first time an individual had been sentenced for genocide in Europe. In Arusha, where the Rwandan genocide is on the agenda, the courts have handed down similar judgements.

1 FROM SOLFERINO TO ROME

Ethiopia and the tribunals in The Hague and Arusha are examples of the hard interpretation of 'justice'. It is based on the idea that there is no room for leniency when dealing with serious violations of human rights and related crimes. This is not an entirely new view, though its breakthrough has come only in the last 25 or 30 years.

Distant roots

In the *New York Times* of 24 March 2005, regular columnist Thomas Friedman made a remarkable journey in

time. American soldiers, he wrote, had killed at least 26 prisoners of war in Afghanistan and Iraq. It had caused hardly any ripples. Friedman then went back more than two hundred years in his country's history. It is 1776 and George Washington, who will later become the first president of the United States, is leading the American troops in the struggle against the British colonial power. He calls upon his soldiers to treat the prisoners they take humanely, entirely in line with the ideals of the American Revolution. How we have forgotten that, sighs Friedman. He omits to mention that in 1863 another American, Francis Lieber, became the first to set down the principles of war law on paper. He did this whilst a civil war was raging. As long ago as 1865 soldiers were convicted for violating those principle. The guidelines of George Washington and the Lieber code were early steps in a development which would lead the world to the international tribunals of today.

At first, it was almost always a war which led to further steps in the battle against impunity. What took place on the battlefield had long been governed by what Michael Ignatieff calls the "warrior's honor". For example, it stated that soldiers were a valuable commodity and that the wounded should be well cared for. After all, mercenaries were expensive and volunteers scarce. For centuries, however, these were unwritten rules, which were enforceable to only a limited extent. Moreover, war is a monster which changes its guise continuously and in that metamorphosis ethical principles constantly lose their power and their meaning. Every new conflict cries out for a refining of the agreements. It is no coincidence that it was a battle near the Italian Solferino (24

June 1859) which began Henri Dunant thinking about the setting up of the International Red Cross. Halfway through the nineteenth century the existing code of honour had fallen into disrepute. Conscription had delivered an almost inexhaustible supply of cannon fodder. Technology, including the introduction of the machine gun, did the rest. The battle of Solferino not only produced around forty thousand dead, but a similar number of wounded. Dunant looked for a set of rules that could make war in its new guise a little more civilised. At the same time that Lieber was engaged with the same subject, he wrote the first lines of what was to become the bible of humanitarian law. The first agreement, on the treatment of wounded soldiers, appeared as early as 1864. Sixteen countries signed up to the document and undertook to punish infringements. Ten years later, Brussels was the stage for a conference to expand the scope of the convention.

The First World War, with its countless Solferinos, showed clearly that more was needed than just a few elevated texts. Moreover, in 1915, Turkey had massacred its Armenian people. Questions about responsibility could not longer be evaded. Attempts were made to set up an international tribunal to deliberate on war crimes, but the principle of the sovereignty of every state proved to be an insurmountable obstacle; the idea that foreign powers should judge German or Turkish citizens, let alone their armed forces or politicians, was a bridge too far. There was a willingness to make an exception in the case of Kaiser Willem II; he was after all the instigator of all the evil perpetrated in the name of war. But the Netherlands, where the Kaiser had sought refuge, re-

fused to extradite him. As a consequence, almost everyone who should have been held accountable got off scot free. It was a graveyard of missed opportunities. The memory of it would however fuel the more productive reactions after the Second World War.

Growing by leaps and bounds

From 1945 to 1949 the battle against impunity gathered pace. These were five remarkable years. The growth proceeded along two tracks, with international and national tribunals indicting hundreds of thousands of large and small perpetrators of war crimes, albeit only on the side of the losers. It was also a period which gave birth to a good deal of legal ammunition (conventions, criminal laws) which would make it easier to punish serious violations of human rights in the future.

In search of justice

After 11 November 1918, the international community failed to deliver justice. The Allies, in an attempt to avoid complete failure to achieve anything, had handed over around nine hundred war criminals to the German Supreme Court, but that body also failed to deliver any convictions. This was not the case after the Second World War. Even before 8 May 1945 the Americans, British, Russians and French had decided to break with the golden rule of national sovereignty. They would themselves judge and convict war criminals in Germany and Japan. On 20 November 1945 the International Military Tribunal in Nuremberg, the most visible expression of this break with the past, held its first session. Of

the 24 top Nazi figures tried, the Tribunal would acquit three, sentence seven to lengthy prison terms and order the rest to be hanged. In Tokyo, a second international tribunal was at work. In the meantime, the lesser figures had also been picked up. Each occupying force tried thousands of war criminals in its own zone in Germany. The Americans issued 450 death sentences, the British 240. The same thing happened in Japan.

Justice was handed down on an even larger scale in national tribunals. This was especially the case in the countries which had been under German occupation. Little is known about the trials in that part of occupied Europe which came under the influence of the Soviet Union. However, precise information is available for Belgium, Denmark, France, the Netherlands and Norway; here, hundreds of thousands of inhabitants paid a sometimes high price for their collaboration with the Germans. In Belgium, more than ninety thousand men and women went to prison or forfeited their political and civil rights. The Netherlands punished more than 110,000 of its errant citizens. The figure in France was almost the same: 130,000.

What was the result? What had happened in the War must not be allowed to be forgotten. That was one aim. Many hundreds of courts therefore tried to record the past, through indictments and witnesses and sentences. There was also a desire to end the culture of impunity. Unfortunately, the attempts were not entirely successful. In the trials of the friends of the Germans, things in countries such as Belgium, France and the Netherlands occasionally went wrong. Mistakes were made, initially

punishments were overly harsh and little attention was paid to the rights of defence. And nowhere, either in Nuremberg or Tokyo, was the wartime behaviour of the victors given any consideration. As a result, the accusation can be made that those who had won the War used these tribunals as a form of legal revenge. At the same time, the delivery of justice was unfinished. The Allies left hundreds of Nazis, sometimes notorious criminals, unpunished, because they could be used as assets in the Cold War. Moreover, the original intention was that the Germans and their European allies would try a proportion of their own people themselves. In most cases this remained a pious wish. The denazification of Germany and Austria failed, while in Italy the past was officially declared a closed chapter as early as in June 1946.

Despite this, the balance is not a negative one. The international tribunal that tried Goering and his consorts set a huge precedent. One step in the right direction compared with the approach in the past is that guilt and punishment no longer affect an entire society, but individuals. After 1918, the responsibility for atrocities had fallen on Germany as a nation. But the most important thing is that an obstacle in the battle against impunity was partially removed. Until 1945, the criminal law answered to an exclusively territorial logic. Every country was master of the decision as to who was guilty or innocent within its borders. That situation now changed. Since then, sovereign states have as it were had their sovereignty usurped for certain crimes. It was the start of what more than sixty years later would be called the legal version of globalisation.

A safety net of binding words

It is 14 March 1921. It is raining in Charlottenburg, a district of Berlin. A young Armenian appears behind a man dressed in a heavy grey coat. The Armenian, Soghomon Tehlirian, presses a pistol against the back of the man's head. He pulls the trigger, screaming: 'now the death of my family is avenged!'. This is more or less how "*A Problem from Hell: America and the Age of Genocide* (2003) begins. It is a book by Samantha Power about coming to terms with the genocides of the twentieth century. Tehlirian is the only survivor in his family from the Turkish massacres of 1915. His victim, Talaat Pasha, was the architect of this genocide. Like his like-minded compatriots, he has not had a single moment of concern or worry. A few pages further on, Power turns her gaze to Raphael Lemkin, a Polish Jew who is studying linguistics at the University of Lvov in the early 1920s. He falls under the spell of this event in Berlin. How is it possible, he asks one of his professors, that you can be punished for the murder of one man, but not for the murder of a million people? He will devote the rest of his life to this question. During the Second World War, the problem also affects him personally when his entire family dies in the Holocaust. Lemkin turns out to be a tireless fighter against impunity. He is the father of the word 'genocide', sets out his arguments in thousands of pages of tracts and pamphlets, and incessantly harasses government leaders and diplomats. He will succeed, with the help of a growing number of supporters. On 9 December 1948 the General Assembly of the United Nations adopts a convention providing for the punishment of genocidal acts. The greatest crime of all now finally

had a name. However, as would soon become apparent, that was not enough.

Power's book is the work of a journalist (who later turned academic). That shines through as she carries the reader along with her accounts of characters such as Raphael Lemkin. However, she also sets about her task with scientific precision. She lays bare the further development of the genocide convention with the sharpness of a scalpel and shows how the document was for a long time nothing more than words on paper. It was not enough to prevent the killing fields of Cambodia, the nine hundred thousand deaths in Rwanda, the gas attacks on the Iraqi Kurds or the tragedy in Srebrenica. Samantha Power identifies the resistances, describes the people who sabotaged the genocide convention, blames the bystanders who looked the other way as yet another people was massacred. She describes in minute detail how the United States for decades refused to ratify the genocide convention. Initially there was complete silence. Then in early 1967 the Democrat senator William Proxmire took up the gauntlet. For the next nineteen years he would call for ratification at every single session of the Senate, day in, day out, on a total of 3,211 occasions. On 11 February 1986 the Senate adopted his proposal. (Reading that story it could be today, with the subject being the opposition of the US to the International Criminal Court – the same fears, the same doubts, the same sham excuses, the same ethnocentricity).

Was a milestone not reached on 9 December 1948, then? Yes, it was. It marked the start of what was to become a safety net of binding words, a set of legal texts

which was to gradually increase the ability to punish violations of human rights. Language, and especially when couched in its legal form, is a weapon in the battle against injustice. Evil has to be called by its own name if it is to be challenged. The charter of the Nuremberg tribunal was the first to provide a legal definition of 'crimes against humanity'. Lemkin and the United States enriched the language of justice with the word genocide. The Chilean author Ariel Dorfman wrote the following about the power of such words: "...that is all that is needed: one person calling out in the ethical wilderness; one person; and then another person, and then another - that is all that is needed to keep the hope of justice alive." It works. Anyone who calls today's violence in Darfur (Sudan) genocide cries out for action.

A new step was taken on 12 August 1949. On that day, under the auspices of the International Red Cross, the four Geneva Conventions first saw the light of day. The Conventions were intended to offer protection in times of war to sick and wounded soldiers, prisoners of war and - for the first time - citizens who get caught up in the violence. These Conventions were not entirely new, but built on what had been begun as far back as 1864, on the initiative of Henri Dunant. They did however push the boundaries. Their scope is also considerably greater now that many more countries have ratified them. It is also incumbent upon signatories to build in the protective measures into their own, national criminal laws. And once again the principle of national sovereignty has been put under pressure by the rise of 'universal jurisdiction', which means that the perpetrators

of serious violations can be prosecuted in every signatory state.

Accountability could now be enforced. But not for crimes that had been committed in the more distant past. For the criminal law has its own way of suspending time, of wiping the hard disk of the memory. It does this through the statute of limitations. This situation did not change until 1968, when the United Nations adopted a convention which broke definitively with the self-imposed limitations of the criminal law in the case of war crimes. Since then, anyone guilty of torture or complicit in genocide in time of war can no longer appeal to the statute of limitations. Time no longer offers a safe haven to the perpetrators of violence.

All roads, literally, lead to Rome

Jean-Paul Akayesu, the Hutu mayor of Taba in Rwanda, was found guilty of genocide by the Rwanda tribunal, among other things because of his encouragement of the systematic raping of Tutsi women in his village. The text of the convention of 9 December 1948 did not include this type of crime. However, Pierre-Richard Prosper, formally the public prosecutor in Arusha, argued that conventions are not dead documents. The spirit of the law must be able to shine through. He succeeded in demonstrating that the rapes were intended as a devious means of making it impossible for a community, an ethnic group, a people, to survive.

That is precisely what has happened in the last quarter of a century: the scope of notions such as genocide, crimes against humanity and war crimes has been broad-

ened step by step. This evolution, which took place via different routes, would ultimately reach Rome, in the guise of the International Criminal Court.

1. A first route was the refinement of what was already present: in the summer of 1977 the Geneva Conventions were updated to bring them into line with the spirit of the times. The list of what were regarded as serious violations of human rights was extended considerably. The genocide convention was also strengthened. More and more countries ratified the agreement. In 1984 the convention against torture was added. In the 1990s a parallel track was followed, as UN committees developed guidelines on numerous issues: impunity, indemnification of victims. These are sometimes described as 'soft law', as if they are a weak outcome. Yet they added a dimension to what had been created via a harder, strictly legalistic route. All of this laid the basis for international agreements to curb large-scale violence.

2. The problem with those ambitious texts was that they remained laws without teeth; they proved virtually unenforceable. Anyone infringing them had access to a number of legal and material escape roads. This situation now gradually began to change with the opening up of a second route. This can be seen clearly from the development of the word 'amnesty'. In the 1970s the term had positive connotations; it stood as a symbol of freedom for political prisoners. Amnesty International turned it into a powerful exclamation mark. Less than ten years later, 'amnesty' stood for cheap forgiveness for those who had committed murder and torture in coun-

tries such as Brazil, El Salvador and Guatemala. This development sparked off an international battle against impunity. Meanwhile the tragic fate of a student from Honduras, Manfredo Velásquez, had prompted a major breakthrough. Velásquez had been arrested in a raid in September 1981 and, like so many others, had disappeared in *Nacht und Nebel*. The political leaders granted amnesty to the probable perpetrators. Members of Velásquez's family complained to the Inter-American Court of Human Rights (www.corteidh.or.cr), which found Honduras guilty in 1988, ruling that impunity was not an option. Ten years later, on 16 October 1998, millions of television viewers watched as Augusto Pinochet, the leader of the Chilean junta, was placed under house arrest in London.

3. At virtually the same time, a third route was opened up, as a major shift took place in the moral sense of what was considered acceptable and unacceptable behaviour from one human being to another. The genocide in Rwanda was a shock, and the ethnic cleansing in Bosnia and Kosovo even more so, because that happened in Europe's back yard. Also undoubtedly significant was the fact that, as the year 2000 came into view, people were forced to look back on a century which had brought approximately 260 million war victims. The view of human rights evolved from an ideal to an increasingly enforceable reality. The sensitivity to violations of those rights increased - in public opinion, in the media, in education. In the margins of economic and cultural globalisation, the embryo of what had the potential to be a global moral order began to grow.

This in turn generated an undercurrent which carried and reinforced the other developments outlined above.

4. The creation of the international tribunals in The Hague (1993) and Arusha (1994), the fourth route highlighted here, breached the defensive wall of those who were not prepared to give up the dogma of national sovereignty, the basis for a great deal of impunity. The principle has now been accepted that the international community can invoke the criminal law even where violations take place *within* a country's borders. Previously, the international community could only swing into action for events occurring in conflicts *between* states.

5. All these routes came together in Rome, as it were, through the founding of the International Criminal Court. A great many new courses were set out here. The definition of crimes against humanity was refined and expanded. It was also separated from a war situation, because it now applied equally to crimes committed in peacetime. The instruments available for combating impunity were also strengthened and expanded. The United Nations now had its own judicial apparatus, which was much less constrained by national borders.

Doubts

It could justifiably be said that my account is coloured by a pronounced belief in progress. However, reality also demands its place in the proceedings. The international tribunals in The Hague and Arusha marked a great leap forward, but they only swung into action

once the events had already taken place. For Vera M., my guide in Vukovar, that action came much too late; her family had already been killed. One of the superpowers – the United States – remains stubbornly standing on the sidelines of these developments; its leaders do not like the International Criminal Court. The shellshock caused by 11 September 2001 stopped the clock as regards the moral progress on human rights, or even turned it back slightly (George Washington and Francis Lieber are a long way away). There is also a global realisation that for every Milosovic who is called to stand judgement, there is another tyrant, a torturer, a barbarian, who is quietly enjoying his pension. Idi Amin and Milton Obote, manufacturers of death and devastation in Uganda in the 1970s and 80s, lived peacefully untroubled lives thereafter, one in Saudi Arabia, the other in Zambia. Raoul Cédras, who drove President Aristide from power in Haiti and who was responsible for thousands of killings, was granted asylum in Panama. Jean-Claude 'Baby Doc' Duvalier, one of his illustrious predecessors, continues to live in France. Mengistu Haile Mariam, head of a merciless regime in Ethiopia, has lived in Zimbabwe for more than fifteen years, undisturbed – at least as long as Robert Mugabe remains in power there. Hissène Habré, the dictatorial ruler of Chad in the 1980s, had a hand in tens of thousands of cases of murder and torture. In 1990 he fled, taking the national treasury with him, to Senegal, where he continues to live eighteen years later. One of the instigators of the slaughter in Srebrenica, Radko Mladic, was still walking around a free man in the summer of 2009. The writer David Rieff said with bitter irony in

1995 that the cry 'never again' means little more than 'never again will the Germans eradicate the Jews in the Europe of the 1940s'. He wrote this after the events in Srebrenica, in his book *Slaughterhouse: Bosnia and the failure of the West*. The geopolitical hand-wringing in relation to Darfur – genocide or not genocide, military intervention or no – arouse the horrible suspicion that this statement had not yet lost its currency today. What perhaps tempers the optimism the most is the knowledge that human rights continually call for modification and refinement. The Geneva Conventions are under pressure, and have been for some time. Bosnia, Rwanda, Somalia and Afghanistan have all demonstrated the most recent version of war: the pro-Serbian militias, the men with their machetes in Kigali, the child soldiers with their Kalashnikovs in Mogadishu, the warlords of the Taliban. Boundaries become blurred in these regions; boundaries between soldiers and civilians, between perpetrators and victims, between ideology and the battle for drug routes. As Michael Ignatieff wrote in *The Warrior's Honour: Ethnic War and the Modern Conscience* (1997), war in the past was the work of military men, whereas today it is prosecuted by *irregulars* with names like Major Rambo, Captain Double Trouble and General Snake. The Geneva Conventions do not work in a context such as this. It is for this reason that war today is so unpredictable and so cruel. Civilians are outlawed, and even staff of the International Red Cross and the UN are regarded as legitimate targets.

2 THE CRIMINAL COURT AS THE DELIVERER OF JUSTICE

In March 2009, a tribunal in Belgrade convicted thirteen Serbians for their part in the massacres in Vukovar, in Croatia. The sentences ranged up to twenty years imprisonment. That is seventeen years after the event. The charge: war crimes. The verdict: prison sentences ranging from five to twenty years. This case was a true breakthrough. For a long time there were doubts about the willingness of the Serbian authorities to bring indigenous war criminals before the courts; the wheels of justice turn slowly here. However, what counts is that a price is ultimately being paid for what happened near Vukovar. Because for many people, in Vukovar and elsewhere in the world, a conviction in the criminal courts is the only route to true justice. That belief is based on a whole gamut of arguments.

1. In Omagh, Northern Ireland, a bomb planted by the Real IRA killed 31 people on 15 August 1998. A self-help group formed by the victims' relatives has been trying since then to bring the perpetrators to justice. First they instigated a civil prosecution against five suspects. It was not until May 2005 that a criminal case proper began. In interviews, the leader of the self-help group, Michael Gallagher, made no bones about the fact that he and his supporters were looking for revenge. That is simply the way of things; victims often want some form of retribution, and their sense of justice can be seriously undermined if that wish is ignored. The courts are also needed to restore the self-confidence of the injured par-

ties: a conviction is a public recognition of the pain that has been suffered. Moreover, such a verdict draws a sharp line between good and evil. That is important, because those fighting injustice in a repressive regime are generally labelled ‘criminals’. The courts free the victim from this odium. All this is a way of saying that in the eyes of many people, bringing the perpetrators to justice is a moral duty.

2. ‘All Serbs hate Muslims’, ‘All Hutus are murderers’; these are chants that could be heard in the 1990s. The idea that an entire people is the cause of atrocities is a very dangerous one, which regularly spawns yet more violence. To quote Amos Oz in *How to Cure a Fanatic*: “No man and no woman is an island, but everyone of us is a peninsula, half attached to the mainland, half facing the ocean – one half connected to family and friends and culture and tradition and country and nation and sex and language and many other things, and the other half wanting to be left alone to face the ocean. I think we ought to be allowed to remain peninsulas. Every social and political system that turns each of us into a Donne-an island and the rest of humankind into an enemy or a rival is a monster.” Tribunals can provide an antidote to this kind of poison, because courts do not rule on collective guilt, but establish individual responsibility. In doing so they undermine the unnerving idea that no one in the other camp can be trusted. According to many observers, it is precisely this that makes criminal trials so indispensable.

3. ‘No peace without justice’ is a slogan that can be heard and read very frequently. It is also to be found in a report that Kofi Annan presented to the UN Security Council in August 2004. Once a conflict has finally drawn to a close, the Secretary-General said, the population hopes that its grievances will find a response through the criminal law. Embedding a fragile peace becomes impossible if that expectation is not acknowledged.

4. However, the best-known argument is that punishment is needed as a deterrent, as a guarantee that the future will bring less violence and less repression. This line of reasoning argues that such punishment gives potential dictators and torturers pause for thought. And it immunises the population against a new wave of collaboration with such people. This lies at the heart of the calls for prosecution and conviction contained in innumerable documents from the United Nations, and standpoints by international human rights NGOs.

3 THREE ROUTES

As suggested in the Prologue, this book is also an expedition. And like every journey of exploration, there are moments where there is a parting of the ways. I have arrived at one such moment here. One route, which in the past was pretty much the only one, runs via national tribunals. What is happening in Ethiopia is an example of this. We might call it ‘in-house punishment’. I will follow this path first, weighing the pros and cons

as I go. On the way I shall meet Mamo Wolde, one of the characters who is accompanying me on this journey. His story will show how great the problems are that are encountered along this route. To avoid these difficulties, a second circuit was opened a few years ago. Here, it is the international community which plays the role of judge. What is happening in The Hague and Arusha is an example of this route. However, its limits are already becoming apparent, and for this reason a side-road has been opened up, branching off from this route: in Sierra Leone, a hybrid tribunal has been deliberating, which contains both national and international judges. The final path is what is called in legal jargon 'universal jurisdiction'. Both Belgium and the Netherlands have experience with this option. In Brussels, six Rwandans were convicted for offences committed in their own country, even though the victims were not Belgians; and the Netherlands is trying two Afghans who tortured opponents of the communist regime in the 1980s.

'In-house punishment': the first route

It may seem obvious that a country should punish its own wrongdoers. After the Second World War Belgium, France and the Netherlands tried their own citizens who had abandoned their national loyalty. Since then, however, this practice has fallen into disuse. Silence, amnesia and amnesty were the rule, with the trials of the junta leaders in Greece (1974) as a notable exception. When, for example, the dictatorial regime of General Franco came to an end, Spain decided to embark on a collective loss of memory. The *Junta de Salvação Nacional*

which took power in Portugal in 1975 initially sought the path of punishment. The result was chaos. Then the climate changed; midway through 1976 a law was passed lifting the sanctions. Although it was not labelled as such, in effect it came down to an amnesty. In similar vein, when the repressive regimes in Asia and Latin America disappeared some time later, there were virtually no prosecutions.

Some time after this, Ethiopia broke with this tradition; from 1994 onwards, the country hauled the defeated Mengistu regime before the courts. However, it quickly became apparent how difficult it was for a devastated country to carry out such an operation successfully. It is this that the story of Mamo Wolde illustrates so strikingly.

Munich, 9 September 1972. Frank Shorter, an American, wins the Olympic marathon, followed in second place by the Belgian Karel Lismont. 37 seconds behind him, the Ethiopian Mamo Wolde comes in to take bronze. Honolulu, 12 December 2002, thirty years later. During the marathon in that city, Shorter and Lismont meet Aberash Semhate, Wolde's widow. Between these two dates, a drama unfolded which mirrors the tragedy of Ethiopia.

Wolde had won Olympic gold in the marathon in 1968. He had taken up the torch from Bikila Abebe, another golden legend from the empire of Haile Selassie. The victory brought rewards for Wolde in his own country, in the form of a promotion in the army. Two years after winning bronze in Munich, fate took charge. In November 1974 Mengistu Haile Mariam seized power

er in Ethiopia and installed a Marxist-Leninist republic which murdered tens of thousands of opponents between the end of 1974 and May 1991 and which was partly responsible for the deaths of around a million people from starvation. Immediately following the coup, Haile Selassie and his entire entourage were murdered. Wolde, who was a member of the imperial guard, was also in danger. In the event, he escaped with banishment to a job in a *kebele*, a sort of local council which fed the secret police with information. This position kept him alive, but would ultimately cost him his life.

In the late 1980s, resistance against the regime was growing. A coalition of rebel movements gradually began gaining ground. The end of the Cold War also robbed Mengistu of Russian support. In May 1991, with the help of the United States, he escaped to Zimbabwe, where he still lives today. A new regime took power which, as is the way of these things, promised a total break with the past. Strikingly enough, given the cruelty of Mengistu and his cohorts, there was no day of reckoning, almost no wild executions. More than 2,000 suspects were however ultimately imprisoned to await trial. One of them, in 1992, was Mamo Wolde.

The bloody high point of Mengistu's reign was the Red Terror campaign in the years 1977-1979. The victims were mainly young people, many thousands of whom were tortured and killed. As a member of a *kebele*, Wolde was probably involved in the political murder of a 15 year-old boy. The charge was that Wolde had fired the fatal shot. He himself always told a different story. Members of a murder victim's family had to pay the ex-

ecutioner for each bullet used. For this reason, victims were always shot at least twice, since this was more profitable. Wolde claimed that the boy was already dead when he fired the second bullet. Attempts were made in many quarters to get him released. The International Olympic Committee paid his lawyer. Kenny Moore, who came fourth in the Olympic marathon in Munich and later became a journalist, mobilised athletes throughout the world who wrote petitions, raised money, put pressure on their domestic politicians. Amnesty International published a dossier on the case in July 1996. All to no avail. When I talked to Girma Wakjira, the special prosecutor, about Wolde's trial, he told me that the law cannot be hurried. In this case, there was perhaps another reason as well. By birth he was from the Oromo ethnic group, which it was alleged is seeking separation from Ethiopia. It may be that no one was prepared to give the Oromo leaders the satisfaction of releasing one of their idols. This is perfectly possible, because domestic political considerations are never far away when dealing with a dark past. Whatever the truth of the matter, it was to be January 2002 before a verdict was delivered in the Wolde case. During all that time, almost ten years, he was kept in prison. The court sentenced him to six years imprisonment, two-thirds of the time that he had actually spent behind bars. In February 2002, a fatally ill Wolde was released. He died three months later, aged 71 years.

Wolde's account is the story of many hundreds of others in his country. It demonstrates how the confrontation with a difficult heritage can go wrong. In Ethiopia,

the change in power in 1991 was the result of a military victory. The old order had been defeated. Experience teaches us that in such a situation the new elites have little interest in dealing properly with the people from the vanquished regime. The leaders are generally put up against the wall and the small fry are released after a certain period has elapsed. However, the international community, headed by the United States, demanded that Ethiopia should act in accordance with the rule of law, the Western rules of the game. Ethiopia acquiesced in order to please the outside world, but insisted on carrying out the task entirely itself, with its own, existing tribunals. Doubts about the feasibility of this in what is one of the poorest countries in the world were waved away. The fact that there were far too few judges and lawyers also proved to be no objection. International help was welcomed, but only in moderation. As soon as international attention faded, the entire operation ended up in a sort of no man's land. The courts were not in any rush at all. The law, they said, must take its course. And a court case is also a little like a truth and reconciliation commission, they felt, which had the task of shedding as much light as possible on what happened under Mengistu. The truth cannot be rushed, but must come to light slowly but surely - even though the thousands of witnesses told the same gruesome stories time and time again. The result was Kafkaesque. Begun in 1994, the trials had still not been completed in 2009. Hundreds of supporters of the former regime are still in prison awaiting trial. Court rulings dribble out sporadically. Many suspects have died in prison, of old age or from diseases contracted in jail (a sort of slow motion

death sentence?). Complaints by the International Red Cross, Amnesty International and Human Rights Watch are ineffectual.

The balance is negative; anything which drags on too long loses its power. Shortly after the tribunals began the entire affair faded from public attention, including in Ethiopia itself. And it is also by no means certain whether justice will ultimately prevail because, according to many human rights organisations, 'justice delayed is justice denied'. Like Ethiopia, Rwanda also set up its own tribunals after the genocide. It very quickly became apparent that the operation would be a failure. A few dozen judges and lawyers had to deal with hundreds of thousands of suspects. Cynics calculated that the trials would not be completed until the year 2300. Do things look any more positive if other, more recent examples are brought into the picture? Yes and no. Chile appears to be achieving success in its trials of the military junta, while in the former Yugoslavia biased sentencing is a serious problem when domestic war crimes come before the courts. I will look briefly at this from a closer vantage point.

The most recent developments in Chile look hopeful. In 2003, thirty years after the coup by Pinochet, criminal trials have begun against the top people in the secret police. Initially, the amnesty laws which the junta itself had brought into being proved a major hurdle. The High Court removed that obstacle in November 2004 by declaring that amnesty played no role in the case of those who were responsible for the unsolved disappearance of opponents. Those crimes have not expired and prosecution therefore remains possible. The head of the

secret service under the General has already been convicted. Dozens of other military personnel have been tried. The forgiveness without confession that they had foreseen for themselves has been seriously undermined. Perpetrators are finally paying a price for their actions. For those who suffered, the past is taking on a different, more meaningful dimension and turning into a crucial phase in the growth towards greater democracy. This step is very evident in the life course of some Chileans. Michelle Bachelet is one of them. Her father, a general and minister in the government of Salvador Allende, died in one of the prisons of the junta. She and her mother were tortured in the notorious Villa Grimaldi. Now, since March 2006, she is president of Chile. A victim of Pinochet, a woman and a socialist: it would be impossible to think of a more powerful symbol of the break with the past. However, not everything in the garden is rosy. It has taken time to get this far, a long time. Not everything is coming out; not all torturers are losing their freedom. Incriminating documents have been destroyed. In the army there is simmering resistance to the new openness. Despite this, Chile scores very highly in comparison to what has happened in other tribunals. What Chile has done has also been used as an enlightening example in Argentina and Guatemala. The trial of Pinochet resonated throughout the world.

What is so special about the Chilean model? Chile opted for a gradual approach. Only after democracy had become solidly embedded did the prosecutions begin. This avoided the risk of a new coup; because it is known that leaders of a junta can hit back hard if they are threatened with a trip to prison. A truth and reconcilia-

tion commission was however set to work (1990-1991). Its report, numbering 1,800 pages, recorded thousands of witness statements, archived evidence and opened many eyes. This was the raw material with which, twelve years later, the tribunals would set about their work. When I complete my expedition in the final chapter, I will definitely be including Chile in the final reckoning.

Local prosecution of war crimes in the Serbian part of Bosnia only became possible in 2005. Forty cases were tried by Bosnian Serb prosecutors. This broke a taboo, but at the same time gave rise to all manner of problems. Human Rights Watch (HRW) dedicated a report to this in 2008: "Local prosecutors and judges are increasingly proactive in investigating and prosecuting war crimes, but remain hampered by weak witness protection, a lack of funding, and limited political and public support." Croatia has also made a start on prosecuting war crimes, but just as with its neighbours, the process is not always free of bias. HRW writes the following on this: "Serbs continue to make up the vast majority of defendants and convicted war criminals in Croatia, a disproportion so large it suggests bias as a factor. Many prosecutions and trials against Serbs remain of questionable standard..." Despite this, a senior Croatian politician was convicted in early May 2009 in Zagreb of war crimes committed against Serbian citizens. And things are also moving in Serbia.

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Settling scores with those guilty of great evil is full of risks. Countries such as Belgium, France and the Netherlands became very well aware of this after 1944. The prosecution of those who had collaborated with the German occupiers was extremely chaotic, especially in the first months following the liberation. It was as if the wheels of justice were square. If it was so difficult in these societies, how can it possibly succeed in countries which were impoverished even before their wars? The transfer of power often remains incomplete, revenge and retribution may be the dominant motives, trained judges and lawyers are scarce. It was precisely to resolve this situation that the UN Security Council set up special tribunals for the former Yugoslavia (1993) and Rwanda (1994).

The conclusion is that 'in-house punishment' is an exceedingly difficult task, and one which often does not make it any easier to come to terms with the past. As a result, it weighs down the future like a millstone and will consequently do little to silence calls for an international dimension.

International tribunals

Two hundred thousand dead; one million refugees. That is the result of three and a half years of conflict in Bosnia. It began in the spring of 1992. For months, the outside world simply looked on. True, there were a good deal of verbal threats, an arms embargo and high-flown words. A military intervention proved not to be possible, because it could not be sold in the United

States and the countries of the European Union. Moreover, politicians and their citizens are inclined to work with a sort of Richter scale, but one which measures degrees of cruelty. The Holocaust achieved the highest score on that scale. Then, in early July 1992, when the war in Bosnia was already raging, the first images of Serbian detention camps began to appear. Captions also immediately appeared speaking of deportation in sealed goods wagons and mass executions. Just like under the Nazis, ran the line. Samantha Power, whom I quoted earlier, described how the American government denied that similarity. The Red Cross had visited nine camps, according to a spokesperson for the Ministry of Foreign Affairs, but had found no evidence that these were death camps. Samantha Power's comment was: "What he implied was that the Holocaust standard had not been met". There was no stepping up of the awareness of what was going on - not in the United States, not on the other NATO countries, not in the Security Council. This changed somewhat when the photos metamorphosed into copies of the images from April 1945. Three British journalists, including Ed Vulliamy from *The Guardian*, managed to film starving prisoners behind the barbed wire fences at a camp in Trnopolje. Vulliamy tells the story in his *Seasons in Hell: Understanding Bosnia's war* (1994). The day that *The Guardian* published its report, he received dozens of telephone calls from radio and television channels. Time and again his interviewers talked about the 'Holocaust revisited'. The Western media thus no longer had any doubts. They placed images from the Bosnian Trnopolje and the Nazi Bergen-Belsen alongside each other. Public opinion followed

suit. Meanwhile, another link had been made with the past. International NGOs, journalists, academics and politicians recalled the Nuremberg trials, where the Nazi leaders were brought to book. Perhaps an international tribunal was needed again, they said. The UN Security Council picked up this idea and on 25 May 1993 created the UN Tribunal for the Former Yugoslavia. This tribunal, which sits in The Hague, will continue until 2010 hearing cases about war crimes, genocide and crimes against humanity committed in that part of the world since 1 January 1991. At the end of 1994, six months after the Rwandan genocide, the Security Council took a second step, creating an international tribunal which would decide on where the responsibilities lay. This tribunal was based in Arusha, Tanzania. And more recently the jewel in the crown, the International Criminal Court, has begun operating. We have thus come to believe that some crimes are of supranational significance, that dealing with the perpetrators is a matter for the world community.

The Hague and Arusha

In many respects, the two tribunals are effectively twin brothers. They have the same distant forebears. Nuremberg provided the inspiration, while the 1948 genocide convention and the Geneva Conventions (1949) provided some of the legal material. Both also had a difficult youth. The UN was far from a generous financial backer in the 1990s, and countries where suspects had sought refuge initially refused to extradite them. Above all, however, there was simply too little experience in dealing with such a complex task. In both cases, there-

fore, it was quite a long time before the operation was able to reach cruising speed. They also face the same deadline: 2008 for cases in the first instance, 2010 for the appeals.

There are also definite differences, however. The tribunal in The Hague came into being when the war was still in full swing, and therefore inevitably played a role in the ongoing peace negotiations. It was for this reason that the French president François Mitterrand repeatedly applied the brakes in the run-up to the tribunal. He was afraid that arrests would simply stoke the flames. The genocide and the war in Rwanda, by contrast, had already ended when the decision to create the Arusha tribunal was taken

The tribunals have now been going on for fifteen and sixteen years, respectively. Their tasks are not yet complete. What the long-term consequences will be is almost impossible to say at present. Despite this, they have been put on the public scale for some time now. That is useful for me, because I am looking for the route that produces the most appropriate confrontation with the past.

How do you weigh such an institution? For president Kagame of Rwanda, an evaluation of the tribunal in Arusha is quickly made. He repeated his views at the beginning of May 2006: the output is minimal, the pace extremely slow and the costs much too high. He is not alone in that opinion; anyone looking purely at the figures is guaranteed to reach a similar conclusion. At the end of 2008, the tribunal had detained a total of 74 suspects. 36 of these were convicted and five acquitted.

Two have died. All other suspects are still awaiting judgment. Meanwhile, roughly 1.3 billion US dollars has been spent. Critics also like to compare the tribunals with the post-war trials in Nuremberg, where all 22 suspects were tried within less than a year; it took a full ten years for Arusha to reach that figure. The Tribunal for the Former Yugoslavia cannot boast much better figures. The costs for the period 1993-2009 will amount to more than 1.7 billion dollars. A total of 161 people have been declared suspects. One remains at large. The trials of 36 suspects ended because they died or because the prosecution case was withdrawn. The cases against around 70 others are still ongoing. 53 verdicts have been pronounced (48 guilty, five not guilty).

These figures do not lie, but they do hide a great deal. At the start of the two tribunals, key notions such as genocide and crimes against humanity had barely been tested against reality. Rather, they had led a paper existence. They first came to life in The Hague and Arusha. The court opened the way to more progressive interpretations of what international law prescribes. We will undoubtedly reap the benefits of this in the future. Many complex questions have also been answered, such as whether ethnic cleansing constitutes a form of genocide. Rules which are designed to ensure fair international trials have been devised and applied. That was not the primary concern in Nuremberg, and it was therefore not difficult to proceed quickly on that occasion. History has literally been written in The Hague and Arusha. Tens of thousands of documents and witnesses have filled in many blank spots on the map of scandals. The suffering of and in Sarajevo, Srebrenica,

Vukovar, Kigali, Nyamagabe and Taba is no longer an abstract fact.

A tribunal that operates under the auspices of the Security Council is more dangerous for perpetrators than a national court. Fleeing is no longer possible, since all countries have in principle a duty to extradite suspects. However, this takes time. Kenya and Congo hesitated for a long time before handing over genocide suspects to the Rwanda tribunal. In mid-2009 Ratko was still in hiding. Despite this, they are all subject to what might be called interim justice. Their wings have been clipped. They are exiles in their own countries. The stigma that clings to them with every new report cannot be shaken off. The public agitation which caused their temporary impunity keeps their crimes alive, in innumerable hours of broadcasting time and in millions of words. For the others, those who have been captured, justice is a reality. These are not third-rank perpetrators; for the former Yugoslavia they include the Serbian president, the Bosnian Serb president, the president of the Bosnian Serb parliament and a number of generals; in Arusha they include a prime minister, five ministers, eight mayors and several other leading figures from the Hutu community.

All these are achievements for which it is worth investing time and money. Moreover, both tribunals are good students, which learn lessons from what has gone wrong. The Yugoslavia tribunal, in particular, innovates and experiments in order to improve its performance. There is also a realisation that a more modest interpretation of their brief is desirable. More cases are now outsourced, for example; the Arusha tribunal has handed fifteen dossiers to a Rwandan court, while the

tribunal in The Hague has also passed a number of cases – a total of eleven at the end of 2008 – to Bosnia and Croatia. What makes the biggest impression on me, however, is the metamorphosis that both tribunals have undergone. Their creation by the Security Council was a purely political decision, especially in the case of the former Yugoslavia tribunal. Military intervention was not an option, but something had to be done. The impasse was broken with a clever compromise, an international tribunal. Expectations were not high, and the tribunals were ignored for quite some time, which explains the many growing pains. The link to the major campaign against impunity came only later. It is the staff of the tribunals that have given them their ‘body and soul’.

More recently, the formula has fallen into *de facto* disuse. When a civil war lasting for years finally came to an end in Sierra Leone in 2002, calls were once again raised for an international tribunal. This time, however, the United Nations opted for a hybrid body consisting of both domestic and foreign judges. The tribunal gathered in Freetown, the capital of Sierra Leone, and thus close to the victims. An added bonus, and perhaps even the main concern, was that the operation would therefore cost much less money. (Although one of the main suspects, Charles Taylor, was ultimately handed over to the International Criminal Court in The Hague).

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Justice following genocide, civil war or a brutal regime is a step-by-step process. The Hague, Arusha and their

half-brother in Sierra Leone are links in that process. Nothing less, but also nothing more. The technique has its limitations. Time and place throw up major obstacles. The tribunal in Arusha is trying crimes that were committed in the region between 1 January and 31 December 1994. However, the murders committed in retribution by the Tutsi army largely fall outside its jurisdiction and remain *de facto* unpunished. This leads to accusations of selective indignation. And why Rwanda, but not the camps of the Soviet Union? The development of an ad hoc tribunal is moreover a complex affair. A great deal of time has to be invested in the geopolitical manoeuvring that goes before a decision. Every time, energy is lost in looking for staff, money and logistical aids. Could the permanent International Criminal Court, the most recent initiative of the United Nations, be the missing link?

The International Criminal Court

He was 32 years old when he faced a number of generals from the former junta in Argentina as public prosecutor. Later he became a lawyer, with the football star Diego Maradona as one of his clients. With Transparency International, an NGO, he opened the season on corrupt politicians in Latin America. Today, Luis Moreno-Ocampo is 53 years old and chief prosecutor at the International Criminal Court in The Hague. It was he who issued the Court’s first ever arrest warrant, in October 2005. The document listed five leaders of the Lord’s Resistance Army, a Ugandan rebel movement. The charge: War crimes and crimes against humanity in the north of Uganda.

The International Criminal Court in The Hague is still young. Its birth certificate, the Rome Statute, dates from 17 July 1998, the day when a special UN conference drafted a convention opening the way for the founding of the Court. After ratification by at least sixty countries, paper became reality on 1 July 2002. There are now three bastions of the international rule of law in The Hague. The city has been home to the International Court of Justice since 1946, which rules purely on disputes between states; private individuals have no access to this Court. Its younger brother, the International Criminal Court, was founded in 2002 and decides only on cases involving individuals. The Hague is also home to the Yugoslavia Tribunal, the third bastion. This is an enterprise which focuses on one single conflict and which will disappear in around 2010. By contrast, the International Criminal Court is permanent and has a global reach. It can also try heads of state, who enjoy no immunity. Its legal competence is however not without limits. It dispenses justice only in cases that are classed as war crimes, genocide or crimes against humanity. The Court also does not step in if a national court is dealing with such a dossier. It can however intervene if the country fails to prosecute a case or does not possess the means of doing so. And it should not be forgotten that the Court cannot rule on crimes committed prior to 1 July 2002.

There are three routes to the International Criminal Court. Uganda and the Democratic Republic of Congo have taken the first route; their governments have asked the Court to investigate and prosecute atrocities in their countries. The arrest warrant against the people from

the Lord's Resistance Army was the direct result of this. In March 2006 a first suspect of crimes in Eastern Congo was arrested and flown to The Hague. The second route goes through the UN Security Council. It is via this road that the crisis in Darfur reached the Court. In April 2005, Moreno-Ocampo was given a list of fifty names. Since then, arrest warrants have been issued against two Sudanese citizens. In mid-July 2008 the public prosecutor asked the Pre-trial Chamber I to investigate whether president Omar al-Bashir could also be charged. Less than a year later, in March 2009, an arrest warrant was issued. The public prosecutor can also instigate an investigation on his own initiative. That is the third route. At the end of 2008, something of the sort was under way in five countries (Columbia, Georgia, Afghanistan, Ivory Coast and Kenya). The prosecutor cannot however start a prosecution himself; this requires the permission of a panel of three judges.

Great words were spoken on the founding of the Court. This was the beginning of the end of impunity. Ravaged countries would no longer have to carry their pasts with them for so long. The early *démarche* by Uganda and Congo seemed to show that the optimists were right. However, it was not long before the reality check came. The civil wars in both countries are still raging. Gathering evidence in areas where fighting is going on is a delicate task. Furthermore, the word of governments in that region proved to be worth less than initially thought. Uganda still hovers between a reconciliation agreed earlier with the rebels and complete cooperation with the International Criminal Court. The Kabila gov-

ernment has consistently put difficulties in the way of extraditing suspects. Sudan, for its part, is unwilling to cooperate at all.

The most troubling aspect, however, is the open opposition of the United States. In 1998, the Clinton government was unwilling to sign the founding treaty, placing the US in the unappealing company of six other countries which also refused to sign, including China, Iraq, Libya and Yemen. The president then changed his mind at the last minute, on 31 December 2000. George W. Bush revoked the treaty again in 2002. Since then, the US has conducted a nasty campaign against the Court. The arguments? According to their own statements, the Americans do not wish to be the victims of frivolous or politically inspired charges, for example by a country from the 'axis of evil'. The second argument is that the Criminal Court limits the divine right to self-government. Just imagine if an American soldier was called before a foreign court for something he or she had done wrong in Guantánamo! A third justification is that the American armed forces would hesitate to collaborate in humanitarian actions in the future. The army does not wish to run the risk of being too readily accused of war crimes by the Court. In other words, the Criminal Court would jeopardise further progress on human rights.

There is a something in these arguments which points to a deeper motive. The emphasis on the consequences for the American armed forces is not coincidental. It is a geopolitical strategy, the one-sided imposition of the will of the United States through force of arms, which has placed the future of the Criminal Court in doubt.

That is also the reason that the American government was prepared to see the Security Council, and only the Security Council, as the submitter of charges in the Criminal Court: the United States has a right of veto on the Security Council. It remains to be seen whether the arrival of president Barack Obama heralds a change in this situation.

The opposition of the United States to the International Criminal Court is anything but passive. Political and economic weapons have been deployed to curb the power of the Court. One of these is the bilateral treaty in which a third country promises never to extradite American citizens to the Court. States which are reluctant to sign such an agreement face threats and sanctions. For example, military aid to 35 countries was suspended in July 2003. At the end of 2004 the US went a step further, withdrawing economic aid as well to Cyprus, Ecuador, Jordan, Peru, Venezuela, South Africa and a number of other countries. But the instrument which goes furthest is the American Servicemember's Protection Act (known colloquially as the 'Hague Invasion Act'), which allows the president to release American citizens, by armed force if necessary, from the prison of the Criminal Court.

The US opposition to the Criminal Court is in fact only one element in a broader attack on treaties which threaten the exclusive right of the Americans. Think of the opposition to the Kyoto Protocol, to the antipersonnel mines treaty or to the treaty on the storage of biological weapons.

There are no longer any safe havens. Or are there?

The future of the Court is uncertain. The US opposition plays a major role in this. Even before this became clear, however, countries such as Belgium, Spain and Germany had opened up a side route, in the form of universal jurisdiction. What cannot (yet) be achieved internationally must be achieved through tribunals held in willing countries, is the reasoning behind this.

In the summer of 2001, four Rwandans were convicted in Brussels of collaboration in the genocide in their country. It was a very unusual case, because this was the first time that foreigners had been tried in Belgium for crimes they had committed in their own country against their own compatriots. It was not a European first, however. In 1997 the High Court in Bavaria sentenced a Serb to five years imprisonment for the murder of Muslims in Bosnia. A Swiss tribunal convicted a Rwandan citizen on a similar count in April 1999. A leader of a Serbian paramilitary group received a life sentence in December 1999 from the High Court in Düsseldorf, and at the end of 2005 a Dutch court decided to try two Afghan secret service officers on charges that they had years before tortured opponents of the communist regime in their country. In December 2008, Norway sentenced a Bosnian Muslim to five years' imprisonment for war crimes. And in early June 2009, Finland announced that it was to try a Hutu and former church minister for his part in the Rwandan genocide. All of these are examples of what is already being called criminal justice without boundaries. Far and away the best-

known case, however, is tied to the fate of Augusto Pinochet, the former leader of the Chilean junta. In October 1998 a Spanish public prosecutor, Baltasar Garzón, requested and secured his detention, with a view to his extradition to Spain.

Baltasar Garzón is a fascinating character in the story of the quest for justice. He is constantly in the spotlight, but rarely shows himself in person. From the few interviews he has given we know that he initially wanted to become a missionary, attended a seminary for a while, was uncomfortable with the vows of celibacy and went to study law. At the age of 24 he became a public prosecutor and began a professional marathon that would bring him into conflict with the Basque separatist movement ETA, the Spanish Ministry of the Interior, the Mafia, supporters of Al Qaeda, a money-laundering bank and occasionally also with run-of-the-mill criminals. (It helps that he only needs a few hours of sleep per day). Meanwhile, he learned from the report of the Chilean truth and reconciliation commission that around fifty Spaniards did not survive the cruelty of the junta. On 16 October 1998 he went into action. He heard that Pinochet was in London for a surgical operation. There was no time to write a formal extradition warrant. He also did not want to go through the Spanish government, which was in the hands of the conservative party and was not ill-disposed towards Pinochet. So he sent the British a request to detain the general temporarily, in anticipation of a document that would contain all the legal finesses. It worked. Pinochet was placed under house arrest, where he remained for 16 months in anticipation of the next episode of what was growing into a

world spectacle. The British courts at first refused his extradition, then changed their minds and ultimately Pinochet was delivered to Chile. Here a new zigzag process began. First he was too ill to appear before the court; then he was well enough; a little later he was unable to appear again, because as a senator he was immunised for life against prosecution. In the autumn of 2005 the Chilean High Court brought an end to the matter. The general lost his inviolability. The old fox had this time not been too clever for his pursuers. But his death meant he ultimately still escaped justice.

Garzón is portrayed in *Speak truth to power. Human rights defenders who are changing our world* (2000), a photo book by Kerry Kennedy and Eddie Adams (www.speak-truth.org). In the accompanying interview he recounts that Giovanni Falcone, the murdered Sicilian prosecutor, was his role model. Politicians, according to Garzón, talk about justice but so often fail to deliver because of economic and diplomatic considerations. Judges such as Falcone do not. The fact that Spain under the conservative prime minister José Maria Aznar wished to spare both Chile and Pinochet was not an issue for Garzón. From 2003 onwards he also set his sights on the Argentina of the generals. He first targeted Ricardo Cavallo, a key figure during the Dirty War. Cavallo was living in Mexico, but was extradited to Spain. Adolfo Scilingo, a fellow torturer of Cavallo, was already in Spain. His trial earned him a prison sentence of 640 years in April 2005.

Did the Spanish prosecutor change the world, as the photo book suggests? In Chile, at any rate, his pursuit of Pinochet broke the spell. It proved to be a tonic which gave new life and new strength to human rights

organisations there. The effect could also be felt elsewhere. European NGOs enthusiastically embraced the principle of universal jurisdiction. Governments were put under pressure. Belgium had already passed a law making it possible to prosecute foreign suspects of crimes against humanity, and in 1999 that possibility was expanded further. A crucial part of the law was that neither perpetrator nor victim needed to have any ties with Belgium. That was unusual. Garzón pursued Pinochet because there were Spanish victims. The Serbian men who were prosecuted in Germany lived in that country. Such a link was unnecessary in Belgium, and this threw the door open wide. The charges poured in, the one more serious than the other. According to critics, this was a clear case of 'trial tourism'. The world looked on with interest. But the United States was not amused, and especially when several leading American figures faced charges themselves. Such a small country with such a lot to say, the Americans must have thought. With barely disguised frankness, the Belgian government was told that this could not go on. Defence Minister Donald Rumsfeld let it be known that the headquarters of NATO did not necessarily have to remain in Brussels. American warplanes on their way to Iraq also suddenly no longer made a stop in Belgium. That is how to keep other countries on a leash. In July 2003 the text of the Belgian genocide law was erased and replaced by provisions with a much more limited scope. In barely fourteen days the bill was forced through the Belgian parliament, driven by the American wind. Base politics rather than exalted ideals? Perhaps, but politicians and NGOs had also been somewhat blinded by

the bright light that emanated from the Pinochet case. They were both too overconfident and too hasty. Universal jurisdiction can be a powerful weapon, but one that needs to be wielded with some caution. Otherwise there is a danger that its power will be trivialised and undermined. The trial ground that was Belgium demonstrated this convincingly. Yet the élan has not disappeared; on the contrary. Since October 2005 it is no longer necessary in Spain for there to be a link with the suspect or the victim, and the German courts have been cautiously moving in the same direction in recent judgments. The Belgian formula has come back in from the cold, albeit tinted with a little more realism.

Baltasar Garzón has accelerated the onward march of universal jurisdiction. There is a growing realisation that some crimes affect everyone. Human rights are a global birthright and those who violate them must face global justice. Yet questions remain. The end of an ethnic conflict or the fall of a brutal regime is usually followed by a period of turbulence. It does not take much to push things off the rails. A trial conducted in the name of universal jurisdiction is by definition an intervention in a distant country which faces severe challenges. Making every allowance for this is therefore no superfluous luxury. The former relations with the country in question are also not without importance. It sat ill with me that the first case in Belgium, the one against the four Rwandans, was a trial involving a former colonial power and people from what had once been a mandated territory of Belgium. That gives rise to an uneasy juxtaposition, especially when the public prosecutor

considers it necessary to wave a machete around in the Brussels courtroom. The Belgians have not yet even come to terms their own colonial history. That again is an example of selective indignation. Even Garzón faced this kind of criticism: Spain, which was playing the role of judge elsewhere in the world, resonates with deafening silence in the way it has dealt with its own civil war. But midway through 2005 the judge called for a truth and reconciliation commission to investigate the atrocities perpetrated under the Franco regime. The request went unheeded. In October 2008 he went a step further, declaring that the executions performed under the General's authority qualified as crimes against humanity, which means they would no longer expire, and that he was therefore entitled to investigate them. It remains to be seen whether or not he succeeds.

In reality, however, the problem goes much further. There is a chance that courts from the wealthy North will continually be trying perpetrators from the poor South. Is it a coincidence that the first cases taken up by the International Criminal Court all concern African countries? Is this the judicial version of what is being called neo-colonialism? At a conference on impunity a colleague from Iran took us Westerners to task. You have everything very nicely organised with your genocide laws, he said sarcastically, you are doing what we cannot do. And yet again, you are walking away with the highest prize in the forum of justice.

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The fact that the scope of the criminal law is spreading and going beyond national borders is an unstoppable trend. Never before has the old saying ‘the long arm of the law’ been so apt. Yet it is still not entirely certain that the choice of this strategy is always the best one. The trials in Ethiopia went awry. The tribunals in The Hague and Arusha attract almost more criticism than praise. Elsewhere, appealing to the criminal courts appears not to be an option at all. Take a country like Mozambique. Seventeen years of civil war have produced many thousands of perpetrators. In such a case, a large-scale criminal justice operation is not a logical step; there are simply too many guilty parties. And there is too little ‘state’ to organise such an undertaking. There are too few judges, too few lawyers, too little of everything. People also often do not want to look back. The past is a dangerous place in which to go digging. The thing then is to venture onto other, less risky paths.

DIFFERENT ROUTES TO JUSTICE

For a while, relations were strained between Yoweri Museveni, the president of Uganda, and the International Criminal Court. The reason for the disharmony was the fate of Joseph Kony, leader of the Northern Ugandan rebel movement. Museveni initially wanted to grant him amnesty in return for peace. He said this repeatedly, including in mid-2006. Just one day later there was a forceful reaction from the public prosecutor at the Court. The Court made it known that amnesty was not an option. The dispute also ran deeper than this. A year earlier, in March 2005, the public prosecutor in The Hague had received an unusual visit. Religious leaders from the region where Kony operated had come to ask the prosecutor to remain in the background. They felt that intervention by the Court would merely prolong the war. For them, peace was only possible if all rebels could count on leniency, even if temporarily.

Since then, the different standpoints have converged slightly. The Ugandan government made it known in October 2007 that there could be no question of a blanket amnesty. More important, however, is that the government actively looked for alternatives to trial by the International Criminal Court. In the summer of 2006 the government opened the door to the use of traditional punishment and reconciliation rituals – about which more later. Two years later, in May 2008, a special war crimes tribunal was set up in Uganda. This step had

been agreed with the rebels in the hope that it would render prosecution by the International Criminal Court in The Hague unnecessary. In response to this, it was reported at the end of 2008 that judges at the Court were examining the possibility of rescinding the international arrest warrants.

The question of whether prosecution of war crimes, genocide and crimes against humanity is unavoidable by dint of being imposed by international law has been the subject of heated debate for some time. A first high point in that debate occurred in the early 1990s, when the end of apartheid in South Africa forced whites, blacks and coloureds to confront the problem. It quickly became apparent that the use of tribunals was not feasible, a development that I shall discuss in more detail in a later chapter. A majority in the ANC freedom movement were in favour of a lenient form of amnesty, albeit in combination with a truth and reconciliation commission. The reaction in human rights organisations throughout the country and around the world was extremely fierce. The United Nations had declared apartheid a crime against humanity; how could any form of legal redress be pushed to one side? But opponents to systematic prosecutions went on a counter-offensive, developing a battery of arguments to defend the strategy of the ANC. One of them, Alex Boraine, took the lead. Initially he played a crucial role in the debate in South Africa. However, it was not long before his arguments against mandatory prosecution were taken up internationally.

Boraine was in his early sixties when apartheid began to falter. He already had a remarkable career behind him. A white vicar, youngest ever president of the Methodist Church of South Africa, Member of Parliament for the anti-government Progressive Party from 1974 to 1986. From my first meeting with him, in 1994, I was struck by the remarkable combination of the man of the Church and the manager. That gentle, soothing quality in his voice, that listening ear, the religiously tinted vocabulary. But also the talent to mobilise people and bend them to his will. It was a mix which was to stand him in good stead when he later became the number two in the Truth and Reconciliation Commission. Boraine was not exactly treated kindly by the apartheid regime in the 1970s and 80s. He repeatedly received visits from the security police at his home, unasked and unwanted; his office came under fire; he received regular death threats; one of his children was twice locked up for months without any form of trial. In an interview, Boraine not entirely unexpectedly said that Mahatma Gandhi had never been his role model; he felt more at home with the fighting spirit of a Martin Luther King. Yet despite this he was one of the men who led and won the ANC's argument in favour of a lenient approach to dealing with the past. Not that every argument in that debate was new: a good deal of experience had already been gained in Latin America with truth and reconciliation commissions. Boraine brought key figures from those countries to South Africa and had them talk above all about what can go wrong in the quest for justice. A second example lay in the post-communist countries of Central and Eastern Europe. South Africa listened to the former dis-

sident leader Adam Michnik in Warsaw, Czech president Vaclav Havel in Prague and Joachim Gauck, then archivist of the documentary evidence left behind by the Stasi secret police in the former East Germany. These figures also came to Cape Town to talk with people from NGOs, the media, universities, political parties, the freedom movements. At the same time a treasure trove of information was collected which was later used by countries such as Bosnia-Herzegovina, Cambodia, Guatemala, Peru, Sierra Leone and East Timor – all countries which were also looking for a constructive way of dealing with a tormented past. Boraine quickly became a valued ‘travelling salesman’, dealing in alternatives to the politics of harsh retribution. In a sense he was the counterpart of Baltazar Garzón, but was just as important in the desire to find ways of reconciling the irreconcilable.

1 WHERE TRIBUNALS FAIL

In principle, it is from the prosecution of horrific crimes that an international legal order derives most of its power. However, in the view of Boraine and many others, it is easy for experts from international organisations and human rights activists to talk and preach about these matters. On the ground, practical hurdles regularly arise between dream and reality: material obstacles, political risks and sometimes the very question of whether tribunals do actually deliver justice.

Material obstacles

Following a civil war or genocide, a country lies in ruins. Judges were assassinated or are themselves suspected of complicity. There is a virtual absence of lawyers. Buildings are unusable. The wheels of the judicial machine are unable to turn or grind to a halt after a short time. The story of Mamo Wolde that I recounted earlier shows what the consequences of this can be. Moreover, the judicial system is dependent for evidence on the cooperation of the army and police; however, the composition and culture of the security forces often continue to embody the spirit of the old regime. They may destroy or withhold documents, so that the possibility of some perpetrators being acquitted cannot be ruled out. That is shocking for the victims; it is better to have no prosecutions at all than an operation which merely inflicts new pain.

Apartheid in South Africa was not the responsibility of a specific number of individuals; an entire generation of men and women helped sustain the system. In the former Yugoslavia, a Bosnian Serb investigation commission identified thousands of people who had collaborated directly or indirectly in the slaughter that took place in Srebrenica. In cases such as this it is physically impossible to bring all those who bear some guilt before the courts. That was also the problem in Central and Eastern Europe following the collapse of communism. A few cases were brought in the former German Democratic Republic, but elsewhere the use of tribunals proved to be an unappealing option. The political culture of communism had had the time – forty years – to penetrate into the smallest capillaries of those societies.

Only a few members of the population had managed to maintain a distance. In any event, people were often simultaneously perpetrators and victims. It was generally hard to draw a sharp line between black and white, good and bad. How to determine who should be sentenced and who should not, where black and white lie, when grey is the dominant colour? Because of this, a different route was sometimes chosen. Poland, the Czech Republic and Hungary sought a solution through a screening process, which involved vetting the communist past of anyone seeking high state office. In serious cases this can cut off access to a job with the government service, though this does not happen often. Elsewhere, the army, security services, police and civil service were partially decontaminated. This cleanup operation sometimes involved dismissal, early retirement or temporary non-activity. But even this policies raised problems. Vaclav Havel, as president of the Czech Republic, was quick to issue a warning about the consequences of this: "It is a time bomb that could go off at any moment and ruin the social climate.", he wrote. In 1993 Lech Walesa, at that time president of Poland, sounded the alarm for a different reason: the country, he claimed, was in danger of losing many highly skilled people during a period of reconstruction. The reintegration followed rapidly. The same problem also arose in Iraq. Tens of thousands of members of Saddam's Ba'ath party were banished from the civil service, the education system, the army and the police. As a result, many of those institutions found it difficult to function properly. Voices have been raised for some time calling for the exiles to be allowed back in. In January 2008 the Iraqi

parliament duly passed a law giving tens of thousands of members of the party the opportunity to go back to their jobs.

Political risks

In Ethiopia and Rwanda, a military victory brought an end to a deadly conflict. Much more often, however, the transition from war and repression to peace is the result of negotiations between old and new. That was the case in Latin America in the 1980s. South Africa followed the same avenue. And negotiation between the communist governments and the opposition was also the decisive factor in the majority of countries in Central and Eastern Europe. This approach calls for great circumspection in dealing with the past. The powers of yesterday have not disappeared; their soldiers and policemen have not been disarmed. Threats of prosecution can lead to bloody confrontations. There is a saying in Chile that it is dangerous to tickle the tail of a dragon. In fact it is often the case that even during the negotiation phase undertakings on clemency have to be placed on the table, otherwise there is no transfer of power.

When a civil war comes to an end or a repressive regime disappears, prosecution of those who have committed murder and torture is only one of the concerns. It can be perfectly justified for politicians and populace to consider other matters more important and more pressing: securing food supplies and physical safety, rebuilding the health care and education systems. Persistent pressure from the international community to begin tribunals is thus not without its dangers.

Do tribunals always deliver justice?

The problems lie not only in the physical and political domain; tribunals also display characteristics that can make the delivery of justice extremely difficult. I shall look at six of them here:

1. Where the courts take many years to deliver verdicts, justice is one of the victims. On the other hand, embarking on trials and convictions when a brutal conflict has only just ended can cause permanent damage. The climate at that moment is totally unsuited to the scrupulous weighing of guilt and punishment. Hate and anger demand blood. The gods are thirsty and slaking their thirst can take months. Fatal mistakes can be made at such times. The problem is that punishment as pure revenge does not lead to a peaceful coming to terms with the past. In one way or another, it weighs as a millstone on the future.

2. Those wishing to prosecute the old regime must decide who will be the judges. Political influence is often difficult to avoid: the trial of Saddam Hussein provided visible evidence of that every day. Cambodia has wrestled since the fall of Pol Pot with the question of whether it should prosecute members of the Khmer Rouge. Under pressure from the United Nations it was decided in early 2006, nearly thirty years after the event, that this was the right thing to do, albeit via a tribunal consisting of Cambodian and international judges. The first domestic judges were appointed in May 2006. This drew immediate criticism from the UN and from international NGOs

because of doubts that had arisen about the impartiality of these individuals.

3. Justice is crucial for victims of crimes against humanity. Trials arouse great expectations on their part. However, in a criminal trial, most of the attention is focused on the suspects. In the best case, those who have suffered are given an opportunity to tell their story, but this is mostly a frustrating experience: there is so much to say and so much that cannot or may not be said. Cross-examination makes it even worse, forcing witnesses to relive their pain and distress.

4. The threat of prosecution is like a sword of Damocles that cuts two ways. It can cause suspects to hesitate, but perverse consequences for the victims can also not be ruled out: perpetrators may be tempted to eliminate as many witnesses as possible as a preventive measure.

5. Criminal courts determine individual guilt. This in essence is their job. In doing so, however, they bring out only one aspect of the past. What is lacking is the broad perspective: what caused things to go so badly and cruelly wrong in a society, and could cause them to do so again in the future, is left out of the picture. The cause may be political or economic discrimination. Entire occupational groups may have helped spark off genocide. The court is not the best instrument to discover this. Moreover, courts make judgments only on judicial guilt; they say nothing about political or moral responsibility, whereas this forms an integral part of what has to be understood and laid bare.

6. The fact that the Cambodian people hesitated for so long before proceeding down the path of prosecutions is no coincidence. In large parts of Asia, turning to the courts is a last resort in settling a conflict. Priority is given to other methods, because of worries about the harm that a trial can do within the community. This is reflected in the saying 'an eye for an eye leaves the world blind'. When the first trial began in February 2009 of a leader of the Khmer Rouge, the doubts rose once again. The Cambodian prosecutors opposed the arrest of more suspects, fearing that this would cause great damage to Cambodian society.

It is said of Africans that they have a great willingness to forgive and forget, that they have a 'a short memory of hate'. Nelson Mandela is a striking example of this: 27 years in prison and apparently no trace of bitterness or hatred. Jomo Kenyatta languished in prison for years during the British presence in Kenya, but subsequently developed into an ardent Anglophile. Léopold Senghor in Senegal, Julius Nyerere in Tanzania and Kenneth Kaunda in Zambia all opted for reconciliation once the white domination came to an end. Street names in these countries still often refer to notorious colonial predecessors; monuments commemorate the (genocidal) heroic acts of white armies in the nineteenth century. I saw this for myself in Zimbabwe; the grave of the conqueror Cecil Rhodes, who gave his name to the land around the Zambezi, lies undisturbed in the most beautiful place in Zimbabwe, at what is known as Rhodes' View. A few hundred metres away is a massive memorial to the thirty or so British soldiers who were killed there by

indigenous people in 1904. There is not a trace of graffiti to be seen. And Namibia still exudes the presence of the German coloniser in so many places, despite the mass murders which were perpetrated here at the start of the twentieth century.

Criminal proceedings can conflict with this culture of reconciliation. Desmond Tutu, president of the South African Truth and Reconciliation Commission, wrote in his *No Future without Forgiveness* (1999) that the formal legal process is a Western invention, which differs markedly from the traditional African administration of justice. It is too impersonal and pays too little attention to the victims. The African vision of justice is aimed at healing broken relationships. Moreover, for Africans guilt is not an individual but a collective burden. It is Western arrogance, I read, to think that stern men in togas can take away that collective guilt by handing down individual punishments. As a reaction to this, experiments are going on here and there with rituals which belong to the cultural legacy of the societies concerned. That route too, however, is not without its difficulties.

2 OLD RITUALS, NEW APPLICATIONS

At least twenty thousand kidnapped children, a hundred thousand dead, one and a half million refugees – that is the price of twenty years of rebellion in the north of Uganda. As I write this, in June 2009, the figures are still rising. The Lord's Resistance Army shows no sign of abandoning its struggle (with the caveat that

the victims lie today mainly in the border region with Congo, Sudan and the Central African Republic into which the LRA has withdrawn). Now and again the Ugandan army gains some ground and refugees and former rebels come back to what was once their home. Meanwhile the LRA, the government of Uganda and the International Criminal Court are unable to agree on what will bring peace and justice: amnesty or trials. But in the villages to which perpetrators and victims return there is no time to wait. Old established rituals offer a way forward. Some find peace by stepping one by one on an egg and over a bamboo twig. A local chief looks on to ensure that they do so with their right foot. Mothers help babies. The egg is the symbol of innocence: already life but not yet contaminated. The twig stands for the division between past and future. For the former rebels, usually kidnapped children, there is an additional ritual. It is called *mato oput*. They drink in company with their victims the bitter sap from the leaves of the oput tree, in order to leave behind the bitterness of the past. A goat or a cow is the price paid. Reconciliation should follow. (Useful information can be found at www.ugandafund.org/empowering_gulu_ngo.)

Mozambique exchanged civil war for peace in 1992. There was no special tribunal, no formal investigation into what had been done to the people. Both parties involved in the conflict opted for silence. But victims and perpetrators developed rituals using 'ingredients' found in existing, local practices of punishment and reconciliation. In this country, as so often in Africa, terrible acts are not ascribed to individuals, but to evil spirits which

have possessed the perpetrators of these acts, and which are driven out by local healers. It seems to work; Mozambique has been spared serious violence for seventeen years.

There are still other ways. In Sierra Leone, rituals form part of a broader approach. There is a tribunal; a truth and reconciliation commission. In addition, there are ceremonies in which consecrated oil is applied to the head to 'cool the heart' of those who have suffered and those who have caused suffering. But the best-known example of such a mixed strategy is to be found in Rwanda. The genocide there left behind an impossible legacy, one with which the international tribunal in Arusha is still wrestling. The local courts were also unable to take on the task. But Rwanda had an alternative in reserve. There had traditionally been *gacaca* at work in the country, institutions in which wise men pronounced the law - on the village green, as it were. They judged like Solomon, listening to the people, issuing verdicts on a theft or argument between neighbours. This method, under the auspices of the government, was now mobilised to adjudge guilt in a time of genocide. The hope was that this would reduce the pressure put on the country by overfull prisons. In October 2001 the population appointed 255,000 wise men as judges. The intention was that they should pronounce verdicts on guilt and punishment in just over 12,000 small-scale 'tribunals'. This approach was initially seen worldwide as a promising breakthrough. The disillusion was not long in coming, however; the operation simply failed to get off the ground properly. It was the end of 2005 before it approached anything like cruising speed. Human

rights activists complained about abuses. The political influence of the government was much too extensive, and partly because of this the formula generated little or no trust in the Hutu population. And the actual and potential prison population did not fall. On the contrary: in June 2008 the number of old and new suspects was estimated at more than 1 million.

Do these rituals deliver added value in the confrontation with a violent past? The answer, I wrote in a handbook I co-edited (*Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, 2008), is a very cautious 'yes'. On the debit side is the observation that they lack real striking power. These practices are generally not suited to dealing with serious crimes. They also become seriously undermined during the course of a lengthy conflict. Civil war and genocide destroy social capital. Solidarity and mutual trust are gravely damaged. Taboos have been disregarded and sacred places defiled. The legitimacy of traditional leaders has been greatly harmed. They suffer from the general fallout of civil war and oppression. Their position has also been endangered by migration to the cities, and manoeuvring by the national political establishment. How can healers and elders successfully perform justice and reconciliation rituals if their authority is disputed? This situation is exacerbated by a lack of trust and credibility both locally and internationally. The general perception is that the rules associated with these local practices are often imprecise and unwritten and that the procedural safeguards are insufficient. Rwanda provides proof that insurmountable difficulties can arise. On the other hand,

there are also positive signs. Some of the rituals, such as the cleansing ceremonies in Sierra Leone and northern Uganda, seem to be successful in reintegrating and reconciling surviving victims and ex-combatants, particularly former child soldiers. Victims and offenders in Mozambique ritually re-enact the violence they experienced and, in doing so, succeed in coming to terms with it. It is therefore too soon to discount this route to coming to terms with the past. The same idea is also gaining currency in the international community. In his August 2004 report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* Kofi Annan, the then UN SG writes: 'due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition'.

3 TAKING STOCK

Terrible injustice calls for an appropriate response. The problem is that, following a civil war or other major tragedy, it is not very clear what will impose the smallest burden on a tormented country in the future. What is certain is that some form of justice is essential. That is the case always and everywhere, from Argentina to South Africa.

In the foregoing pages we have explored pathways, identified obstacles, highlighted successes. The most striking thing is the parallel rise of two divergent views

on how justice can be achieved. On the one hand there is the almost absolute preference for prosecution. In this approach, the tribunal is the gold standard. Where local courts default or fail, the International Criminal Court must in principle intervene. Universal jurisdiction, the other guise in which 'law without limits' appears, is also a possibility. In all these cases, professional judges play the central role, with an important subsidiary role for international experts. The suspect receives more attention than the victim in this approach. The obligation to mete out punishment weighs more heavily than the obstacles thrown up by the local context. The growth of this model is driven mainly by UN organisations and large human rights NGOs. On the other hand, there is the choice of a strategy that seeks to avoid the use of tribunals as far as possible. This shifts the centre of gravity from the courtroom to the public hearing, from the professional judge to the layman, from individual guilt to an attempt to discover what caused a society to go off the rails, from the perpetrator to the victim, from revenge to reconciliation, from international pressure to prosecute to what can be achieved in the local situation. Truth and reconciliation commissions, the theme of the next chapter, and the rituals just discussed, are built on these characteristics.

Both models are built on plausible arguments. It is good to listen to both Baltasar Garzón and Alex Boraine, the two characters who have been my guides in this matter. I will not choose one of them now, because there are still other routes to be explored. One of them is amnesty.

It is a well-known fact that politicians often – and especially after a painful episode in the life of their country – prefer oblivion to memory. This choice is based on a wide array of motives. Some of those motives shy away from the daylight, while others are intended for public consumption. One unspoken motive is the desire for that which is the most comfortable outcome for the perpetrators of great injustice: a wall of silence, a deafening stillness. The offenders then go unpunished. More open is the argument that memory can be a time bomb, because it frequently sustains the desire for vengeance. The politics of silence is often supplemented and broadened by some form of amnesty, placing an official seal on impunity. In the 1980s, however, this path came in for increasing criticism. It was replaced by the conviction, substantiated by international law, that prosecution of war crimes, genocide and crimes against humanity is a duty that cannot be circumvented.

The calls for justice are becoming ever louder, and yet amnesty is still a prominent presence – as a factor, as a plan or as a promise. Kenya became one of the latest in a long series when its parliament passed a law at the end of 2008 providing for the founding of a truth and reconciliation commission, but at the same time not ruling out amnesty. In early May 2009 the Congolese parliament passed a law granting amnesty for acts of war and

rebellion in eastern Congo. More or less similar decisions have been taken in the last six or seven years in Afghanistan (2007), Algeria (2005), Angola (2002), Colombia (2003), the Democratic Republic of Congo (2005), Iraq (2006), Cote d'Ivoire (2003), Liberia (2003), Mexico (2007), Nepal (2007), Northern Ireland (2006), Uganda (2000) and East Timor (2007). This persistence demands some explanation.

1 AMNESTY IS A CONTAMINATED WORD

Amnesty is a term that covers too many shades of meaning to be usable everywhere and on all occasions. Chile under Pinochet and South Africa under Mandela both opted not to prosecute grave violations of human rights; yet there are considerable differences between the two countries. Chile was then an example of a 'blanket amnesty', in which all violators of human rights were given freedom without condition or restriction. South Africa falls into a very different category. Here, strict conditions applied: only those who were completely open in the Truth and Reconciliation Commission could count on clemency. This was not without its consequences, for example for the murderers of Ntombi Khubeka, the ANC activist who disappeared without trace in 1987. Nothing more was ever heard of her, until members of the security services came to the Truth and Reconciliation Commission, requesting amnesty in exchange for the account of their involvement in the case. They confessed that they had kidnapped her and repeatedly beaten her with a whip. She then sud-

denly fell into a coma and died, they presumed from a heart attack. Some time later, Khubeka's grave was found. It was discovered that she had been shot in the head. The perpetrators had lied to the Commission and amnesty was therefore ruled out. Such decisions were taken many times. Even where the crime was not political, amnesty was refused. Of the 7,116 applications, fewer than 1,200 were ultimately granted. Anyone who forgets the difference between unconditional and conditional amnesty risks creating a fog of confusion.

There are other important differences. Take Rhodesia in the 1970s. First there was the bitter war between the white masters and the black freedom fighters. Then, in 1979, came a peace negotiated in Great Britain. Power was transferred in April 1980. Zimbabwe was now the name of the newest former colony in Africa. In his first speech Robert Mugabe, the new president, declared that hate must give way to friendship between black and white. And it went beyond words alone. No one was prosecuted, including the white generals who had terrorised the black population. This leniency was however not the result of interracial love, but had been imposed upon Mugabe in the peace agreement. As it happened, this also worked out well for the black elite, enabling a veil to be drawn over the violations of human rights in the camps of the freedom movements. Somewhat later, in 1982, unrest broke out among the black population of Matabeleland, a region far removed from Mugabe both ethnically and politically. The President dispatched the Fifth Brigade, which had trained in North Korea, and allowed his soldiers to murder and plunder with im-

punity for twenty months. Once again the government opted for amnesty, this time after negotiations with leading figures from Matabeleland. A government of national unity, formed in 1987, sealed the agreements with a Clemency Order. It was not until the second half of the 1990s that a corner of the veil was lifted on the events in Matabeleland. Zimbabwean bishops commissioned a report from two NGOs which had gathered evidence at the time of the outrages. What emerged was so troubling that the church hierarchy was afraid to publish it. *Breaking the Silence* (1997), as the report is called, is an account of innumerable deaths, mutilations, rapes and famine used as weapons of war. The government remained silent. Impunity was also the order of the day during elections. Between 1995 and 2008 Mugabe's political party committed terrible acts of violence against candidates and militants from the opposition. Each time, the President decided on his own authority that the perpetrators deserved complete forgiveness.

Over a period of twenty years, Zimbabwe has shown how different the origins of amnesty can be. In 1979 and 1987, impunity was the product of negotiations. More recently, it has become an expression of a one-sidedly self-serving approach based on the attitude that a government which rules with an iron fist can whitewash its own deeds and those of others with impunity. Brute force is the argument. General Pinochet demonstrated this strikingly with his amnesty law of 1978. No one could contradict him. But even where absolute power is beginning to crumble, self-amnesty remains possible. This can be seen from the threatened elites who grant themselves forgive-

ness just before they relinquish power. This is what happened in Latin America in the 1980s, when junta leaders hurriedly sought to protect themselves just before the fall of their regime. It seemed as though this continent was permanently burdened in this respect.

2 WHY ERADICATE THE GUILT?

Amnesty is often granted from a desire to keep the peace. This is often literally the case, because those who are forced to give up power are frequently strong enough to make a peaceful transition of power impossible. Clemency is then the lesser evil. This is what happened in Angola, when almost thirty years of civil war dragged laboriously to an end in the spring of 2002. The rebels from Unita had lost their leader, Jonas Savimbi, at the end of February. This created an opening for serious peace talks with the Angolan government, and in early April an agreement was signed. Just before this, parliament had passed a law granting amnesty to the rebels, almost certainly in a final attempt to bring Unita on board. Those who had fought on the side of the government army during the civil war were also given freedom from prosecution. This form of mutual absolution served everyone's interests. The peace agreement between the government of Guatemala and the biggest rebel movement (Madrid, 1996) told a similar story.

'Without amnesty, no reconciliation; without reconciliation, no permanent peace.' This sentence lies at the heart of many calls for clemency. According to this rea-

soning, prosecution does not bring the opposing camps closer together, but actually drives them further apart. For those who have suffered, the trial brings a new confrontation with their pain and sadness, reopening old wounds. For the perpetrators, punishment – especially when it entails years of imprisonment – engenders feelings of revenge and resistance against the regime that sentences them; this can be fatal for a fragile peace. Several variants of these arguments are in circulation. One is that amnesty is necessary in order to restore unity in a country; or to close ranks in the face of a foreign enemy. It is no coincidence that as early as 1947 France and the Netherlands adopted a more lenient approach to those convicted of collaborating with the German occupiers. Both countries had by that time become embroiled in colonial wars in Asia; in such a situation, internal divisions are a major concern. Reintegration of the black sheep is then part of the solution.

3 WHY NOT?

Whatever guise it takes, amnesty is a controversial way of dealing with the past. The fiercest opposition usually comes from those who have suffered: those who have been maimed, banished or stripped of everything they have. Their resistance runs very deep. Then there are the objections based on international law, which states that prosecution is the only option for crimes against humanity. And thirdly, amnesty never brings permanent peace and reconciliation; sooner or later, everything erupts again.

Amnesty shifts the burden of the past from the perpetrator to the victim

“And why must it always be people like me who have to make sacrifices? Why is it always us? Why is it always us who have to make concessions when concessions have to be made? Why do I always have to bite my own tongue? Why? Tell me, why?” [author’s translation]. This cry from the heart comes from Paulina Salas, the wronged woman in Dorfman’s *Death and the Maiden*. She is one of the thousands of victims of a military dictatorship; a victim of torture and rape. Can a wound be healed with salt? And these people are being asked to forgive their executioners, their tormentors. Where they are even asked at all; usually it is a president, parliament, a church leader that grants forgiveness in the name of the victims. But, said a widow to the South African truth and reconciliation commission, no one can grant forgiveness in my place. No one feels my pain. Only I can take that step.

Impunity, the natural product of amnesty, is also diametrically opposed to the need of many victims for affirmation of their moral rectitude, finally to hear that the suffering of those who fought against injustice was not in vain. Amnesty makes this vital step almost impossible.

Dura lex, sed lex

It is September 2003. A special meeting of the United Nations Security Council is in session. The members ask themselves how a country that is emerging from a

bitter conflict can best deal with violations of human rights. Kofi Annan, the Secretary-General, is instructed to prepare a report on this. The document appears in early August 2004. It contains 23 recommendations, for all branches of the UN. Recommendation 3 reads as follows: "Reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes, ensure that no such amnesty previously granted is a bar to prosecution before any United Nations-created or assisted court". It could not be clearer; international law, the fruits of civilisation, does not allow perpetrators of the gravest violations of human rights to go unpunished. This position is based on the conviction that this is the only way in which the world can eradicate the culture of impunity. International human rights NGOs are if possible even more outspoken in their opposition to amnesty.

But what if the wall of silence is the only way to free a country of a civil war or a repressive regime? What if it is the only way of securing peace? When Kofi Annan visited the deeply troubled Sierra Leone in 1999, he saw the terrible consequences of the civil war. He wrote about people's desire for a stable peace, about their willingness to forgive the perpetrators. Yet the UN signed the peace treaty, in which amnesty was one of the ingredients, only with reservation. The treaty must not, Annan said, become a blanket used to cover serious infringements of international human rights.

No guarantee of reconciliation

Look at what happened in Latin America. A quarter of a century ago, Argentina and Chile offered total protection to perpetrators of grave violations of human rights. The need for reconciliation was one of the motives, but this was enforced with a rifle in the back. It did not help. The signs of this are most tangible in Argentina; the fact that thousands men and women disappeared during the 'Dirty War' between 1976 and 1983 still gives rise to bewilderment, anger and loud calls for justice. Since the summer of 2003 that past has also been officially reawakened, when President Nestor Kirchner, the House of Representatives and the Senate declared the amnesty laws of 1986 and 1987 null and void. The High Court ratified this move. In addition, at the end of 2003 an Archivo Nacional de la Memoria was created containing documents, images and objects designed to show the cruelties of the junta. Three months later it was decided to convert the Escuela de Mecanica de la Armada, the most feared centre of torture in Buenos Aires, into a museum, as a mark of respect for those who suffered and died there. And the Grandmothers of the Plaza de Mayo still search for the 'stolen babies' of their disappeared children. In early March 2009 they tracked down the hundredth grandchild. Chile is moving in the same direction. The amnesty law signed by Pinochet in 1978 is being eroded, and the wall of silence is starting to crumble. Army chiefs are revealing the location of the graves of murdered opponents. In November 2004 a commission, having heard 35,000 victims, set down the account of the tortures under the junta on paper.

All this is accompanied by an upsurge in emotions and calls for punishment. In short, people cannot be forced by law to forgive and forget.

The past is returning

Madrid, Wednesday, 17 March 2005. It is 4.30 in the morning. A crane rumbles on to the Plaza de San Juan de la Cruz, where a gigantic statue of *generalísimo* Franco on horseback has stood since 1959. Just over an hour later all that remains is the plinth. The bronze Franco and horse are relocated to a warehouse on the edge of the city. The last statue of Franco was removed in April 2009, in the Spanish enclave of Melilla. It seems that the dictator and his regime are to be buried for a second time. In the capital city alone, hundreds of streets and squares will be renamed in the near future. The Arca de la Victoria is now called the Arca de la Concordia. As many of the reminders of Franquism as possible must be removed. The Valle de los Caídos, some fifty kilometres from Madrid, is the most pompous monument from the time of Franco: an underground cathedral, the tallest crucifix in the world, a gigantic atrium, all in honour of those who fell on the side of the General during the Spanish Civil War (1936-1939). Spain at its most one-sided. This icon, too, has been under fire for some time. In October 2007 it was decided that it should become a purely religious site, with no political connotations, and a memorial to all victims of that tragic period.

As some are buried, others are exhumed. The Spanish Civil War and the years of terror that followed cost the lives of around 600,000 people, most of them oppo-

nents of Franco and his allies. The bodies of almost 140,000 of these people were never found. Six or seven years ago a feverish search began for the hidden and forgotten mass graves. Bodies were disinterred in dozens of locations. The site that caused the greatest stir was at Viznar, near Granada. The suspicion is that this grave contains the skeleton of Federico García Lorca, the poet who was murdered by right-wing militias in August 1936. This site is now the focus of high emotions and heated discussion. Should he be exhumed or not? Should old wounds be opened or left undisturbed? Lorca wrote words in 1935 which resonate more loudly today than ever: “Un muerto en España está más vivo como muerto que en ningún sitio del mundo” (“A dead person is more alive in Spain than anywhere else on earth”). Meanwhile, a dense network of organisations is attempting to reconstruct the entire history of Spain under Franco. They identify victims, publish books, operate interactive websites (www.memoriahistorica.org), produce radio and television programmes, organise exhibitions, apply pressure.

What is so strange about this collective looking back to the past? It is the fact that it is happening after more than seventy years of deliberate loss of memory. Until 1977, when democracy was introduced in Spain, it was dangerous to talk about the civil war and its aftermath. After that came a ‘pact of silence’ which was endorsed on all sides. Fears of a new civil war and the longing for reconciliation called for collective silence. Virtually the entire political class, communists and moderate Basques included, wished to turn over a new leaf. The archives of the secret police were sealed. History lessons main-

tained the gap in the collective memory, year after year. In addition, just about everyone remained in their jobs, even the most faithful supporters of Franco and his dictatorship. There was no question at all of any trials. Some years later, when the communist regimes in the Eastern Bloc collapsed one by one, this urge to forgive and forget would be adopted as the 'Spanish model'. In Poland the Spaniard Jorge Semprun, a leading communist and writer, said the following to Adam Michnik of the Solidarity (Solidarnosc) union: "If you want to live a normal life, you must forget. Otherwise those wild snakes freed from their box will poison public life for years to come".

This strategy appears able to work miracles. Spain slipped apparently effortlessly into the world of stable democracies. Year after year, government after government, the 'plot of silence' did its work. The country looked itself in the mirror and saw that all was well. Until, that is, the first questions began to arise in the late 1990s. Was it still necessary to keep the collective memory locked down? Was Spain not mature enough to confront its past without fear? Had the time not come to hunt down some of the myths that had grown up? Seven or eight years later the wall of silence is already pockmarked with a large number of holes. What has happened? The answer is that the international context has changed. Windows have been thrown wide open onto a bitter past in many parts of the world. At the same time, the political and social situation in Spain itself has changed completely. In 1977, fear was the driver causing the population to turn its collective back on the past. That terrible fear of a new civil war was not with-

out foundation – on the contrary: the period 1975-1980 was a violent one, with hundreds of political murders, dozens of deaths at demonstrations. Moreover, forty years of terror under Franco had created a climate which, particularly among victims, strongly suppressed any desire for accountability. Around the turn of the last century, these sources of fear had largely ebbed away. The risk of a renewed explosion has all but disappeared, partly thanks to the embedding of Spain within Europe. And the shadow which Franco had cast over Spain even after his death has been erased. Then there is the effect of the experiences of two widely separated generations. Many witnesses who experienced the greatest excesses of the dictatorship at first hand are now in their seventies and eighties. They have always remained silent, saying nothing, for example, about where the mass graves were located. Now that their end is in sight, they are willing to share this information. On the other hand there is the generation of young forty-somethings. Their attitude to the legacy of the old regime is more distant, freer. They were not even fifteen years old when Franco's regime died with him. Now that their cohorts are occupying the political arena, the bars built by the authorities around the past are gradually disappearing. The most striking result of this is the *Ley de Memoria Histórica* which was passed by the Spanish parliament on 21 October 2007. This law provides for reparation payments to those who suffered heavily under Franco's regime. And local authorities can now offer help in identifying and exposing mass graves.

4 AND SO?

The discussion about the sense and nonsense of amnesty rages on, all over the world. Specific cases in point emerge with predictable regularity. There is for example the fate of Zimbabwe which has sunk into a deep political, economic and humanitarian crisis since the summer of 2005. In the eyes of many, president Robert Mugabe is the obstacle to a sustainable solution. But Mugabe is not willing to step down, knowing that if he does he could face prosecution for crimes against humanity. There are rumours that offering the president amnesty could definitively unblock the crisis. Richard Dicker, director of the International Justice Programme at Human Rights Watch, said the following about this: "Amnesty is a price that only fools want to pay. What you buy with it is an illusion". Because, he concludes, impunity spawns new violations. It is a certainty that not everyone shares. The idea that amnesty is sometimes an unavoidable option is gradually gaining ground. It is a means of securing a change of power without more bloodshed, and that is not something to be dismissed lightly. Those propagating this view do however generally apply a list of strict conditions. I will briefly summarise them. Only political crimes can be considered for clemency; the population must have their say in the decision not to prosecute perpetrators; paying compensation to victims is strongly recommended; it is also important that democratisation does not come to a halt in other domains: media that are no longer muzzled, free circulation of opinions, schools which are no longer lackeys to those in power. Just as crucial as the willing-

ness to look at what happened in the past, to identify perpetrators and victims as precisely as possible. It is a kind of interim justice; it creates opportunities for installing tribunals at a later date, as is currently happening in Argentina and Chile.

Is this 'light' version of amnesty a good bet? South Africa can provide part of the answer. The Truth and Reconciliation Commission there has applied conditional amnesty, combining the carrot and stick approach. Offering amnesty in exchange for confessions has shed light on many gruesome aspects of apartheid. At the same time, however, a great deal has remained in the shadows. Military personnel have avoided the Truth and Reconciliation Commission. The political class from the apartheid era, with the exception of one single minister, have ignored the invitation from the Amnesty Committee. Entire occupational groups which served and supported the former regime have stayed away. This experience is worthy of a close-up, and is on the agenda for the next chapter. At the same time, an outline of what happened in South Africa serves as an intermediate stop on the route to the other truth and reconciliation commissions that have been operating in recent years.

DIGGING UP THE PAST

There is something remarkable about the autobiography of Nelson Mandela. His *Long Walk to Freedom* (1995) numbers 560 pages, yet it devotes not one single word to the question of how the new South Africa should deal with its apartheid history. Yet this question will constantly delay the consultations between whites, blacks and coloureds. For premier Frederik Willem De Klerk and his supporters, only amnesty was acceptable. There was no consensus among the ANC and its allies; some of them were thinking in terms of an African Nuremberg; others saw too many risks in that approach: a coup by those who would be brought to trial, time-consuming and expensive lawsuits, destroyed evidence. A blanket amnesty was also ruled out: that would be too unfair on the victims. Forgiving might be possible, but forgetting certainly was not. Inspiration was found in Latin America, which had been wrestling for some time with the bloody legacy of the junta. Amnesty could not be avoided there, but Bolivia, Argentina, Uruguay and Chile exposed the violations of human rights as clearly as possible. South Africa looked to these Latin American operations and devised its own version.

1 TRUTH AND RECONCILIATION, MADE IN SOUTH AFRICA

The South African Truth and Reconciliation Commission is to date the most talked-about demonstration of a collective digging up of a painful past. There have been films, plays, novels, diaries and tens of thousands of pages of journalistic and academic writings. The almost violence-free end to apartheid had not been expected, and this aroused great curiosity to find an explanation for the lack of bloodshed. Moreover, the idea of exporting the experience to countries facing similar challenges arose fairly quickly, and reporting about the Commission was therefore especially welcome. During its creation and development just about all the problems, questions and dilemmas emerged that can possibly arise in the quest for 'the truth'. At the same time, the gestation and functioning of the Commission reveals the limits of the remarkable formula which is that quest. All these considerations invite a detailed report on the South African adventure.

The expectations

It is August 1995; winter in Cape Town. The law on 'promoting national unity and reconciliation', the mother of the Truth and Reconciliation Commission, is three weeks old. It is time to talk to people whose lives are about to change radically. For my first conversation I have to go to the Parliament building. I am too early and begin pacing up and down in a building that feels eerily sombre. My interviewee, Antjie Krog, is full of

cold and very tired. She is currently working in the Parliamentary press office; but the Truth and Reconciliation Commission is calling her. From December she will follow its sessions for South African radio. The preparations are already eating up her agenda. Once the Commission attains cruising speed, her tiredness will regularly turn into pure exhaustion. In her later book *Country of my Skull* (1998), she notes that: "Flesh and blood can in the end only endure so much ... Every week we are stretched thinner and thinner over different pitches of grief ... How many people can one see crying, how much sorrow wrenched loose can one accommodate? ... My hair is falling out. My teeth are falling out. I have rashes." But she does not realise that yet. We talk for some of the time in English, and at other times she switches to Afrikaans while I speak Dutch. That is no coincidence, she says. There are aspects of apartheid which can only be described using the language of the Afrikaner, while for others English is the better vehicle. This linguistic gymnastics will also follow her in her report on the Commission. "What is the role of radio with its access to all the language groups and impoverished communities? And do all eleven official languages have the words needed to cover the commission?", she writes in her book.

What did she expect from this quest for the truth? Apartheid deeply eroded the moral standards on all sides, affecting the whites, the blacks and the coloureds, she says. Perhaps this is precisely where the political confrontation between offenders and victims will result in healing. But it will be a difficult undertaking. Those who suffered under apartheid fluctuate between a willingness to forgive and the desire for retribution. And

quite a number of whites are only now beginning to realise what they gave away in the elections in April 1994. Antjie Krog says: “Until four or five years ago my father could pick up the phone and talk to anyone he wanted to at the top of government. Now that route has been closed off to him completely.” She hopes that the Commission will be able to prevent the creation of an ‘imagined past’, something which has been part of the mindset of the Afrikaners for generations. Far too many legends have survived from the war against the British a hundred years ago. That has a big impact. If only there had been a truth and reconciliation commission then, she sighs, because that war has never been examined objectively. More than 26,000 white women and children died in British concentration camps, along with at least as many blacks. The British have never uttered one word of regret about those excesses. Krog says this was a missed opportunity to bring respect for human rights to southern Africa. It is perhaps precisely for this reason that apartheid was able to take root in a community which felt humiliated, misunderstood and threatened. Perhaps the pro-German rebellion by the Afrikaners in the Second World War also stemmed from this. Krog uses this diversion through the past in an attempt to put forward arguments for doing things differently today, a century later. “Perhaps”, she says, “my excursion into the past is pure speculation.”

Antjie Krog, her reports and her books are my guide in the land of the Truth and Reconciliation Commission. However, in those days of 1995 there were other characters waiting in the wings.

Cowley House is a decrepit building which houses the Cape Town Trauma Centre for the Victims of Violence and Torture. In the waiting room are seven black people and a Malayan. Marlene Bosset, who is running the centre in the summer of 1995, is a young woman in her thirties. Each day she sees some of the human wrecks that the apartheid regime has produced. She herself is also a victim; she is black and was put out of her house by the regime many years ago, along with her parents and brothers. Her father was psychologically damaged. Her brother was tortured. She herself fled abroad. Her take on the Truth and Reconciliation Commission and the seeds of reconciliation is short and powerful: I do not want to forgive and I do not want to forget what was done to us. In her view, the entire operation is intended as a sop to the whites. They want the whitewashing of a deadly black past. That is why we, the victims, constantly hear the same refrain: “You have to embrace your enemy”. Yes, sure. Moreover, no one has listened to the people in the townships at all. What they want above all else is for the Commission to compensate the victims. But the ladies and gentlemen in Parliament think that money shouldn’t be the first consideration. As long as there is ‘truth and reconciliation’. It’s no wonder they see it like that; they live in the better districts. Bringing the truth to the surface? Whose truth? The truth of the victims or of the perpetrators? The truth of the blacks, the whites, the coloureds, the Muslims, or the Christians? At the end of our conversation she adds: “It will all come to nothing. Everyone will gradually come to see themselves as a victim, even the whites because for years they were tempted by the

serpent of indoctrination. And who do you then reconcile with whom?”

The Truth and Reconciliation Commission will tear open old wounds for many people. Some of them will come to Bosset. Long before the Commission's work is complete she will leave her Trauma Centre, burned out by her relentless efforts. She will not be the only one to experience apartheid for a second time and to be in danger of being crushed by it. But on the day of our conversation, 24 August 1995, that story is still for the future. One of her colleagues at the Centre is Michael Lapsley, a New Zealand-born priest. He lost both his hands in 1990 when he opened a letter bomb whilst working for the ANC in Harare. As he talks he waves the hooks in the air which he was given to replace his hands. Or perhaps he didn't want prosthetics hiding the fruits of his experience with apartheid, I think to myself as I see him in a television debate. Lapsley views the Commission differently. Anyone who appears before it and confesses their sins must be given amnesty. “I have to forgive and forget”, I hear him say. “Otherwise I will remain a victim till the end of my days, and I don't want that.” Bosset and Lapsley: two people greatly damaged by apartheid and yet so different in their view of what needs to happen now. That divergence in views is something that will market the entire community of victims.

Whilst still in Cape Town I talk to André du Toit, professor of political studies at the University of Cape Town. Du Toit, an Afrikaner and a campaigner against apartheid, is a fervent advocate of what the Truth and Reconciliation Commission should become: an oasis

where as much truth is possible is brought to light about what happened between 1960 and 1994. I meet him at home, in a room which looks and feels like a cold monk's cell. He is very slow to get going – a diesel, it would seem. But he believes in what he does. For him, the Commission could take the place of any kind of tribunal, though he doubts whether everyone can remain in the position he or she occupied during the apartheid era. Perhaps there is after all a need to purge the army, the police and the judiciary. Otherwise the Truth and Reconciliation Commission risks going down in history as dealing too softly with the past. And, he says, whether the Commission succeeds or fails will also depend on whether senior figures from the freedom movements appear before it. It is well-known that there were serious excesses in the camps of the ANC: execution of (suspected) infiltrators, torturing of mutineers and deserters. The battle against apartheid also created many civilian victims. Is it possible to keep silent about this? What Du Toit does not yet know is that his great dream, of having a seat in the Truth and Reconciliation Commission, will not come to pass. The selection of members becomes an incredibly difficult balancing act. There will be hardly any place for Afrikaners such as Du Toit.

A few days later I have a meeting in Pretoria with Ahmed Motala, director of the NGO Lawyers for Human Rights. He and his organisation are among the most critical voices concerning the proposed Commission. He launches into his argument very animatedly, saying that the crimes of the apartheid regime can never be erased. The perpetrators have to be brought before

the courts, even if there is the possibility of their being pardoned at some point in the future. He accordingly wants to test the principle of 'amnesty in return for a simple confession' against the provisional Constitution and against South Africa's international obligations. He does though admit that such a step will not achieve very much; the Truth and Reconciliation Commission is an instrument designed by politicians to limit the risk of chaos now that a new and fragile era is dawning. And talking of politicians, Motola is not convinced that the Commission will be able to remain out of their domain. Suppose the chairman has ANC leanings; the deputy chairman will then undoubtedly be someone from the National Party, the mother of apartheid. He also has his doubts about the attitude of the ANC. At the moment they are one hundred percent in favour of the search for truth. But there are strange rumours going round that anyone approaching the headquarters of the South African police hears a strange noise. It is the combination of the sounds made by paper shredders and photocopiers. Documents that incriminate the police have disappeared, whilst material that could be useful in blackmailing the ANC is being stored in multiple copies, as is the paper evidence that a number of senior figures in the party were on the payroll of the apartheid regime. Motola points briefly to a photo of Mandela and says: "The politicians of my country are making a very old mistake. They believe it is an easy matter simply to turn around a bloody chapter in our history." I nod in agreement and think of what happened to me a few years earlier. The secretary of King Baudouin of Belgium asked me in early June 1993 to attend an audience with the monarch. It

transpired that the king was deeply concerned about a past with which Belgium had still not come to terms, a past of collaboration and cleansing during and after the German occupation. Is it really so difficult to forgive and forget, he asked. Will there, for example, ever be an understanding of the soft wartime behaviour of his father, Leopold III? When I wonder out loud whether forgetting is possible and acceptable, his reaction is: "And you are a professor at the Catholic University of Louvain?".

Motola will disappear from my story fairly quickly. He is not willing to compromise, it would seem. He moves to London. At crucial moments in the decision-making process there is little room for manoeuvre for people like him. But he will return ten years later, as director of yet another critical NGO.

Krog, Bosset, Lapsley, Du Toit, Motola. They are prototypical characters in a remarkable play. Some of them remain at front of stage, others fade to the background. But each of them is a window on to problems caused by the confrontation with the history of apartheid. And there is something else. Whoever one spoke to in those days, there was a notable absence of certainties. For some, the Truth and Reconciliation Commission was the only alternative to civil war, though they recognised that the whole enterprise was a big gamble. For others, the promise of amnesty was a slap in the face for thousands of victims. However, they too realise that harsh punishments could throttle the fragile democracy that is emerging. Then there are those who would rather bury the past than dig it up. The gulf is deep, and has still not been completely filled to this day.

The origin

The idea for a truth and reconciliation commission for South Africa first saw the light of day on the campus of the University of the West Cape, some twenty kilometres from Cape Town. The history of this educational establishment, known as UWC for short, is brimming with irony. At the end of the 1950s the universities in South Africa were coming under growing pressure to stop admitting non-whites. The government came to the rescue with a perverse plan: a college for coloured people, somewhere far away from the city and staffed with white professors who, as the UWC website states, “supported racial separation and who saw their role as white guardians of their coloured wards”. Once on campus, there was no public transport to Cape Town; the students could not contaminate their peers with their desire for equal treatment. The reality turned out differently. After just a few years the campus developed into a breeding ground for protest against the apartheid regime. Later, in the middle of the brutal repression of the 1980s, UWC helped in the final assault on apartheid.

UWC as the crucible which led to the Truth and Reconciliation Commission? Yes, when in May 1992 Kader Asmal made use of his formal installation as professor of human rights there to call for a commission which would dig over the past and possibly forgive the sins of those who confessed – amnesty in exchange for truth. Even then, Asmal had for years been a key figure in the opposition to apartheid. In 1953, at the age of 18, he befriended Albert Luthuli, the legendary president of the

ANC. He went to London to study economics in 1959. That was also where his exile began. Until he returned to South Africa in 1990, he was the man who carried the message of the ANC to Europe. Once back home he was quickly absorbed into the National Executive Committee (NEC) of the party. It was from this position that he organised the development of his pet idea, a truth and reconciliation commission. He wrote memos for the NEC, preached in the party press, carried out media interviews. He was destined to succeed.

When I seek out Asmal on the UWC campus in March 1994, a few weeks before the first free parliamentary elections, he is completely occupied with the campaign. Now in his sixties, and a few months later to become a minister in the Mandela government, I discover very quickly that he still has a sharp tongue. Once he begins talking about dealing with the past, he starts to resemble a tornado. Names, dates, arguments: the words flow from him in torrents. I sweat until my shirt is drenched. My only aid is an internal party document that he gives me. It is dated 22 September 1992 and describes the five-fold core of the operation for which the ANC is calling: the past must be dug up; first there must be a wide-ranging public debate over how that should be done; amnesty is not ruled out except for crimes against humanity; there is no longer a place in the government service for torturers and murderers; victims and their families have a right to compensation. That text, Asmal adds, no longer mentions the trials of the kind that the leaders of Nazi Germany went through. “Because that is what we initially wanted to do with the leaders of apart-

heid: catch the bastards and hang them”. There is to be no African Nuremberg, then.

Amnesty: a last-minute compromise

Allow me to turn back the clock of history a little. At the start of 1990 the white administration had taken cautious steps towards a transition. The ban on the ANC had been lifted in February of that year. Mandela was released from prison in the same month. He had already, albeit in complete secrecy, been the privileged discussion partner of prime minister Frederik Willem De Klerk; now the discussions could take place in complete openness. Six weeks after his release, on 2 May 1990, the first round of negotiations got under way. The venue was Groote Schuur, the grand house built in Cape Dutch style which had been the residence of South Africa’s colonial governors. In our delegation, Mandela writes in his autobiography, we joked that we were being drawn into a trap in enemy territory. Item number one on the agenda was the question of how whites, blacks and coloureds would deal with the past. The ANC asked for a blanket amnesty for all its exiled and imprisoned supporters. The government denied this request, but did see scope for temporary indemnity from prosecution for political offences – however those were to be defined. That was what, three days later, was written into the famous Groote Schuur memorandum and which led in May 1990 to a first ‘indemnity law’. (It was here that the expression ‘reconciliation demands forgiveness’ first appeared, which was to become a mantra that would be repeated throughout the entire transition

process). Around five hundred members of the freedom movements would benefit from the new law. De Klerk was anything but happy with this turn of events and also wanted a general amnesty for those who had committed offences in the name of apartheid. This led to a second indemnity law in October 1992. Now it was the turn of the ANC to protest. How could apartheid and the struggle against it possibly be placed on a par with each other? The acts of the white masters, it was claimed, were morally reprehensible. The struggle by the ANC and its allies was of a very different order, because it was directed against grave violations of human rights. It was a discussion which would continue to generate a great deal of heat for years to come.

Eighteen months after Mandela’s release, all the problems which cause such great difficulties in any change of regime anywhere in the world had been placed on the table: amnesty; what constitutes a political crime and how that should be morally defined; the need for reconciliation; the calls for justice. The real work could now begin.

Meanwhile, negotiations were proceeding on the transfer of power. They were not going well. The agenda was a very heavy one: a new constitution, free elections, a transitional government, guarantees for the white minority, amnesty or no amnesty. The mutual trust was fragile, like very thin ice. The discussions took place in what was called the Convention for a Democratic South Africa, or CODESA. The first meeting, on 20 December 1991, was attended by the government and twenty political groups. The next day, the ‘courtship ritual’ was over; the ice had indeed proved to be too thin. Behind

the scenes, however, negotiations continued. Six months later, the result was CODESA-2. Once again, however, things went wrong. De Klerk and his National Party were not interested in a power-sharing which would result in the ANC cashing in on its numerical dominance. And the demand for amnesty for the whites consistently short-circuited the discussions. Mandela and De Klerk continued to talk, sometimes in secret, sometimes in the open. Then, at the end of 1992, help appeared from an unexpected quarter. Joe Slovo, head of communications and a leading member of the military wing of the ANC, launched the idea of a transitional government to include De Klerk and company. The fact that it should be Slovo of all people, known in white circles as the local Stalin, who made this suggestion caused a great stir and led to a breakthrough. It was in fact his second pirouette in the *pas-de-deux* between white and black. It was he who in mid-July 1990 had persuaded the ANC to lay down the armed struggle unilaterally. History is full of strange wrinkles.

In April 1993 the time was ripe for a third round of negotiations. The stumbling blocks were removed one by one, with the exception of that one stubborn one: whether amnesty could remain an option. This question now once again threatened to lead to a breakdown in the negotiations. Until the tide finally turned; during the night of 18 November 1993 – the interim Constitution was already on paper – a postscript was added to the text stating that the new parliament would pass a law making possible amnesty for crimes committed in the name of apartheid, albeit under strict conditions. The formulation had been kept deliberately vague. This

saved the negotiations. Desmond Tutu, who would chair the Truth and Reconciliation Commission, told me that it was only once that sentence had been included that the opponents were willing to put their signatures to the agreement. But this shadowy side of the compromise would place a heavy burden on the functioning of the Commission. Even in the first days of its existence, writes Antjie Krog in *Country of my Skull*, it seemed as if everyone was repelled by the idea of amnesty, so great was the confusion.

Under construction

The ANC likes surprises. A few months before the crucial agreement of November 1993, the ANC went on the defensive. A powerful rumour mill had begun turning out stories about violations of human rights in the ANC camps. Then the ANC did something that had never before been seen in the world of the freedom movements: it took the initiative itself to create an independent investigation commission. An international trio of lawyers wrote a report running to 172 pages which landed on the ANC table on 23 August 1993. The report opened a window on to an awful reality; there had been murders and torture in the ANC's own house, especially where suspected infiltrators were kept prisoner. The organisation confessed its guilt – and immediately turned a setback into a triumph. The ANC had demonstrated that it was not afraid to investigate its own wrongdoings. Now it could put De Klerk and his cohorts under pressure. Were they, unlike the ANC, afraid of a commission that would scrutinise the entire apartheid period?

From November 1993, attention shifted completely to the forthcoming elections, which took place at the end of April 1994. Millions of blacks, coloureds and whites buried apartheid in the ballot box. Just over a week later the transitional government was sworn in. Dullah Omar, a colleague of Kader Asmal, left the University of the Western Cape to become Minister of Justice. It was he who had the task of transforming the magic formula 'amnesty for truth' into an apparatus that could bring both reconciliation and justice. As early as 27 May 1994, Omar stood up in Parliament to outline the contours of the TRC, the Truth and Reconciliation Commission. He created a task force to refine the blueprints. It was headed by Medard Rwelamira, a Tanzanian who also worked at UWC. Asmal, the founding father, Omar as the builder and Rwelamira as the architect: or how the University of the Western Cape, once intended as a *cordon sanitaire* around young coloureds and blacks, became the birthplace of the most delicate enterprise in the new South Africa.

The bill was tabled in Parliament in the summer of 1994. This marked the start of what was to become a true marathon. The justice commission organised dozens of hearings and debated with those fighting for and against apartheid. Church communities, senior figures in the army and police, professional groups, local and international human rights organisations, were all asked to submit their views. This led to an avalanche of documents. But it also generated a number of very practical suggestions. In the shadow of and in parallel with the parliamentary work, an ambitious information campaign was also under way, with mobilisation of the media and

brochures in the eleven official languages of South Africa. There were also strip cartoons. (In one of them a doubter asks the main character: "And what about the ANC detention camps?". The answer refers to the sensitive point to which I referred earlier: "You can't compare the acts of those fighting for our liberation with the acts carried out by an oppressive government.").

Days became weeks, weeks became months. In total, the justice commission would spend almost 130 hours on the bill. On 17 May 1995, the text was presented to the full National Assembly. "According to some", writes Antjie Krog in *Country of my Skull*, "it was the most sensitive, most technically complex, most controversial and most important law ever passed by Parliament. According to others it was the Mother of All Laws". Emotions became heated. Antjie Krog: "Everybody has a story to tell - from members of parliament whose houses were firebombed, to friend's children were put in a coffee grinder, to criminals already walking the streets while right-wingers languish in jail." At the end of the day came the vote, by show of hands. The bill was approved. After journeying through the Senate, the text was ripe for signature by president Mandela. He signed the document on 19 July 1995. According to the new law, the Commission must lay bare "the killing, abduction, torture or severe ill-treatment of any person by any person acting with a political motive or any attempt, conspiracy, incitement, instigation, command or procurement to commit such act."

And so to work

The Commission finally got down to work on 15 December 1995. It completed its task in July 1998. Three months later, president Mandela received the final report, in six thick volumes. In the intervening period, the Commission had worked with three committees. The most public of them was the Human Rights Violations Committee. In its fifty hearings, which were extensively reported in the media, 2,440 victims had been able to tell their stories. This frequently led to very emotional scenes. Fuel for these sessions came from the reports of the Commission's statement-takers, who went round the country gathering witness statements. In total, just over 21,000 statements were taken, relating to more than 35,000 violations of human rights. The recording of these accounts was preceded by a major information campaign, in which hundreds of thousands of folders about the Commission were distributed throughout the country. A second notable activity of the Committee were the hearings involving representatives of political parties, the business community, the legal community, the magistrature, the medical sector, the press, trade unions and NGOs. The second committee, the Reparation and Rehabilitation Committee, investigated the acute needs of witnesses, provided immediate help where needed and formulated recommendations about compensation for the hurt suffered by victims. The Amnesty Committee, finally, deliberated on the 7,116 requests for amnesty from offenders. The petitioners came both from the world of apartheid and from the opposition movements. Ultimately, amnesty was granted in 1,167 cases. This

third committee had been a problem child right from the start. Judges and lawyers were assigned a crucial role, and were expected to ensure that the entire process was an objective one. In the event, legal formalism crept into the decision-making process and accordingly led to all manner of delays and manoeuvring. There were also serious material problems. The time was too short, the resources too limited, the staff often overworked. It was not always possible to verify what petitioners presented as the truth. The Committee needed 1,888 days and 12,000 working hours to process the requests for amnesty – much longer than originally expected and budgeted. Its report was not published until 2003, more than five years after the Truth and Reconciliation Commission had closed its doors.

The work of the three committees and of the logistical operations was supported by a panel of seventeen members: seven women, ten men, two Indians, six whites and two coloureds. It was chaired by Archbishop Desmond Tutu, with Alex Boraine as his deputy. The Commission employed three hundred staff. It cost around 70 million USD, making it far and away the most expensive truth and reconciliation commission of the thirty some that have been in operation. (A drop in the ocean, say cynics, compared with the golden handshakes that were given to former top members of the apartheid regime).

On the scales

In the spring of 2006 the British Broadcasting Corporation (BBC) broadcast a series of programmes about

reconciliation. In these programmes, Desmond Tutu talks to the perpetrators and victims of the violence in Northern Ireland. Or rather, he listens and allows the predators and their prey to search together for words of understanding. At times things become very emotional. Tutu's body language shows how familiar he is with confrontations of this kind. Now and again he hesitatingly intervenes, a gentle guide in a minefield of vulnerable emotions. Six times Tutu plays host; six times it makes for gripping television.

That is just one of the ways in which the spirit of the South African Truth and Reconciliation Commission has spread around the world. Tutu preached reconciliation in Rwanda. In Latin America he was the ambassador of hope, talking about the truth that liberates. Alex Boraine travels halfway around the world, carrying his experience as baggage. Indeed, the Commission has very rapidly been promoted to a role model for the digging up of the past - in the rest of Africa, in Southeast Asia, among the aboriginals in Australia and among the Native Americans in the United States. A star was born. It is, however, still much too early to speak of an indisputable success; we will have to wait at least a generation for the real litmus test.

Yet the evaluation is in full swing. At the end of 2005 it was precisely ten years since the Commission began its work. This anniversary was an opportunity to look back. Tutu did this in interviews; others wrote books or exchanged ideas during conferences. Since then, there has been no end to the flood of publications. What is the provisional verdict?

The aspirations of the Commission are encapsulated in its name: searching for the truth about apartheid and bringing about reconciliation between white, black and coloured. Truth? Reams of paper have been written in South Africa reflecting on the word and its meaning. Truth appears in innumerable guises, and in as many versions as there are producers and consumers of this mysterious good. Confusion is rife, in other words. "The word 'truth', Krog writes, makes me uncomfortable. The word "truth" still trips the tongue. ... I hesitate at the word; I am not used to using it. Even when I type it, it ends up as either turth or trth." What the Commission has produced is not *the* truth - though it is important that the knowledge gained via the public hearings and reports has acquired official status. Yet the insight remains limited, because the phenomenon that is apartheid consists of many layers, of which the Commission has laid bare only a few. It has not exposed everything, then, though more than enough to purge the memories of a great many people of lies and myths. That itself is of inestimable value. There can be no one left in South Africa who is able to deny the existence and grisly effects of apartheid. Nor can there be anyone left who can claim that the freedom movements were free of sin.

Reconciliation, the Commission's second ambition, is if possible even more difficult to measure. A great deal has been said and written about hearings in which parents embraced the murderers of their children; or about widows who proved willing to bury the hatred they felt towards those who had killed their husbands. There has indeed been a degree of rapprochement here and there between individual perpetrators and victims. But has

this mutual understanding also begun to take root among Afrikaners, in the black townships, in the Malay and Indian districts? That is a very different question. Initially there were fears that the Commission would deepen the gulf even further with the shocking revelations that emerged from its investigations. It quickly became apparent that these fears were premature; but by the same token the different population groups were not brought much closer together. The visible and invisible walls between the white community and the rest have not yet been demolished. There is above all frustration about the indifference with which many whites react to the willingness of victims to forgive. The love evidently often comes from only one side. This thought is expressed very incisively in a poem by Antjie Krog. It is a dialogue between a perpetrator and a victim, both of whom have appeared before the Truth and Reconciliation Commission. I cite here an extract from the poem, in the English version:

‘I have been given a clean slate
and can continue with my life’

‘I have given a clean slate
and see how they simply continue with their lives’

‘I am surprised about my clean slate
it shows they cannot even hate properly’

‘I am surprised that I have given a clean slate
and they simply continue as before’

Justice is for the rich
forgiveness for the poor

Despite this the Commission, with its unique combination of ‘amnesty for truth’, was of crucial importance in the bloodless transformation that occurred in South Africa.

As many commentators have written, however, it remains an unfinished business. There are still so many aspects of apartheid which are unknown and remain in the shadows. The work of the Commission is also incomplete above all because so many recommendations proved to be dead letters. The most difficult question concerns compensation for the victims. The Commission report contains the names of almost 22,000 identified victims. In principle, all of them are entitled to a one-off payment of 5,200 USD. However, that would recompense only a fraction of the suffering. Many victims of apartheid saw the Truth and Reconciliation Commission not so much as a producer of truth about the regime, but as a deliverer of material compensation. The politicians, however, claimed that there was no more money. The Commission’s proposal to top up the coffers with a wealth tax to be paid by anyone who had profited explicitly or implicitly from apartheid was rejected. It is highly likely that this issue will continue to drive up the temperature for many years to come. In the European setting, Germany – 65 years after the end of the Second World War – still finds itself confronted with demands for compensation. It was not until July 2008 that compensation payments to forced labourers came to an

end. A total of USD 5.9 billion was paid to 1.7 million people in various European countries. In the United States, African-Americans expect compensation for what was done to them during the era of segregation. African countries are placing the issue of slavery on the table of the Western world and looking for some form of recompense. It will be no different in South Africa.

It is also 'unfinished business' because of the disquiet that still surrounds the amnesty issue. There were always serious doubts about the moral justification for the promised leniency. The Commission soothed the wound slightly. Only one in six perpetrators received what they had hoped for; the rest - let us not forget - would have to appear before the courts come what may, together with those who had not applied for amnesty. It is precisely this latter idea which is in danger of disappearing in a vanishing act. The about-turn had been coming for some time.

The first act was played out in the United States. Here, foreign victims of human rights violations can instigate civil proceedings against the suspected perpetrators even though they do not live in the United States. That is what happened on 26 November 2002 in a courtroom in New York. People from South Africa were seeking compensation from 34 multinationals, friends of apartheid, including giants such as Anglo American, Barclays, BP, Coca-Cola, Credit Suisse, Deutsche Bank, Ford, General Motors Corporation, Hewlett-Packard, IBM, Shell Oil and De Beers. When the case came up in New York a few months later, in the spring of 2003, the South African government reacted furiously. A commu-

niqué dated 16 April set the tone: good relations with industry, the government declared, were of crucial importance for the reconciliation process in South Africa; the country desperately needed industry and business. It was to be the end of November before the American court declared the application admissible. This time, the Mbeki government lodged an appeal. Ultimately, the United States Supreme Court would ratify the decision of the lower court.

But in South Africa, the ANC too was changing tack. In early 2004 the movement announced that it had doubts as to whether continued prosecution of those who have not received amnesty was really necessary. Desmond Tutu, a fierce opponent of any such white-wash operation, told me that the government and members of the former security forces had been holding secret talks on this issue for months. The opposition grew gradually. The first major initiative was an open letter sent at the end of December 2004 by leading figures from the Truth and Reconciliation Commission and victim groups. I spoke to one of them, Graeme Simpson, who at the time was director of the Centre for the Study of Violence and Reconciliation (www.csvr.org.za) in Johannesburg. What did he feel was driving the ANC? Officially the argument was that new trials could cause great harm to the fragile democracy that was emerging in the country. Political stability, it was argued, had to be given priority. This meant it was better to avoid trials which would arouse strong emotions. However, the timing of this argumentation begs questions. The possibility was looming of prosecution of people who had played a leading role in the freedom movements. Was

this the South African version of Realpolitik? “Yes”, says Simpson, “because the argument that new trials would stand in the way of reconciliation doesn’t add up. The country managed the change of regime perfectly well. There was no longer any immediate danger.” In early 2006 the government came up with a concrete proposal. A senior examining magistrate would be able to decide, based on the criteria used by the old Amnesty Committee, whether or not an individual should be prosecuted for crimes committed under apartheid. This would not be an open process; there would be no sanctions for those who had nothing but disapproval for the Truth and Reconciliation Commission; and there would be no role at all for the victims. Opponents talked of a ‘backdoor amnesty’ and asked the Pretoria High Court to prevent president Motlanthe from granting pardons on the basis of the new arrangement. This legal challenge met with a first success when the Court ruled that the president cannot issue pardons, pending the final determination of the case.

This still leaves unanswered the question of whether the South African approach is one that could be worth exporting to other countries. Nelson Mandela believed so a few years ago when, acting as a mediator between the Burundian government and the local rebel movements, he put forward a proposal which pointed in this direction. The formula as given form in South Africa has meanwhile been praised as a model in Nepal, the Democratic Republic of Congo and the Solomon Islands. Is this wise? South Africa had a number of unique trump cards in its hand in the 1990s: good economic prospects,

an active and well-developed civil society fuelled by years of underground activism during the apartheid era and by productive contacts in the diaspora, charismatic figures and any amount of goodwill from the outside world. And the influence of the Christian churches and their tendency to forgive should also not be forgotten. Far too little attention was given to these unique aspects of the South African situation when less well-equipped countries thought about a simple copy. Transplantation is then doomed to encounter rejection symptoms.

Meanwhile, the formula of the truth and reconciliation commission is also gaining ground in the Western world. In October 2008 Gerry Adams, leader of Sinn Fein, called for the creation of such a commission in Northern Ireland. In the United States, there are many groups pressing for the creation of an ‘independent, non-partisan commission of inquiry’ (though the term ‘truth and reconciliation commission’ is also in circulation) to systematically investigate the abuses of the Bush administration. And in Canada a truth commission is seeking to establish how the aboriginal peoples have suffered as a result of the Indian Residential School system, which removed children from their families, causing great suffering as well as damage to the indigenous cultures. The one-way traffic, from North to South, has finally been reversed to some degree.

2 THE THIRD WAY

The truth and reconciliation commission formula is still young, at barely a quarter of a century old. It

had a kind of predecessor in Uganda (1971), but the real work began in Bolivia (1982-1984). The last in the series for the time being has been set up in the Solomon Islands mid-2009. Between these two are more than thirty examples. It is a varied company. The commissions differ from each other in terms of their mandate, the period covered, the reporting system and their effects. However, the most important difference has to do with the quarter from which the support comes. Generally speaking, as in South Africa, it is a political authority which takes the initiative to set up a commission. Initially this was exclusively the government or parliament of the country that decided to investigate its own past, as for example in Argentina (1983-1984), Uruguay (1985) and Nepal (1990-1991). The first and only commission to be set up by the United Nations appeared in 1992 (El Salvador). In recent years a mix has often been used, with the UN sharing responsibility with the local government. This is what happened in Sierra Leone (2002-2004) and East Timor (2002-2006). However, there are also commissions which had their origin in civil society. In Guatemala, for example, a Catholic human rights organisation organised the REMHI project (Recuperación de la Memoria Histórica). More than 7,000 victims of the 36 year-long civil war were interviewed. The report, 'Guatemala: Nunca Más', rent open the past; it detailed more than 400 mass murders and reported that in 90% of cases it was the army that was responsible. Bishop Juan Gerardi, who presented the report, was killed two days after its publication.

The idea of the truth and reconciliation commission has spread across the world within a very short space of time. If they are all brought together in a kind of group photo, it is possible to see the failures and the more or less successful cases.

Failures

Of the truth and reconciliation commissions that have been created since the early 1980s, ten are regarded as complete or partial failures. I shall discuss a few of them. The very first commission, which operated in Bolivia from 1982 to 1984, was dissolved prematurely and did not produce a report. Its mandate was also very limited. The Mugabe government in Zimbabwe allowed the bloody excesses in Matabeleland to be investigated in 1985, but the report of that investigation was not made public. In the same year, a commission in Uruguay investigated the question of disappearances, but this was anything but an objective exercise. In Uganda, a commission continued for years to investigate human rights violations perpetrated during the regime of Milton Obote. It wrestled continuously with a shortage of funds and its report was not disseminated. Similar problems occurred in Nepal (1990-1991), El Salvador (1992-1993) and Ecuador (1996-1997). For El Salvador there was the additional problem that the United States, which had played a central role in the civil war, refused to hand over any documents.

Failure has numerous causes. Often, the power relations at the moment that a commission is formed stand in the way of its successful operation. The bastions of

the old order are still largely intact, enabling the army and police to prevent a powerful mandate or to place serious obstructions in the way. In the case of El Salvador, members of the Comisión de la Verdad received death threats. A good deal also depends on the commitment of the government or parliament which creates the commission. The operation is doomed to failure if these authorities do not provide the necessary credits, do not inform the population, do not disseminate the report and push the recommendations to one side. Politicisation is also sometimes impossible to rule out. This may be reflected in a mandate which regards crimes committed by the new regime itself as 'inappropriate' for investigation. Or it may be expressed in a highly selective reading of the commission report intended to serve political ends.

On the other hand, despair is not always necessary. Initially, the truth and reconciliation commission in Chad (1991-1992) was felt to have been largely a waste of time. As time went by, however, it became apparent that the material that had been collected could after all be used to initiate the prosecution of the former president Hissène Habré.

Summing up the results

Mention was made earlier in this chapter of the results that the South African commission was able to place on the table. What was said then largely applies for most of the other members of the family as well.

Decimating the lies

Truth and reconciliation commissions bring to light only a fraction of what really happened. But they do curb the number of lies circulating in a society. They do this whenever they confront the offenders with their victims in public hearings; they cut into the pack of lies by publicising the well-documented and long lists of crimes committed; and they do so with even longer lists containing the names of those who were murdered, maimed, exiled and robbed. Exhumations, often carried out on the instructions of a truth and reconciliation commission, are an even stronger contradiction of the myths of innocence. Clea Koff is an anthropologist who has explored mass graves in Rwanda, Bosnia and Kosovo. She has written down her experiences in *The Bone Woman* (2004). She has also worked in Ovcará, the place where Serbian troops murdered more than 200 Croats and dumped their bodies into a pit. She tells how she slowly releases a body from the remains of its clothing. At some distance from the grave, a woman stands watching. She wears a martyred expression on her face, writes Koff. Later, Koff hears that she is a Serbian interpreter. She told her that for years she had believed what had been written in her newspaper: that this grave did not exist. Koff: "That is the power of human remains, even before anthropology and pathology unlock their testimonies. When a government or military denies the murder of its own citizens, then to find even three bodies, let alone more than one hundred, is to lay waste to those claims, or at least undermine them. In a way, it is immaterial who is in these graves. The image alone can undo years of propaganda."

Breaking the silence

It is no coincidence that the formula of the truth and reconciliation commission was born in Latin America. The worst horrors there took place in the dark: disappearances, torture in anonymous houses, shadowy militias. The need for something that would shed light on the fate of the victims was exceptionally strong. The survivors also needed that light, because it meant they would finally receive recognition for what they had experienced in the dark. A few chapters ago I discussed the photo book *Speak Truth to Power*. Ariel Dorfman has translated that material into a play (*Voices from the Dark*). Its main character is Man, a sinister individual who mockingly puts into words the fears of the human rights activists. Halfway through the play he says that it is not death that people fear, but abandonment. I quote: "And this is what they fear, what they really fear : that nobody cares, that nobody listens, that people forget, that people watch t.v. and say these are not their problems and then have dinner and then go to sleep. People go to sleep. That is what they know and fear."

It is known that torturers try to sharpen that sense of abandonment and use it as a lever. "Scream as loudly as you can. No one can hear you.", they tend to say. Laid Saidi is an Algerian who lives in Tanzania. In May 2003, for reasons that are not entirely clear to him, he was expelled from the country. On the border with Malawi he was taken into the custody of a group of masked men. A week later another group of men, also masked, came to collect him. Two of them spoke English. They blindfolded him, placed a plug in his anus, put a nappy on him, tied his hands and feet and threw him into an aero-

plane. It was a long flight. When the plane landed he was once again placed in prison, a sombre place filled with deafening Western music. Then an interpreter translated for him what a man was screaming at him in English: "You are in a place that is beyond the world. No one knows where you are, no one is going to help you." It later turned out that he was in Afghanistan. In August 2004, after sixteen months, he was released. All that time, he was wrongly suspected of terrorism. He was given no explanation, no compensation. The story was reported in the *New York Times* of 7 July 2006. Since then, many similar stories have been made public.

Truth and reconciliation commissions break down the wall of silence which threatens to hold victims prisoner even after their liberation.

The rituals of the hearing

A criminal court session in the West is full of rituals, especially when the court is dealing with a particularly serious crime. The gowns worn by judges and barristers, the somewhat archaic language used, the décor and setting of the courtroom: these are all props whose intention is clear: to give more weight to the seriousness of what is happening. The hearings organised by some truth and reconciliation commissions, especially in Africa, tend to have an even stronger indirect influence on perpetrators and victims. People may express regret, weep, sing, pray, applaud. Where older rituals or religious elements are deliberately interwoven in the scenario of the commission, the effect becomes even more marked.

Quite a number of reports by the South African Truth and Reconciliation Commission recount an event

which occurred during the very first hearing. The Commission was hearing Nomonde Calata, whose husband had been murdered by the butchers of the apartheid regime. Suddenly, her speech turned into a long, protracted wailing. The sound of it continued to resonate for a long time on the radio and television. In her radio report, Antjie Krog described it as follows: “For me this crying is the beginning of the Truth Commission – the signature tune, the definitive moment, the ultimate sound of what the process is about. She was wearing this vivid orange-red dress, and she threw herself backward and that sound ...that sound ...it will haunt me for ever and ever. ...So maybe this is what the commission is all about – finding words for that cry of Nomonde Calatta. When the hearing resumed, Tutu started to sing: ‘Senzeni na, senzeni na ... What have we done? What have we done? Our only sin is the color of our skin.’” Alex Boraine, who was chairing the session, wrote later: “It was that cry from the soul that transformed the hearings from a litany of suffering and pain to an even deeper level.”

The third way

Unconditional amnesty has for some time ceased to be a real option. On the other hand, there are situations where using tribunals is a dangerous enterprise. A truth and reconciliation commission can then offer a third way which is rightly given priority for a while. In addition, this approach allows the victims to be placed on the front row, the local community to be involved in the process of coming to terms with the past and society at large to look for the mechanisms that caused a civil war

or other terrible event. No less important is the observation that the documentation brought together by such a commission can later serve as evidence in a tribunal; Argentina and Chile have demonstrated that this is possible.

Doubts

As a formula, the truth and reconciliation commission has strong supporters. However, there are also doubters; the political and/or cultural context may be such that public testimonies by victims and the equally public confessions of perpetrators are not a real alternative.

Opening cases

After the fall of the Berlin Wall, there was no rush in Eastern and Central Europe to write down a detailed account of forty years of repression. During the communist era, the writing of history had become a very malleable concept, a fact which evidently made the use of a truth and reconciliation commission an unattractive proposition. Instead, a different approach was adopted. The quest for information focused not on the entire period, but on a few key moments: the suppression of the Hungarian Revolution in 1956, the breaking up of the Prague Spring of 1968, the attack on the Polish Solidarity movement in December 1981. A second operation focused on the archives of the secret services, which were thrown open to individual citizens. It is not the history of a whole society that is being written here; instead, people can as it were put together their own histories. In the unified Germany this approach took on spectacu-

lar forms. An institute was created to administer the documents of the Stasi; the archive contains almost 200 kilometres of dossiers and more than 10,000 sacks of documents shredded by the secret service. For years, around 15,000 applications came in each month from people wanting to know what information had been gathered about them during the communist era, people who wanted to separate truth from suspicion and rumour. In his book *The File. A Personal History* (1997), the British essayist Timothy Garton Ash describes the confrontation with the archives. He shows how many people are filled with doubt, not wanting to know for fear that they will read that a relative, a friend, a neighbour had been spying on them for years; but at the same time not wanting to miss that quest.

A cultural phenomenon?

In my chapter on justice, Desmond Tutu argues that the system of criminal trials is a Western concept which often does not fit in with the culture of the African continent. Similar voices are now also being heard in relation to the proceedings of a truth and reconciliation commission. Tim Kelsall, a British colleague who has worked in Africa, writes that the concept of individual confession and the associated ‘healing’ has its origins in the Catholic religion. This religious custom was later globalised, as it were, in the practice of psychoanalysis and psychotherapy. (He sees the most recent version of this tendency in the confessions of well-known and less well-known men and women on the television screen). A truth and reconciliation commission is based in part on that cultural principle. But is such cultural given also present in

the non-Western world? The doubts are fuelled by the work of anthropologists, who have shown that a collective forgetting of the past is the cornerstone of the reintegration of child soldiers in Sierra Leone and that, as a result, it is risky to reawaken memories of the civil war in public. There is a general belief that talking explicitly about a traumatic past opens the door to evil spirits.

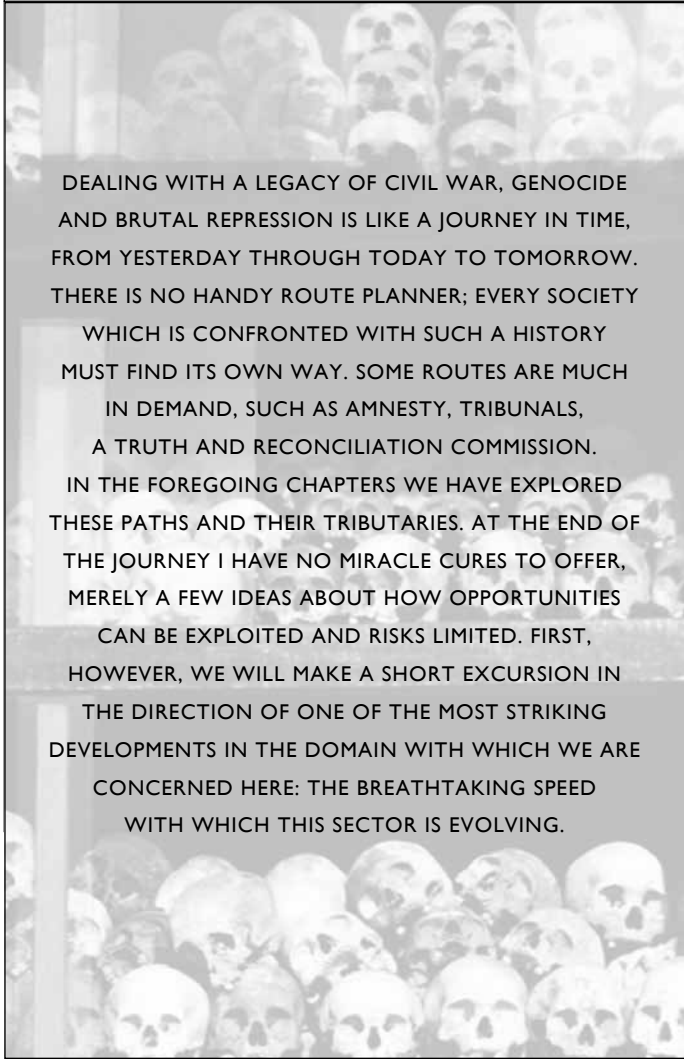
What ultimately matters

The question of which is the better path to choose – that of forgetting or that of remembering – has still not received a uniform answer. Susan Sontag, the *grande dame* of the American intellectual community, tackles the question in her final book (*Regarding the Pain of Others*, 2003). She writes that remembering war and violence is a moral duty, that forgetting is tantamount to dismissing the pain of others. But five lines further on she says that too much remembering sows bitterness; it can be a time bomb, because it frequently encapsulates a desire for revenge. Nowhere is the problem so powerfully captured as in the play by Ariel Dorfman, to which I referred earlier. In *Death and the Maiden* Pablo Escobar, a member of the newly formed *Comisión de Verdad*, says to Paulina Salas, his wife and one of my characters: “We are being destroyed by so much past; we are choking from too much pain and rancour. People can also die from an overdose of truth, you know.” In an epilogue accompanying the text of the play, Dorfman formulates the dilemma very precisely: “How are we to keep the past alive without being its prisoners? How can we forget the past without

running the risk that it will repeat itself, with all its horrors?” [author’s translation].

It remains a tremendously difficult balancing act. Yet the current debate has already borne fruit. A consensus is growing around the realisation that a government-imposed silence is the worst of all options. Anyone who obscures the window into the past does not prevent the creation of poisonous myths, of whole and half lies. These then fill the vacuum left by the enforced silence. The past simply carries on smouldering, like a heathland fire: barely visible but no less damaging for that. But even where a society is not afraid of the confrontation with a dark past, caution is called for. Victims must be free to decide how far they themselves are willing to go in their personal quest. For some, looking at what happened can be liberating; for others it can be a source of new pain. In any event, memory alone is of limited value; enrichment is needed. That can be achieved if knowledge of the facts is supplemented by a reflection on what made possible a civil war, a military dictatorship or a bloody repression. Perhaps, as Susan Sontag also writes, there is too much commemoration and too little reflection. The fruits of reflection can limit the risk of a return to the awful events of the past. Only then does remembering open the way to a better future.

**PART III
THE FUTURE
OF AN UNRESOLVED PAST**



DEALING WITH A LEGACY OF CIVIL WAR, GENOCIDE AND BRUTAL REPRESSION IS LIKE A JOURNEY IN TIME, FROM YESTERDAY THROUGH TODAY TO TOMORROW. THERE IS NO HANDY ROUTE PLANNER; EVERY SOCIETY WHICH IS CONFRONTED WITH SUCH A HISTORY MUST FIND ITS OWN WAY. SOME ROUTES ARE MUCH IN DEMAND, SUCH AS AMNESTY, TRIBUNALS, A TRUTH AND RECONCILIATION COMMISSION. IN THE FOREGOING CHAPTERS WE HAVE EXPLORED THESE PATHS AND THEIR TRIBUTARIES. AT THE END OF THE JOURNEY I HAVE NO MIRACLE CURES TO OFFER, MERELY A FEW IDEAS ABOUT HOW OPPORTUNITIES CAN BE EXPLOITED AND RISKS LIMITED. FIRST, HOWEVER, WE WILL MAKE A SHORT EXCURSION IN THE DIRECTION OF ONE OF THE MOST STRIKING DEVELOPMENTS IN THE DOMAIN WITH WHICH WE ARE CONCERNED HERE: THE BREATHTAKING SPEED WITH WHICH THIS SECTOR IS EVOLVING.

A SPECTACULAR DEVELOPMENT

It has become popular to talk about an ‘acceleration of history’. It has become a cliché. But in the domain that is explored in this book, it comes very close to reality. Within the space of twenty-five years, dealing with a past of war and repression has evolved at a rapid pace from monotony to a multicoloured tableau.

In 1983 Argentina exchanged its junta for an elected civilian president. The country looked hard at the black consequences of seven years of military dictatorship. It could take one of two paths: prosecutions or amnesty. At the time, these were the only strategies available. But the new president, Raúl Alfonsín, innovated: he convened a Comisión Nacional para la Desaparición de Personas, a truth and reconciliation commission *avant-la-lettre*. A second development came in 1988, when the Inter-American Court of Human Rights found Honduras guilty of impunity. Thereafter, things suddenly began to move very quickly. Chile breathed new life into the concept of the truth and reconciliation commission. South Africa made a template of the procedure. The reunified Germany experimented with opening up the Stasi archives; Poland did the same with the screening of leading communists. When its civil war came to an end, Mozambique mobilised old rituals of reconciliation. A tribunal for the former Yugoslavia was set up in The Hague. The International Criminal Court was in

the starting blocks in 1998. Rwanda modernised its *gacaca* courts. More and more countries began putting foreign perpetrators of human rights violations on trial, based on the principle of universal jurisdiction. And then there is the plethora of hybrids. Sierra Leone opted for a cocktail of instruments: a tribunal, a truth and reconciliation commission of mixed composition, and traditional rituals. Cambodia brought up the rear of this long line of innovations with a court jointly designed by the UN to deliberate on the killing fields.

The speed with which this wide array of strategies developed came as a surprise – all the more so because between 1945 (the tribunals in Nuremberg and Tokyo) and 1983 (the Argentinean Comisión) there had been virtually no development on this front. This begs the question of what pushed the engine of change into a higher gear. I see three powerful causes.

1. The fact that the economy now operates on a global level is familiar. Politics is also visibly and palpably in the grip of the globalisation process. Much less noticed is the growth of an international legal order. Yet the arrival of a court without borders is a fact. The consequences of this can be found in the many forms taken by the prosecution of grave violations of human rights.

2. The second cause came about in response to the rise of tribunals. Countries which have left behind a civil war or a dictatorship are now expected to haul the wrongdoers before the courts. The UN and international NGOs make this patently obvious. That creates major problems, since the local context often stands in the

way of straightforward punishment. I have already discussed the political risks, material obstacles and a whole raft of other objections. The result is a devil's choice. On the one hand there is the heavy but not unjustified pressure from the UN and human rights NGO's – though admittedly, accepting this pressure can fail miserably on the ground. On the other, blanket amnesty is no longer regarded as tolerable. Political reality conflicts with ethics. The result is a feverish search for techniques that lie in between the tribunal and complete forgiveness. One answer may be a truth and reconciliation commission, as in South Africa. Temporary amnesty may be another, as in Burundi. North Uganda sees part of the answer in existing rituals, post-communist Hungary in a limited clean-up of the police and civil service. Sometimes the answer lies in a policy that completely replaces prosecution. Sometimes it is an instrument that supplements some form of administration of justice. But always, the design is geared towards the dangers inherent in the local situation and the opportunities it offers.

3. The diversity of strategies is still growing, as fashionable techniques are stealthily distorted. In the former Yugoslavia this was done with the formula of the truth and reconciliation commission. The ethnic groups there could accept the procedure, but only if each group had their own commission – each their own truth, in other words. Indonesia provides a second example. The government there at first vehemently opposed a criminal law approach to the violent acts perpetrated by its army in East Timor in 1999. Under international pressure, the country then set up its own ad hoc tribunal. Unfortu-

nately, that court produced mainly acquittals. Key terms, such as 'victim' and 'war crime' are also hijacked and given new meanings. In South Africa the majority of whites eagerly plucked the fruits of apartheid. Despite this, many of them described themselves as victims after 1990, arguing that the government had misled and indoctrinated them for years. All very odd. Interpreting the notion of victimhood so widely dilutes the demands for guilt and punishment. Serbian and Croatian courts, for their part, have been very creative in their use of terms such as 'war crimes' and 'crimes against humanity'. They judge, often on dubious grounds, that these terms apply to suspects from the other camp; for suspects from their own ethnic groups, they search for less threatening labels.

2

A CALL FOR REALISM

Following their liberation in early 1945 Belgium, France and the Netherlands faced an enormous challenge. Hundreds of thousands of buildings had been laid to ruin or damaged, thousands of bridges destroyed. The railway network was completely disrupted; more than half the merchant fleet had disappeared. Factories lay idle or ran at half capacity. Supplies of food and coal for the people were frighteningly low. Politically, reconstruction was no less of a task. It was only years later that these countries returned to the economic levels of 1939.

If this corner of the world needed so long to pull itself upright again, how much more difficult must it be in countries such as Cambodia, Liberia and Chad? The devastation caused by genocide, a civil war or a dictatorship is incalculably greater there. The agenda facing the political leaders and the people is more complex. Achieving peace, writing a constitution, organising free elections, cleaning up the civil service and judiciary, enforcing respect for human rights, stabilising the currency, breathing new life into industry, demobilising rebels, guaranteeing a minimum of physical security, helping the victims, keeping the international community on-side – all of this has to be done. It is impossible to take on everything at once. Time imposes painful choices. What is the best moment to tackle a particular item on

the agenda? What should come first, what last? What timing and tempo should be adopted? In other words, when is the time ripe to begin prosecuting those who murdered and tortured? With a view to the victims, should recording what happened to them be given priority? How quickly should things proceed? These are also questions that exercise the UN and large NGOs – except that their answers are not always the same as those of the countries concerned. Circles within the United Nations, supported by international human rights NGO's, generally wish to see tribunals installed; and if that cannot be achieved immediately, then at least a truth and reconciliation commission. Locally, a different view is often taken, especially by the government, which has problems on its agenda that are felt to be much more pressing. Moreover, prosecution is a very risky undertaking. The question then is whether tribunals really cannot wait until later. In these circumstances, my view is that the answer to this question can be 'yes'. That is what my journeys through the world of the unresolved past have taught me. Let me briefly retrace my steps.

1 LESSONS FROM ARGENTINA

Argentina and Chile have already been a part of call earlier in this book, because analysis of their recent evolution is more than worthwhile. Both countries opted for amnesty when democracy returned in the early 1980s. Around the end of twentieth century, this policy came to an end; senior officers in the army and police

were now brought before the courts. As a result, the burden of the past is likely to become easier to bear for the survivors. What is happening now also breaks with the culture of impunity. There are several factors that have made this possible. In Chile and Argentina, there is the significant role played by the truth and reconciliation commissions from the early 1980s on. Local NGOs also kept the fires burning. But there is much more, as a close-up of the Argentinean case shows clearly.

The amnesty demanded and received by the military leaders was not total. Even shortly after their fall, in 1983, several generals were convicted. Moreover, there was no amnesty for the kidnapping of children of murdered opponents. Another factor of crucial importance was the report of the truth and reconciliation commission which had begun work in 1984. The report described 340 secret prisons and identified 9,000 disappeared opponents of the junta. Within the space of barely a year, more than 200,000 copies of the report were sold. Some of the unpaid debt had been brought to light and stored in the memory for later use.

The junta had ruled with an iron fist. Despite this, it did not intervene when in 1977 mothers openly went in search of their missing children. Every Thursday, these Madres de Plaza de Mayo walked around this part of Buenos Aires holding aloft photos of their missing sons and daughters. They were succeeded by the Grandmothers, the Abuelas de Plaza de Mayo (www.abuelas.org.ar). They knew that they had lost their children for ever. But their grandchildren had also disappeared, taken away from those killed and given as gifts to childless

supporters of the junta. It is highly probable that they are still alive, living in families that are not their own. The grandmothers to date have knowledge of around four hundred missing grandsons and granddaughters.

The organisation of the Abuelas grew into a symbol of the resistance to impunity. Help for this came from an unexpected quarter. Since the late 1980s, knowledge of DNA had made it possible to match genetic data via the female line. In 1987 the government had founded a 'banco de datos genéticos', yet another not insignificant detail in the story. The grandmothers deposited their genetic identity cards in this databank. They contacted an American researcher, Marie-Claire King, from the University of Washington, who supplied the technology. King told me that since then she has discovered the biological link between a missing grandchild and a searching grandmother in almost a quarter of cases. One day, the Abuelas believe, this instrument will lead to all those who disappeared. The babies and toddlers would now be aged over thirty; they will live for another forty or fifty years. As King told me, the memory of the DNA will be a weapon against forgetting for at least as long. Meanwhile, an Argentinean team had been formed which was investigating the mass graves in that country. The combination of exhumations and DNA technology is manna from heaven for those who still do not know what happened to their missing relatives.

Localising a kidnapped child is one thing, removing it from its adoptive family is something else entirely. It is at this point that the Argentinean family courts come into the picture. During its regime, the junta populated the judiciary with loyal supporters. The courts which

rule on family matters escaped this operation, however; the generals probably thought they would not be taking any vital decisions. The result is that in this sector judges remained in office who were favourably disposed to the pleas of the grandmothers. This acted as a catalyst. Moreover, most of the disappearances have never been resolved. The crimes are therefore still open and unsolved, which means that the statute of limitations does not apply. This also means that criminal courts wishing to prosecute such cases are on solid ground.

It all seems like little more than tinkering, but the scale of operations increased rapidly. The websites and the actions of the Madres and the Abuelas became a focus of attraction – first in Argentina, later in many countries of Latin America and ultimately also on other continents. The Argentine forensic team has now performed exhumations in more than twenty-five countries.

What happened in Argentina looks like the result of a happy confluence of circumstances: an amnesty with restrictions; a widely read report on torture and disappearances; NGOs which were unsuspected because they were staffed by women; national and international experts in the field of identifying disappeared opponents; impartial judges; crimes which do not expire; and the power of the Internet. Yet lessons can be learned from this. What happened more or less by chance in Argentina can be elicited deliberately elsewhere. A first lesson is that amnesty laws, if they are genuinely unavoidable, must always contain restrictions. This keeps the door open for prosecutions. Crimes against humanity should ideally be recorded as quickly as possible, in a truth and reconciliation commission or in some other way. Just as

important is that civil society has every chance to develop; this can allow zones to arise in which requests for honest information on and accountability for violations of human rights are recorded and kept. And then there is the remarkable role played by women in this entire process of dealing with a past that is full of horrors. The mothers and grandmothers of the Plaza de Mayo are not an exception: in Northern Ireland there is the Women's Coalition to which I referred earlier; Betty Bigombe is a Ugandan woman who was first a government minister and has been for some time the only emissary who had access to the rebels of the Lord's Resistance Army. In Burundi there is Marguerite Barankitse, a Tutsi who has helped thousands of Hutu orphans to find homes. And there are many other examples. All this is no coincidence. Women choose an identity in which their position in the family can be the dominant ingredient. This makes it easier for them to build bridges to the women 'on the other side'. The relationship they have with the past is also often much more focused on the future than is the case with men. As mothers, they want to be sure that tomorrow and the day after are safe for their family. Feelings of hatred which are rooted in the past stand in the way of this, and are therefore less avidly cultivated. Argentina also shows that women can develop political activities that are not accessible to men, perhaps because they are perceived as less threatening. The result is that they were able to get under the radar of the government, as it were. There is an important lesson in all of this: it pays to involve women much more explicitly in the confrontation with the legacy of civil war and repression.

2 EVERYTHING IN ITS OWN TIME

The battle against impunity cannot be fought hard enough. Yet there are situations where it is desirable to wait before instigating legal proceedings against those who are responsible for great wrongs. This pause may be needed in order to rescue peace or to persuade a repressive government to stand down. In other cases a society may have no choice but to give priority to much more pressing needs: there may be famine, and bread comes before justice; the survivors may hanker after peace and defer their calls for punishment. Exceptional circumstances demand exceptional measures. It is in this light that the debate surrounding the arrest warrant issued against the Sudanese president Al Bashir could be viewed. Resistance to the decision by the public prosecutor of the International Criminal Court is particularly strong among African countries, supported by the African Union. In the spring of 2009 they even threatened to rescind their ratification of the Court. They see the step taken by Louis Moreno-Ocampo as yet another demonstration of the Western fixation on abuses in Africa. At the same time, they say that the demands for systematic punishment are closing off the path to peace in Darfur. This problem is now often seen as a dilemma worldwide: peace or justice. In reality it is possible, as long as there is a willingness to move towards temporary forms of conditional amnesty, to achieve both peace *and* justice.

This does not however mean that the past can be forgotten. Developments in Argentina, Chile and Spain show that the desire for justice never dies. The door

must at the very least remain ajar. This means that anything that can prevent destruction of evidence is of crucial importance. Recording of incriminating documents and witness statements is one of the possibilities. Occasionally, luck is on the side of the victims. At the end of 2005 a remarkable find was made in Guatemala. In an abandoned munitions depot, an archive was found of one of the most hated police forces from the time of the junta. It contained the names of opponents who had disappeared, of kidnapped children and of those who had given the orders. But it is far too risky to leave the custody of material of this kind to chance; it must and can be done differently. In Cambodia, a non-governmental organisation has been active since the middle of the 1990s collecting everything that could shed light on the regime of the Khmer Rouge (www.decam.org). Hundreds of thousands of documents, six thousand photos, information on 189 prisons and almost 20,000 mass graves were gathered together. It is an activity in which donor countries, including small nations such as Belgium and the Netherlands, can also play a key role. They can train archivists, develop digital techniques for storing data, facilitate the translation of reports into the indigenous languages.

Vital information is also sometimes present in other countries, which can then be released. Part of the memory of Burundi, Congo and Rwanda, for example, lies in Belgium; the same applies to the Netherlands with regard to Indonesia. Just how important this step can be was demonstrated in El Salvador and Guatemala. In the former case the United States refused to open its archives; this was one of the reasons that the truth and

reconciliation commission in El Salvador was not really able to succeed. Somewhat later, an NGO succeeded in forcing the transfer of American documents to the Guatemalan truth and reconciliation commission; this greatly enhanced the value of the report.

The hope is that this recording and storing of memories will lead to a form of interim justice. However, in anticipation of later criminal trials, it is also essential to devote explicit attention to the victims and survivors. Their pain does not disappear when the pages are temporarily turned. Where the means are available, it is important to meet their material needs. It is also desirable to record the memory of what happened in all manner of symbols as quickly as possible. Monuments, memorial days, museums: these are just a few of the possible ways of giving recognition and a sense of fulfilment to victims. The most urgent need, however, is the identification of mass graves and the reburial of those who were dumped in them. All cultures share respect for the dead. On the African continent, this takes on an additional dimension. In Matabeleland (Zimbabwe), the Amani Trust worked on exhuming those murdered in the 1980s by president Mugabe's army. "At community and family meetings we have been told of many difficulties linked to the spirits of improperly buried dead, such as bad behavior in children, failure to marry, illness, drought, floods, and crop failure, says Shari Eppel, who worked for the Trust. This is why reburial and the rituals that surround it is so important. Martien Schotsmans, from whose diaries I have already quoted, saw how even finding out what happened to the rest of the victim's body is of enormous significance: "In Rwanda I saw

how a mass grave was opened in order to remove the bodies which had been thrown into it; how what came out was mostly mushy pulp; horribly stinking pulp; not excrement but corpses; I saw the fragments of clothing there too; I saw how the woman that I knew suddenly uttered a cry, somewhere between intense sadness and intense joy; this was her father's loincloth, so this must be his skull; she holds him tight, almost kisses him. People are digging as if possessed in the slime, some of them wearing gloves or black plastic bags tied around their hands, others with their bare hands. There is an armband that I gave my mother on her birthday; here are a couple of identity cards, you can still read them; a crucifix, a shoe, clothes, digging and digging, people come to look, some of them go away, no, my sister isn't here; others sit, silently staring ahead. I stand, look at it, take pictures, at their insistence, stand looking for hours, no longer noticing the stench; people talk to me, tell me how their husband, their brother, their child might have been murdered here, might lie amongst these corpses."

Exhumations also provide proof that soldiers, police, militias and rebels have perpetrated murder and torture. Clea Koff talks in *The Bone Woman* about her work in Ocvara, Vukovar. *The Graves* (1998), a photo book by Gilles Peress and Eric Stover, deals with the same subject. The images show what remains by way of bones, items of clothing, wallets. Accompanying one of the photos is a sentence from a conversation with Clyde Snow, the forensic anthropologist who led the mission: "Bones are often our last and best witnesses: they never lie, and they never forget". No wonder, then, that the perpetrators do all in their power to ensure that those

witnesses disappear. *The Graves* recounts how a first attempt to excavate the mass grave in 1993 was prevented by Serbian soldiers. An explicit mandate from the UN was met in Ocvara with ill-disguised threats. The book describes the ultimate discussion between the forensic experts, a Serbian general and the local commander of the UN peacekeeping force, the Belgian Colonel Peeters: "All eyes turned to Colonel Peeters, who had full authority granted by countless UN Security Council resolutions, to challenge the Serb general's ultimatum. But he didn't say a word. Unperturbed, the colonel sat slouched in his chair, stroking his chin as he stared at a bouquet of red rose buds in a white porcelain vase in the center of the table. It was as if he were waiting for them to bloom".

3 NO CARTE BLANCHE

Deferring punishment is not an easy decision. For many victims it may prove to be an ordeal or the cause of disconsolate resignation. In 2000, Ariel Dorfman wrote about the years in which Chile's General Pinochet enjoyed amnesty: "I could sadly no longer foresee a different future. And so I did what so many of my compatriots did: I hushed my conscience in order to be able to bear the inevitability of the injustice. I became accustomed to the shadow of the General in our midst." [author's translation].

Politically, deferring punishment is also a gamble. Procrastination can mean that tomorrow never comes. Temporary immunity, as provided for in the Arusha

agreement for Burundi, can quietly turn into a prolonged version of amnesty. A decision to hold off from prosecution should therefore preferably be accompanied by very strong arguments. This prevents the problems that stand in the way of prosecution from being artificially exaggerated. Are the fears of a return of a junta, for example, based on verifiable facts or is it a cheap alibi for leaving the military alone? Is the wall of silence that people wish to build around the past absolutely necessary? These questions can best be answered in the context of a debate that is as broad and open as possible. Amnesty out of necessity is also only possible if the democratisation of politics and society is given every opportunity. That is precisely what happened in Argentina and Chile. Otherwise there is little or no guarantee that choosing leniency will prove fruitful in the medium term.

This of course leaves the question of whether those responsible for grave violations of human rights will cooperate in this strategy if they know that any amnesty is temporary. Would Pinochet have stepped down if he had known what a certain Baltasar Garzón would set in motion a few years later? Does president Robert Mugabe of Zimbabwe believe that he can relinquish power with an easy mind, because he has been promised free passage? The existence of the International Criminal Court and the principle of universal jurisdiction undermine the credibility of promises of this kind. Consequently, it remains a leap in the dark for all concerned.

Amnesty International is one of the fiercest opponents of any form of amnesty for violations of human rights. In its public utterances, prosecution receives absolute priority. Processes that do not go via the criminal courts, such as a truth and reconciliation commission or the use of traditional rituals, are regarded with suspicion. An internal document from May 2002, which has not been revoked since, states that AI can support these options only if they supplement prosecution and do not stand in the way of the work of tribunals. The document adds a further eight restrictive rules to this general condition. This issue came up again in 2007 in a public report (*Truth, Justice and Reparation. Establishing an effective Truth Commission*; reference: POL 30/009/2007), in which AI discusses the formula of the truth commission at length. There is great appreciation for the role that such a commission can play, but once again the conclusion emphasises the primacy of prosecution in the courts: “Truth commissions should unearth and reveal the whole truth – or as much as is possible to find. They should ensure that suspected perpetrators are prosecuted ...”.

1 LEGAL FUNDAMENTALISM?

This very restrictive view, which is echoed elsewhere in the human rights movement, is a source of great

frustration in the Third World, where accusatory terms such as 'enforced legalism' and 'legal fundamentalism' are commonly heard. What are the arguments?

Self-delusion

Following a civil war or years of repression, a society is usually in a very weakened state. Leading figures have been murdered or are under suspicion. Army and police are under legal restraint or resist all change. Government agencies and the courts lack even the most elementary resources. In this situation, organising criminal trials is almost impossible. On paper, the internationally imposed obligation to prosecute crimes against humanity sounds very plausible. However, all that is involved in implementing this mandatory task is far too often underestimated by the outside world. One consequence of this is that countries seek recourse in sham operations. What the international community demands is apparently accepted, but very quickly becomes corrupted. I saw it happen in Ethiopia, and it is happening again in Burundi. This state of affairs does not bring justice closer - quite the reverse. Anyone who does not see this is suffering from self-delusion.

A paradox and an unavoidable debate

The West has for some time shown an interest in the alternatives developed in Canada and New Zealand to 'standard' punishment of crimes. These countries employ techniques borrowed from their original inhabitants. The technical term is 'restorative justice'. The formula is

based on the idea of mediation between perpetrator and victim, on dialogue between the two parties and on restoration of the damage and suffering caused. Custodial sentences are avoided as far as possible. The interest in this restorative justice is related to the realisation that an approach based purely on the criminal law sometimes fails to achieve its objectives, that it helps neither perpetrator nor victim.

It is a paradox. Precisely at a time when doubts are arising in their own countries about the benefits of the criminal process, Western experts are demanding the use of tribunals elsewhere. Once again, one of the arguments is that prosecution acts as a deterrent to future perpetrators. Yet some realism is called for here, too. Neither international bodies nor NGOs can deny that punishment has (so far?) failed to have a deterrent effect. The Yugoslavia Tribunal, formed in 1993, was unable to prevent the massacres in Srebrenica, in Kosovo or in Knin. The dead in Eastern Congo and in Darfur lost their lives after the Rwanda tribunal in Arusha had begun its work.

Much also has to do with the lugubrious form which war sometimes takes. Regular armies have been replaced by gangs operating in the shadows. Agreements made by the UN are binding for governments, but the warlords who terrorise each other and the population in places such as Somalia take no notice of them. That was also a problem in the former Yugoslavia. In January 1992 a ceasefire was agreed between Croats and Serbians with the mediation of the UN. This was intended to end the siege of Dubrovnik. But in fact the city, where tens of thousands of people had spent months

living in the cellars, remained under fire. I spoke to Mirko Jokic, the Croat who was responsible throughout that time for distributing the scarce food supplies. In answer to my question as to why the firing only stopped in August, seven months after the ceasefire, he said that the militias from Serbia and Montenegro did not feel bound by the agreement. That is the way of things.

There is yet another problem. The demand is not only that crimes be prosecuted, but also that Western procedural norms be applied – as in fact already happens in the international tribunals. Our Western rules rightly offer ample legal certainty to suspects who are brought before the courts. At the same time, there is a danger of procedural errors which can lead to unexpected and undesirable verdicts. We are happy to accept that risk, because the right to a fair trial is sacrosanct. However, the situation is more sensitive when it comes to particularly grave violations of human rights, such as happened in Rwanda. There was the case of Jean-Bosco Barayagwiza, a leader of the extremist Hutu party and major shareholder in the hate radio Mille Collines in Kigali. Prior to being handed over to the tribunal in Arusha, he spent some time in prison in Cameroon. The international judges ruled that he had spent far too long in pre-trial detention without being formally charged, and consequently released him. For the survivors this was a slap in the face; for confidence in the tribunal it marked a new low point. With some legal gymnastics this decision was reversed and Barayagwiza was later convicted. But the debate about the universality of the Western rule of law will not be quickly silenced.

The accusing finger

The post-war trials of Belgian, French and Dutch citizens who had gone astray in the Second World War did not proceed according to the book that is now prescribed. What the colonial powers did in their battle against the freedom movements did not come before the criminal courts. Spain and Portugal decided against prosecution after years of dictatorship. Yet we expect countries in the Third World to do what we did not. It reminds me of what Amos Oz writes about the attitudes of Europeans on the Arab-Israeli question: “So, before you people look down on us – Jewish idiots, Arab idiots, cruel people, fanatical people, extremist people, violent people – be a little more careful wagging your fingers at all of us. Our bloody history is going to be shorter than your bloody history”. (in *How to Cure a Fanatic*).

There is something touching in the arguments of the guardians of justice. The cause for which they are fighting is of the greatest importance. It is good that they consistently point a finger at the culture of impunity. However, overkill lies just around the corner. A healthy dose of realism will do their arguments no harm. A certain modesty in the demands for a policy of harsh retribution would also not go amiss. It is notable in this regard how some circles in the United Nations are beginning to distance themselves from overly rigid standpoints in the battle against impunity. The report by Kofi Annan to the Security Council, that I already mentioned, points to the need for new techniques other than prosecution – “to do things that courts do not do or do not do well”.

2 WHAT TO INVEST IN?

Coming to terms with a tragic past is initially a matter for the country where the suffering occurred. Yet there is also a growing involvement of the international community. The question then is how the United Nations, individual donor countries and the human rights movement can best direct their energies. Should the battle against impunity be given absolute priority? Or is it better to choose a diversified approach?

Two priorities

As I wrote earlier, there is a lot of competition on the market for sympathy. Victims are often embroiled in a fierce struggle for attention. But there is also competition on the supply side. As soon as a conflict comes to an end international organisations, governmental and non-governmental, appear on the stage. Dealing with trauma, giving advice on setting up a truth and reconciliation commission, offering assistance in developing tribunals: these are some of the services they are keen to provide. In Kosovo, around three hundred of these organisations were active at the end of the 1990s. In Burundi, some fifty projects were set up around that time in the field of reconciliation alone. This oversupply regularly creates problems. There is duplication, lack of co-ordination. Moreover, many of these well-intentioned third parties bring their own experts with them. In his report to the Security Council, Secretary-General Kofi Annan wrote: "Too often, the emphasis has been on foreign experts, foreign models and foreign-conceived so-

lutions to the detriment of durable improvements and sustainable capacity." Annan was asking for a double change of course. Much more attention is needed for the strategies demanded by the local context. And most of the energy could best be invested in training people locally, eliminating the need to import experts as rapidly as possible. Local embedding of policy is thus a first priority. This offers the best guarantee against unexpected failures.

Whichever path is chosen, giving priority to victims and survivors is crucial. It is they who carry the heaviest burden of the past. This second principle has many consequences: allow an open debate to take place, at all stages of the process of coming to terms with the past; listen to the victims, involve their organisations in the preparation and implementation of policy; disseminate information via all media and in as many local languages as possible; protect those who are willing to testify; allow a truth and reconciliation commission to shed light on what the victims wish to see an illuminated; seek measures that increase their access to health care, housing and education and actually put those proposals into practice.

All this is no easy task. Only South Africa has succeeded in systematically incorporating these priorities into its policy planning, but taking the step to implementation proved difficult there, too. In countries where the resources are even scarcer, the barriers are usually much too high. Material support from the international community is then indispensable. This applies all the more for countries which still have an unsettled debt to pay.

A simple 'sorry' is not enough. Business leaders in South Africa admit that they supported apartheid; the Catholic Church in Spain regrets its role during the Civil War seventy years ago. Sometimes this seems like a cheap way of salving a troubled conscience: cheap because after the words of apology money rarely appears on the table. At a UN conference in which the slave trade and colonialism were discussed (Durban, September 2001), African countries pointed out yet again that much more is needed. There can be no doubt about the sincerity of the gesture. There is no possibility of avoiding the question of guilt. And the apology must above all have tangible consequences.

Flexibility

One-sidedness in the international response to violations of human rights has long been the preferred option. First, people looked the other way when amnesty was granted. Later, once again one-sidedly, the obligation to prosecute was introduced and imposed. Gradually, however, an understanding of other forms of local policy is developing. Combinations of a tribunal, a truth and reconciliation commission and traditional rituals are now commonplace. Flexibility is replacing rigidity. Despite this, there is still great hesitation in accepting that there are circumstances in which prosecution can have unwanted consequences. That is wrong: it would be much better to recognise the risks and at the same time invest in programmes to support a powerful democratisation process. That will enable the conditions to be created that will lead in the medium term to

justice, even criminal justice. That is the lesson offered by countries such as Argentina, Chile and Spain.

Prevention is better than cure

No policy can guarantee that a past of civil war and repression will ultimately be laid to rest. There are too many dilemmas, too many unknowns. It is in this light that the question of conflict prevention arises. Preventing a bloody conflict between different sections of the population, avoiding the rise to power of a brutal junta, smothering potential genocide – all these render protracted and bitter healing processes unnecessary. Naturally, this is in the first instance a matter for the countries where the time bomb is ticking. Yet the responsibility of the outside world is immense.

But how are we to achieve this timely intervention? Often, reports about crimes against humanity encounter disbelief among the public, politicians and the media. There is hesitation, doubt, there are protestations that such cruelty is not possible. Victims who manage to break down the wall of silence find that no one is willing to listen. Time and again we all go through a number of phases: first the phase of not knowing what is happening; then, as the amount of information increases, there is initially scepticism, then the first wisps of concern appear; this is ultimately followed by acknowledgement, later by humanitarian actions, later still by feelings of guilt, perhaps an apology or the erection of some kind of local monument and a promise that things will be different next time. Can this 'learning curve' to which Samantha Power refers in *A Problem from*

Hell be shortened, so that the cancer is not able to spread? This appears to be easier where a derailing conflict could have geopolitical consequences. That is rarely the case in Africa, but in Bosnia and Kosovo it was most certainly relevant. There, the new world order was being built after 1989. The credibility of NATO was at stake. The link with Muslim terrorism was a cause for concern. Yet the tragedy of Srebrenica once again came as a surprise. Has anything changed since the genocide in Rwanda and the mass murders in the former Yugoslavia? News-gathering, such an important part of the process of consciousness-raising, has certainly become easier. Journalists have more and better technical aids than in the middle of the 1990s. There are mobile phones; satellites enable reports to be phoned in from anywhere in the world, even where the mobile phone fails. Other satellites deliver pictures of even the smallest mass grave. The Internet opens up access to sources from all over the world. Weblogs provide first-hand reports. In Iraq, soldiers with digital cameras were gradually displacing the professional photographers. Soldiers stand (and fall) on the front line, where the action is. The photographs they take are also immune to the rules that govern editors. Self-censorship appears to be alien to them, as do aesthetic concerns. As a result, their images are often much closer to the reality. International aid workers and sometimes victims also make digital records of what is going so terribly wrong. The Internet allows these photos to circulate more widely and more rapidly than ever before. All of this can cause the hazard warning lights to flash sooner. The images from Abu Ghraib prison in Iraq are a clear demonstration of this.

It is of course debatable whether all this is merely a question of technology. The problem is related not so much to the timely detection of an incipient genocide or other great suffering. Recognising that intervention is needed – that is the highest hurdle.

Is it up to the media to help in removing this obstacle? Conflicting experiences have been gained on this subject in the Netherlands, following the events in Srebrenica. The Dutch press devoted a great deal of attention to the adventure of Dutchbat, the Dutch UN contingent in the enclave. That reporting later came under fire. A study published in 2002 by the Netherlands Institute for War Documentation highlighted a whole array of shortcomings: too much moralising, too few facts, too much opinion, too little analysis, too much emotion. And it added: “The trauma of Srebrenica is also the trauma of the Dutch journalist”. Then, in early July 2005, came the book by Nel Ruigrok (*Journalism of attachment. Dutch newspapers during the Bosnian war*). Her conclusion sounds harsh: journalists at the time deviated from the ideal of impartial reporting. By choosing the side of the victims and by continuously calling for military intervention, they put politicians in The Hague under excessive pressure. This in turn led to defective decision-making. The discussion is still in full swing.

Prevention is better than cure, I wrote above. But the link between prevention and cure consists of two-way traffic. Dealing adequately with the past prevents new conflicts. If the mutual hate does not die down, if the perpetrators of yesterday reoffend tomorrow, if the victims are left with their pain, there is a great risk that the

terrible events will recur. It is this realisation that has placed coming to terms with a painful past so high on the agenda of governmental and non-governmental organisations. About time, too.

EPILOGUE

In his first appearance as a strip cartoon figure, before the Second World War, Superman recounted in every episode that he stood for a 'never-ending battle for truth and justice'. Coming to terms with the legacy of a civil war, genocide or harsh repression is also such a battle, albeit rooted in the reality of every day. It is a continual quest for information, for the truth if possible, about what was done to so many. Justice is the other Holy Grail after which individuals and communities endlessly hanker. Because coming to terms with such a past appears to be a process that is never complete, even after many decades. In Belgium, France and the Netherlands, the German occupation, the collaboration and the trials that followed still cause disquiet today. Sometimes, as in France and the Netherlands, the problem reminds one of malaria: brief moments of high fever following long years of relative quiet. In Belgium, it appeared until recently that it was a societal neurosis which refused to be cured. It will be no different in Afghanistan, Burundi, Cambodia, Guatemala, Kosovo and South Africa.

This dual quest begins even before the ravages of conflict have come to an end. How the legacy will be dealt with in the future plays a crucial role in the negotiations that could lead to peace. Uganda demonstrates this today in convincing fashion. The domestic offer of amnesty conflicts with foreign calls for prosecution, and in

this impasse the war rages on. Once the guns finally fall silent and the repression ends, coming to terms with what has occurred is at least as important – if only because new violence cannot be ruled out where lies displace the truth and silence prevents justice. That is precisely what is at stake in the former Yugoslavia.

My expedition in the land of a tragic past which is so difficult to come to terms with ends here. Not all the questions with which this journey began have been answered. There is only the certainty that there is no panacea which can bring peace to the hearts and minds of those who have been through terrible suffering. There is no policy that is free of shortcomings and risks. This is most manifest in the case of amnesty. Tribunals, truth and traditional rituals also carry risks. International initiatives such as the International Criminal Court have their defects. But even a purely local policy is hemmed in by limitations. At the same time, all these instruments, with the exception of blanket amnesty, offer considerable chances of success. The feverish search that has been under way since the end of the 1990s for combinations that can fill these gaps and limit the risks is therefore to be welcomed. The result is that people in some localities are combining a tribunal, a truth and reconciliation commission and local reconciliation techniques, in a mix of national and international elements.

The result of this evolution looks somewhat chaotic. In parallel with the rise of the – largely international – demands for criminal trials, local experiments are taking place with conditional amnesty or temporary clemency.

The search for perpetrators has been raised to a new level, but there is also much more attention for the victims. And while the role of high tech legal procedures and of professionals is increasing, there is also a growing mobilisation of informal, cheaper and ‘expertless’ ways of dealing with suffering and guilt. The greater emphasis on the role of the state and its courts and judges is being accompanied by a more explicit appeal to non-governmental organisations, schools and media. These are highly divergent trends, which are so typical of a time in which innovation is sorely needed.

What is going on here constitutes an almost perfect reflection of the hybrid developments that can be seen globally on a much broader level: upscaling the economic and political institutions and, at the same time, reappraising what the local settings have to offer (‘globalisation’); making government stronger and selectively privatising some of its tasks; emphasising the primacy of politics and more and more appreciating the role of civil society; expanding the deployment of experts and increasing the use of lay persons. In this sense, the quest for a resolved past falls into line with the changes that our world as a whole is undergoing.

RELEVANT PUBLICATIONS AND WEBSITES

Writing is a question of garnering and bringing together fragments of material. That is how this book, too, was born. My own experiences and my meetings with a number of fascinating people laid the groundwork. Books and websites did the rest. There is any amount of scientific literature available, and I did not ignore it. Yet above all I wanted to enrich the text with what people actually in the field have put to paper. The reader has met them here and there in the course of this book. There is Samantha Power, now an advisor to President Obama, who wrote *A Problem from Hell: America and the Age of Genocide* (2003). There is Clea Koff, who penned *The Bone Woman* (2004) which describes her work in the mass graves of Rwanda, Bosnia, Croatia and Kosovo. There is Antjie Krog, who brought the South African Truth and Reconciliation Commission to life in her *Country of my Skull* (1998). And there is Desmond Tutu, the president of that Commission, who in *No Future without Forgiveness* (1999) makes an ardent though not universally welcomed plea for forgiveness and reconciliation. And I am a great fan of Ariël Dorfman. Many of his essays are concerned with coming to terms with a painful past. I found inspiration above all in his play *Death and the Maiden* (1992), about the quest for the truth in an unspecified country in Latin America.

For an author or fieldworker in search of information, no book is as generous as the Internet. The websites of some thinktanks and NGOs are a veritable goldmine, if only because their publications can be downloaded free of charge and because they contain hugely useful links. The International Center for Transitional Justice in New York (www.ictj.org) is the access gateway *par excellence* to the world of tribunals, truth and reconciliation commissions, amnesty and much more. International IDEA, an intergovernmental organisation based in Stockholm, has a website (www.idea.int) containing reports and practical guides on reconciliation processes and the role of traditional rituals in the quest for justice. It also hosts a 'reconciliation resource network' (www.idea.int/rrn). A similar initiative is the African Transitional Justice Research Network (www.transitionaljustice.org.za). Amnesty International (www.amnesty.org), Human Rights Watch (www.hrw.org) and Avocats sans Frontières (www.asf.be) are a rich source of information on the struggle against impunity. The Institute for Justice and Reconciliation (www.ijr.org.za) is active in various African countries. The website of the United Nations (www.un.org) also provides access to interesting documents on this problem; an example is the report by Kofi Annan to the Security Council (3 August 2004) on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. Background information, historical details and statistical material on the functioning of the ad hoc tribunals in Arusha and The Hague can be found at www.ictr.org and www.icty.org. The International Criminal Court has a public face at www.icc-cpi.int. The official report of the South African Truth and Reconcilia-

tion Commission (TRC) can be read at www.info.gov.za/otherdocs/2003/trc/. More general information on TRC's can be found at www.truthcommission.org). There is a huge bibliography on transitional justice, compiled by Andrew G. Reiter, at the University of Wisconsin-Madison: <http://users.polisci.wisc.edu/tjdb/bib.htm>. The following academic institutes have useful websites: the Transitional Justice Institute at the University of Ulster (www.transitionaljustice.ulster.ac.be).

