

**SERBIA AND MONTENEGRO:  
SELECTED DEVELOPMENTS IN TRANSITIONAL JUSTICE<sup>1</sup>***October 2004***I. INTRODUCTION**

For much of the 1990s, the many conflicts in the various parts of the former Yugoslavia dominated international headlines, and in 1993, the UN Security Council declared them a “threat to international peace and security.” The conflicts involved widespread attacks against civilians, including “ethnic cleansing,” mass killings and population expulsions, systematic rape, and the use of concentration camps. Although the departure of Slovenia and Macedonia from the former Socialist Republic of Yugoslavia occurred relatively easily, the separation of Croatia and then Bosnia and Herzegovina (BiH) provoked bloody wars. By the end of 1995, there were an estimated 200,000 dead and two million displaced in BiH alone. The subsequent spread of the conflict to Kosovo in the late 1990s served to confirm the UN’s initial assessment. It was the darkest period in the region’s history since World War II.

Since the end of open armed conflict, there has been little progress in the area of transitional justice, particularly at the domestic level. This is most evident in Serbia and Montenegro, formerly the Federal Republic of Yugoslavia (FRY).<sup>2</sup> The country has lurched from one political crisis to another since the October 2000 revolution that removed former President Slobodan Milosevic from power. There have been multiple failed presidential elections because of low voter turnout, the assassination of reformist Prime Minister Zoran Djindjic, and a strong showing by the extreme nationalist parties in the December 2003 parliamentary elections. Although the June 2004 Serbian presidential election resulted in the election of reformist candidate Boris Tadic of the Democratic Party, stagnation and nationalism continue to pervade the body politic. With time, however, there is hope that Serbia and Montenegro will do more to confront the recent wartime atrocities that have left so many perpetrators unaccountable and so many victims disregarded.

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<sup>2</sup> On February 4, 2003, the Yugoslav parliament adopted the Constitutional Charter and Implementation Law. This marked the end of the FRY and the establishment of the confederal state union of Serbia and Montenegro. The country consists of two states, Serbia (with approximately 7.5 million people, excluding Kosovo) and Montenegro (with a population of about 650,000). The Charter takes no account of the status of Kosovo. Although officially part of Serbia and Montenegro, Kosovo has been administered by the UN Interim Administration Mission in Kosovo (UNMIK) since the adoption of UN Security Council Resolution 1244 (1999). Although events in Kosovo directly influence public opinion and domestic politics in Serbia, this paper does not address transitional justice developments there.

The purpose of this paper is to provide an overview of some of the major issues and recent developments in transitional justice in Serbia and Montenegro. In particular, it examines the International Criminal Tribunal for the former Yugoslavia (ICTY), local trials, the national Truth and Reconciliation Commission, reparations, and vetting of public officials.

## II. TRIALS

### A. The ICTY

Located in The Hague, the ICTY is the first international war crimes tribunal since Nuremberg and Tokyo.<sup>3</sup> It was established in 1993 by the Security Council in response to atrocities committed on the territory of the former Yugoslavia. The Tribunal is internationally representative in its composition and receives the bulk of its funding from UN member states through assessed contributions. It has primacy over the domestic courts of every country in the world, including those of the former Yugoslavia, and it has the power to request states to halt proceedings against individuals subject to its jurisdiction and transfer the accused and all related evidence to it.

Overall, the ICTY has played a critical role in advancing the cause of justice in the former Yugoslavia. Without it, there would have been a massive justice deficit in the region, as few cases have been pursued in domestic courts. The ICTY has also contributed a rich jurisprudence in the area of international criminal law and served as the inspiration and direct precursor to the International Criminal Tribunal for Rwanda. In addition, it has been a catalyst for countries in the region to adopt legislation implementing their human rights and humanitarian law treaty obligations. At the time of this writing, the Tribunal is also conducting one of the most significant trials of the past decade: the prosecution of Slobodan Milosevic.<sup>4</sup> Apart from setting an important precedent in trying a former head of state, the trial is also expected to make a valuable contribution to the debate on the causes of the war.<sup>5</sup> However, the trial has already taken more than two years because Milosevic has represented himself until recently, and he frequently suffers bouts of ill health.<sup>6</sup>

Despite the ICTY's obvious contributions, it has faced many criticisms. Above all, these relate to its prosecutorial strategy (which focused on low-level perpetrators in the early years because of difficulties in obtaining custody over higher-ranking offenders), high cost (currently averaging in the range of US\$120 million annually), low output (a relatively small number of judgments each year), and lengthy trials. Many of these shortcomings are being overcome gradually as lessons are learned and reforms are implemented.

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<sup>3</sup> See [www.icty.org](http://www.icty.org). On the ICTY generally, see R. Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy* (Oxford: Oxford University Press, 2004); J. Ackerman and E. O'Sullivan, *Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia* (The Hague: Kluwer, 2000).

<sup>4</sup> Milosevic was indicted in 1999 and transferred to the ICTY's custody in 2001.

<sup>5</sup> The prosecution's case against Milosevic asserts that the wars in BiH, Croatia, and Kosovo were all carried out with the purpose of annexing parts of Croatia and BiH to an all-Serbian state and maintaining Serb control over Kosovo.

<sup>6</sup> The Prosecutor took approximately two years to present its case, and it is now Milosevic's turn to present his defense. Recently, the Tribunal appointed a defense team against his will, after doctors determined he was too ill to conduct his own defense.

Since the inception of its work, the ICTY has been viewed with distrust, even hostility, in Serbia and Montenegro, where most perceive it to be dominated by NATO states and inherently biased against Serbs.<sup>7</sup> The Prosecutor's decision to discontinue a relatively brief investigation into NATO's bombing of the FRY in 1999 apparently reinforced this distrust.<sup>8</sup> Another aggravating factor is the ICTY's remote location in The Hague. Although ongoing conflict precluded the possibility of setting it up in the region in 1993, the Tribunal has had difficulty connecting with local populations. Recently, if belatedly, the ICTY established local victim and public outreach offices, which may help to gradually build confidence and trust.<sup>9</sup>

The widespread distrust of the Tribunal in Serbia and Montenegro is largely fueled by state propaganda depicting it as "anti-Serb." Ironically, local awareness of ICTY proceedings is probably higher than in any other state in the region, given the significant level of media attention it receives. But, with few exceptions, the coverage is very unfavorable and frequently inaccurate. Indeed, even many moderate Serbs mistakenly believe that the ICTY has yet to try anyone for crimes committed against Serbs, an allegation clearly contradicted by the Tribunal's very public trial record.<sup>10</sup>

In this context, it is not surprising that Serbia and Montenegro has not been fully cooperative in making arrests and transferring evidence and indictees.<sup>11</sup> Although changes of governments and pressures from the outside have led to improvements, relations remain unfriendly and uncooperative. This has been a major problem, as the ICTY has no control over the territory of the former Yugoslavia and lacks a police force. Without state cooperation, there is no effective means to arrest suspects and gather evidence.<sup>12</sup>

For many years, the U.S. government has conditioned economic assistance to Serbia and Montenegro on the country's effective cooperation with the Tribunal. This has occasionally forced the hand of otherwise reluctant authorities to cooperate, not least in the case of the

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<sup>7</sup> According to a comprehensive survey based on 10,000 face-to-face interviews conducted during January and February 2002, trust in the ICTY ranges from 83 percent (Kosovo) and 51 percent (Bosnian Federation), to 24 percent (Montenegro), 21 percent (Croatia), 6 percent (Serbia), and 4 percent (Republika Srpska), respectively. See International IDEA, "South East Europe Public Agenda Survey" (2002), available at [www.idea.int/press/pr20020404.htm](http://www.idea.int/press/pr20020404.htm). The level of trust in Serbia is only slightly higher in a more recent, if less systematic, survey published by the Belgrade Centre for Human Rights, available at [www.bgcentar.org.yu](http://www.bgcentar.org.yu).

<sup>8</sup> The ICTY Prosecutor stated, "[A]lthough NATO had made some mistakes, it had not deliberately targeted civilians." See UN Security Council Press Release, SC/6870, June 2, 2000.

<sup>9</sup> Outreach sessions are planned in various towns in Serbia and Montenegro that have been the subject of Tribunal proceedings. In each town, senior ICTY staff involved in the trials will, with the assistance of local NGOs, meet community leaders and members of the general public. The planned events are modeled on similar exercises recently conducted in BiH.

<sup>10</sup> So far, 16 individuals have been indicted for crimes committed against Serbs. See B. Ivanisevic, "The Grapes of Wrath," *Danas*, May 7, 2004.

<sup>11</sup> In a speech made on May 7, 2004, to the Council of Europe, ICTY President Theodor Meron characterized Serbian cooperation as "nearly non-existent." See [www.icty.org](http://www.icty.org).

<sup>12</sup> Although it operates outside of Serbia and Montenegro, the NATO-led Implementation Force (IFOR) and its successor the Stabilization Force (SFOR) have made some important arrests in past years. In 1995, IFOR made it a policy to arrest indicted persons only if it happened to come into contact with them. By 1998, partly in response to pressure from Western governments and the ICTY, some SFOR troop providers became more aggressive.

handover of former President Milosevic in 2001.<sup>13</sup> In the most recent certification review, the U.S. government refused to disburse the last \$25 million of a \$100 million assistance package it set up three years ago to help Serbia reform its economy. The U.S. administration was particularly critical about failures to share evidence or arrest former Bosnian Serb commander Ratko Mladic, who is widely believed to be hiding in Serbia.<sup>14</sup> Paradoxically, the United States urged the Serbian government to sign an “Article 98 agreement” immunizing its nationals from the jurisdiction of the International Criminal Court (ICC).<sup>15</sup> Many in Serbia and Montenegro apparently interpret these U.S. actions as a confirmation that international justice is victor’s justice.

Another recent development is the adoption of a law on assistance to ICTY indictees.<sup>16</sup> Introduced by the Radical Party and publicly supported by Prime Minister Vojislav Kostunica, the law offers financial aid to Slobodan Milosevic and other accused facing trial before the ICTY. The law enables the use of taxpayers’ money to cover indictees’ legal fees and expenses and compensate for lost earnings during the legal proceedings.<sup>17</sup> Serbia’s constitutional court issued a temporary ban on the controversial law pending a final ruling.

Against this unsettling background, the ICTY now confronts what may be its greatest challenge: finishing investigations and trials and handing over remaining cases to national authorities ready to conduct fair trials. The Tribunal will complete its own investigations by 2004, and should complete all first instance trials by 2008 and appeals by 2010. Officials appear to be optimistic about meeting these targets, particularly in light of recent increases in the number of guilty pleas, the arrival of *ad litem* judges (those who sit only for specific cases), and the effectiveness of various procedural reforms designed to expedite trials. Still, an enormous amount of work remains. Among other things, meeting the targets will depend on who else is apprehended and when.

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<sup>13</sup> Other prominent examples of past cooperation partly triggered by U.S. pressure include the transfers of former State Security chief Jovica Stanisic, JSO founder Franko Simatovic, and Veselin Slijivancanin, the last of the so-called “Vukovar Three.”

<sup>14</sup> Serbian authorities have refused to transfer additional indictees, including Serbian Deputy Interior Minister and former Kosovo police chief Sreten Lukic, former Yugoslav army chief Nebojsa Pavkovic, former commander of Pristina Corps Vladimir Lazarevic, and former Assistant Minister of the Interior and former Chief of Public Security Department Vlastimir Djordjevic.

<sup>15</sup> These agreements, based on a controversial interpretation of Article 98 of the 1998 Rome Statute for the ICC, “prohibit the surrender to the ICC of a broad scope of persons including current or former government officials, military personnel, and U.S. employees (including contractors) and nationals. These agreements, which in some cases are reciprocal, do not include an obligation by the U.S. to subject those persons to investigation and/or prosecution.” See [www.iccnw.org](http://www.iccnw.org).

<sup>16</sup> Law on the Rights of Persons Indicted by the International Criminal Tribunal for the Former Yugoslavia.

<sup>17</sup> In a press release dated May 6, 2004, the Humanitarian Law Center criticized the law, stating that its purpose is

to ensure funding for defense counsel in order to exert an influence on their defense strategy. Specifically, the aim is to prevent the accused from entering guilty pleas, which frequently can be to their benefit, especially when the evidence against them is compelling... The state’s intent to prevent the entering of guilty pleas, even when in the best interests of an accused, runs counter to the legally regulated independence of lawyers and their obligation to keep confidential what their clients tell them (Articles 1 and 15 of the Law on Attorneys).

Whatever the case, the ICTY will likely transfer dozens of cases to domestic courts in the former Yugoslavia in the coming years. Plans are already under way to transfer so-called Rule 11*bis* cases (in which an indictment has already been issued and confirmed) and cases under investigation (in which no indictment has been issued) to a special War Crimes Chamber within the BiH State Court, due to be established by the end of this year.<sup>18</sup> But there is little to encourage the transfer of anything other than cases under investigation to Serbia and Montenegro, where, as discussed below, the local justice system remains rather weak and corrupt.<sup>19</sup>

## **B. Local Trials**

International and local human rights NGOs have frequently noted that, given the nature and scale of war crimes attributed to its nationals and the ICTY's limited mandate, and notwithstanding an alleged preference for domestic proceedings, Serbia and Montenegro has conducted very few war crimes trials. The country's unreformed police forces continue to produce few results in war crimes investigations, and the judiciary still suffers from a lack of independence and expertise in the area of international humanitarian law.<sup>20</sup> In addition, prosecutors continue to focus on lower-level accused, rather than military, paramilitary, police, and civilian leaders. As ICTY spokesperson Jim Landale noted in a recent letter to the *Wall Street Journal*:

So far, of the handful of war crimes trials held there over the past decade, none whatsoever have included senior leaders. Some observers have concluded that there appears to be a policy of exclusively trying low-level perpetrators, thus promoting a culture of impunity for the military and political leadership.<sup>21</sup>

As of October 2003, there had been only nine completed war crimes prosecutions in Serbia and Montenegro since 1996.<sup>22</sup> The details of some of these cases provide a sense of their range. The 1996 trial of Dusan Vukovic, a soldier, resulted in a conviction and sentence of eight years for war crimes and the rape of Bosnian Muslim (Bosniak) civilians in 1992. Ivan Nikolic, a former Yugoslav army soldier, was convicted in 2002 and sentenced to eight years for killing two ethnic Albanian civilians in Kosovo in 1999. Nebojsa Ranisavljevic was convicted and sentenced in Montenegro in 2002 for war crimes arising from his 1993 hijacking of a train in Strpci (BiH) and the abduction and subsequent murder of one Bosnian Croat and 19 Bosniak civilian passengers. In a retrial ordered by the Supreme Court, police reservist Boban Petkovic was sentenced to five years for war crimes committed in Kosovo in 1999, while co-accused Djordje Simic was acquitted. In September 2003, in the first completed war crimes trial in the first instance in Belgrade, four Bosnian Serb members of a former paramilitary organization were convicted and sentenced to up to 20-year terms of imprisonment for the October 1992 abduction, torture, and

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<sup>18</sup> See "Bosnia and Herzegovina: Selected Developments in Transitional Justice," available at [www.ictj.org](http://www.ictj.org).

<sup>19</sup> Currently, there are plans to transfer only a few such cases to Serbia and Montenegro. The transferred cases will likely include a substantial and organized body of evidence and draft indictments.

<sup>20</sup> In the past several years, only a handful of judgments have relied on international humanitarian law treaties.

<sup>21</sup> *Wall Street Journal*, Jan. 6, 2004. It may be noted, however, that even if there was the political will to try military and civilian leaders, the doctrine of command responsibility for war crimes remains vague in Serbian law. OSCE (Mission to Serbia and Montenegro), "War Crimes Before Domestic Courts" (Oct. 2003), at 51.

<sup>22</sup> OSCE (Mission to Serbia and Montenegro), "War Crimes Before Domestic Courts" (Oct. 2003), at 8–11.

killing of 17 Bosniaks taken from a bus near Sjeverin (BiH).<sup>23</sup> More recently, in March 2004, the Belgrade District Court sentenced Sasa Cvjetan to 20 years for crimes including the killing of 19 Albanians in Podujevo (Kosovo) in 1999.<sup>24</sup>

In June 2003, a law was passed creating the Office of the War Crimes Prosecutor and designating a special War Crimes Panel at the Belgrade District Court to handle new war crimes cases.<sup>25</sup> The law also established a special unit within the police (the War Crimes Investigation Service) to gather evidence in war crimes cases, and introduced new practices, including the examination of witnesses by means of a video link.

The War Crimes Panel officially opened in October 2003 and began its first trial in March 2004. The case concerns one of the more infamous massacres of the 1990s wars, namely the 1991 killing of some 200 civilians seized from a hospital in Vukovar (Croatia), commonly known as the Ovcara massacre. The ICTY transferred its documents and evidence to the War Crimes Prosecutor while retaining jurisdiction over the three main alleged organizers of the massacre, all currently on trial in The Hague. There were originally 6 accused on trial in the case, but 11 more individuals were recently arrested and indicted.<sup>26</sup> The ICTY is closely monitoring the trial to assess the Panel's capacity to handle similar cases. Recently, Panel members made a working visit to The Hague to discuss issues such as command responsibility, witness protection, and access to ICTY documentation.<sup>27</sup>

According to the War Crimes Prosecutor, another series of cases expected to come before the Panel will concern individuals accused of involvement in the massacres in Batajnica, a police training compound in the suburbs of Belgrade. Mass graves there are believed to hold some 700 bodies of Kosovar Albanians killed in 1999.<sup>28</sup> Evidence relating to the Batajnica graves has already been presented at the *Milosevic* trial in The Hague.

If conducted with a genuine intention to further accountability for past crimes, local war crimes trials can contribute to greater public understanding and acceptance of many important and uncomfortable facts about the wars of the 1990s. They have the potential to improve prosecutorial and judicial capacity. They are also likely to enable improved access to witnesses and evidence—if an effective witness protection program is established<sup>29</sup> and victims and witnesses overcome their general reluctance to travel to Serbia. But the record of past local trials is inauspicious, and already human rights groups have expressed concerns about the War Crimes Panel, worrying that it is being used to try low-ranking henchmen as scapegoats while leaving the senior planners

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<sup>23</sup> Two of the four convictions were made *in absentia*; the convicts, Milan Lukic and Oliver Krsmanovic, remain at large.

<sup>24</sup> The verdict was based on the testimonies of children who survived the massacre and the testimony of Goran Stoparic, a member of the special antiterrorism forces of the Serbian Ministry of the Interior. He testified to the connection among the accused and other members of the special forces in the massacre of Albanian women and children in Podujevo. The case was the first one involving war crimes in which ethnic Albanians testified in a Serbian court.

<sup>25</sup> Law on the Organization and Jurisdiction of Government Authorities in Prosecution of Perpetrators of War Crimes.

<sup>26</sup> Two others were also originally charged, but one turned prosecution witness in return for immunity and another died on the eve of the trial as a result of injuries he sustained from an earlier suicide attempt.

<sup>27</sup> The UNDP Judicial Training Centre in Serbia and Montenegro organized the visit.

<sup>28</sup> Allegedly, victims were killed in Kosovo and transported to Serbia in a clandestine manner.

<sup>29</sup> Current witness protection rules and practices are widely considered inadequate.

untouched. However, even if the War Crimes Panel and other local courts significantly improve on their current record, other transitional justice mechanisms will be required to mitigate their inherent limitations and produce a more comprehensive form of justice.

### III. TRUTH-SEEKING

#### A. Truth and Reconciliation Commission

Although the ICTY has made a significant contribution to clarifying the historical record of war crimes committed in the former Yugoslavia, the ongoing perception that it is an anti-Serb body has severely limited its impact in Serbia and Montenegro, as well as in the Republika Srpska (BiH). As a result, there have been calls for a truth commission (or, more accurately, several truth commissions) in the region. To date, the only state in the region to actually establish a truth commission is Serbia and Montenegro. Unfortunately, its experience is a case study in how *not* to establish or run an effective commission.<sup>30</sup>

The Yugoslav Truth and Reconciliation Commission (TRC) was established by means of a presidential decision issued on March 29, 2001, by then-President Kostunica.<sup>31</sup> The brief text of the decision set out the TRC's mandate and listed the 19 individuals originally appointed as members, three of whom resigned within the first few months and one of whom died. Commission members included persons from different political perspectives within Serbia, but there were only two ethnic minority representatives and no members of religious communities other than the Serbian Orthodox Church. There was also insufficient representation from NGOs and professional associations, and no one from Montenegro. In this sense, the Commission is more properly characterized as Serbian, rather than Yugoslav. While subsequent efforts were made to expand and diversify the Commission's membership, the appointments came too late (almost one year later) and failed to assuage the Commission's many detractors at home and abroad.

The TRC's establishment came as a surprise to most, as there was no public consultation or debate in advance. Many criticized the fact that the Commission was established by an act of the President, rather than by Parliament (although it is doubtful that the parties in Parliament would have supported its establishment). The more damaging claim, however, was that the Commission was just a weak attempt to placate the U.S. and the international community, which had been pushing Kostunica to address the legacy of the Milosevic era. The fact that the TRC was established on the eve of a U.S. certification decision only reinforced this perception. In brief, the TRC lacked the necessary civil society and political support to be perceived as a credible initiative.

The Commission's mandate was another problem. It was charged with the task of organizing research "on the uncovering of evidence on the social, inter-ethnic and political conflicts which led to the war and to shed light on the causal links among these events."<sup>32</sup> The Rules of Procedure and Work Programme adopted by the Commission (pursuant to the presidential decision)

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<sup>30</sup> For several months after its creation, the ICTJ directly engaged with the commission and urged major reforms to its composition and mandate. The few improvements that resulted were minor and, ultimately, inadequate.

<sup>31</sup> Decision on the Establishment of the Truth and Reconciliation Commission, Official Gazette of the Federal Republic of Yugoslavia, No. 15/2001 (March 30, 2001).

<sup>32</sup> *Id.*

reflected the same focus on the causes of the wars and related atrocities, rather than their effects. In a context marked by the violent breakup of the former Yugoslavia and widespread violations of the laws of war (for which primary responsibility is widely attributed to Serb forces), it would be difficult, both in appearance and in reality, for a truth commission established in Serbia to objectively assess the truth about the causes of the war. Such a task could be credible only in the hands of a body that represents the various ethnic communities. Had the TRC's mandate focused on Serbia's responsibility for wartime violations and their effects on victims, the reception might have been more positive. The Commission's members could have chosen this option when developing their Work Programme, as they were neither bound to focus on causes nor barred from focusing exclusively on Serb responsibility. The failure to interpret their mandate in such a manner contributed to the Commission's ultimate demise, and the TRC was perceived in many quarters as a tool of the President and a mechanism to help justify Serbian wartime atrocities.

Some other details of the Commission's mandate, primarily as defined in its Work Programme, are worth noting, if only for historical interest. Commission members were to serve in their personal, not institutional, capacity. The Commission proclaimed itself independent and committed itself to operating in a transparent and public manner. It also promised to cooperate with the ICTY, although it had little of substance to offer. The Commission had no investigative powers and conceived and conducted its work mostly as a form of academic research, rather than human rights investigation and documentation. Its work was to be completed within three years and it was to conclude with the delivery of a final report of findings and recommendations. However, this never happened. Instead, the TRC was wound up when the office of the federal presidency (last occupied by Kostunica) was abolished in 2003.

It took months before the Commission acquired an office. Commissioners received no salaries and none was able to work on a full-time basis. Moreover, there was insufficient funding to hire a full professional staff or carry out any serious research, let alone conduct any on-site investigations. As a result, by the time the Commission was able to organize its first public event (a roundtable discussion that did not allay the concerns of its detractors), it was already rather irrelevant. Its ambitious plans to hold public hearings on issues such as the Srebrenica massacre never came to fruition, although this was partly because of victim distrust, and not just due to resource shortages or the absence of a viable plan.

Today, the TRC's utility is as a cautionary tale. The key lessons are the following:

- It is difficult to establish a *national* truth commission with external legitimacy if its mandate is to examine the causes and consequences of a *region-wide* conflict, unless the commission's mandate, methodology, and composition are specifically designed to build confidence among key regional actors.
- The inadequate consultation of and engagement with NGOs and victims before and during the Commission's operation severely harmed its image. Had there been an extensive and public commissioner-selection process, and consultation in the adoption of the President's decision to establish the TRC, its legitimacy and independence might have been greatly enhanced.
- The ideological, ethnic, and political homogeneity of the commissioners prevented it from being seen as an impartial body. The early and public resignations of two respected commissioners, Vojin Dimitrijevic and Latinka Perovic, highlighted the problematic nature of



this composition.<sup>33</sup> A more diverse composition would have benefited the Commission's image and helped overcome the inevitable criticisms of its mandate.

- In the absence of political will and civil society support (especially that of leading human rights NGOs), it will be very difficult for a truth commission to succeed. The TRC's outreach and communications efforts were slow and generally ineffective. Rather than soliciting ideas or acknowledging legitimate criticisms and concerns, commissioners tended to publish self-defensive opinion pieces in the local media.

While Commission members are not entirely to blame for the TRC's ill fate—President Kostunica's failure to consult adequately in designing and appointing the commission played a major role in hampering their work—ultimately they proved incapable of demonstrating to anyone that the Commission was, or could become, an independent and victim-centered body. Time will tell whether Serbia will witness a new truth commission. If it does, the lessons from this experiment merit close examination.

## **B. NGO Initiatives**

Given the multiplicity of states in the former Yugoslavia and the cross-border nature of the conflicts, many human rights groups in Serbia and elsewhere have long recognized the need for a regional body to investigate and document wartime atrocities. The reality is that many of the findings of any national truth commission—whether in Serbia and Montenegro, Croatia, or BiH—would be contested in neighboring countries. If a truth-seeking effort is to succeed, it will likely have to be regional in composition and operation. And, because of the difficult relations that persist among the governments of the region, such an undertaking may have to be nongovernmental, at least for now.

At the suggestion of local NGOs, in April 2002 the International Center for Transitional Justice commissioned a comprehensive report on available documentation of war crimes and human rights violations committed in the former Yugoslavia.<sup>34</sup> The report highlighted the extensive range of existing war crimes documentation. It also called for a regional, nongovernmental initiative to systematically consolidate existing documentation and begin to consider its many possible applications, including to domestic and international truth, justice, and reparations efforts. The Humanitarian Law Center in Belgrade, perhaps the best-known human rights organization in Serbia, has long made similar appeals. Recently, it entered into a "Protocol on Regional Cooperation for the Purpose of Investigation and Documentation of War Crimes in the former Yugoslavia" with the Sarajevo-based Research and Documentation Center and the Zagreb-based Center for Peace Studies. The agreement, which was signed in Sarajevo in April 2004 in the presence of NGOs and victim associations, aims to promote greater truth, justice, and reconciliation. Comments made at the signing ceremony suggest that the initiative is at least partly a response to the failure of the Serbian TRC and the absence of any other official truth commission in the region.<sup>35</sup> Whether this initiative and similar ones, such as the Igman Initiative,<sup>36</sup> can succeed will depend on many factors, including funding, state cooperation, and a

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<sup>33</sup> Both resigned because of disagreements over the Commission's composition and mandate.

<sup>34</sup> See "A Report on Local, Regional and International Documentation of War Crimes and Human Rights Violations in the Former Yugoslavia," available at [www.ictj.org](http://www.ictj.org).

<sup>35</sup> Natasa Kandic, director of the Humanitarian Law Center, said, "In the absence of official truths which by law are established by institutions, governments, states...we are going with the truth of the victims." See [www.hlc.org.yu](http://www.hlc.org.yu).

<sup>36</sup> See [www.igman-initiative.org](http://www.igman-initiative.org).

comprehensive strategy that draws from the wide variety of international and domestic sources of war crimes documentation.<sup>37</sup> Such initiatives represent perhaps the most positive option for establishing truths that could be accepted throughout the region.

#### IV. REPARATIONS

In the face of systemic atrocity, states have the obligation not only to act against perpetrators, but also to act on behalf of victims. Given the limitations of international and domestic prosecutions, a complementary and expeditious way to assist victims is to provide reparations for some of the harm suffered. Whether material or symbolic in nature, reparations can have many potential benefits, including fostering a collective memory of past abuse and social solidarity with victims and providing a concrete response to calls for remedy. Reparations can also help promote democracy and reconciliation by restoring victims' trust in the state.

Many victims of the conflict in the former Yugoslavia reside outside Serbia and Montenegro, indicating the need for a mostly regional approach to reparations. Such an approach has yet to be adopted.

On an interstate level, BiH in 1993 and Croatia in 1999 filed separate cases at the International Court of Justice against the FRY for alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Both countries asserted that the FRY must pay reparations for damages to persons, property, the economy, and the environment.<sup>38</sup> The reparations claim is in the billions of dollars.

In addition, in 1999 the FRY brought 10 cases of its own to the International Court of Justice against NATO member states, claiming reparations for the allegedly illegal bombing of Yugoslav territory. The cases, of which eight remain,<sup>39</sup> were halted at the request of the government of Serbia and Montenegro due to “dramatic” and “ongoing” changes in the country, which they claimed had put the cases “in a quite different perspective.”<sup>40</sup>

Official apologies, which are perceived as legally dangerous, have been few and far between. There have been some acknowledgements of responsibility, particularly between Croatian and Montenegrin leaders,<sup>41</sup> and then more recently by Svetozar Marovic, President of Serbia and Montenegro.<sup>42</sup> But there have been no groundbreaking apologies of the sort that, for example, German Chancellor Willy Brandt once made to the Jews for Nazi atrocities.

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<sup>37</sup> Domestic governmental sources for such documentation include the Committee for Data Collection on Crimes against Humanity and International Law and the Commission for Humanitarian Questions and Missing Persons. Domestic nongovernmental sources include the Veritas Center for Collecting Documents and Information and the “Wars 1991–1999” Documentation Center. International sources include the ICTY, the International Commission on Missing Persons, the International Committee of the Red Cross, Amnesty International, Human Rights Watch, the Institute for War and Peace Reporting, and Physicians for Human Rights.

<sup>38</sup> It is not clear that any damages paid out would be distributed to victims.

<sup>39</sup> The other two were dismissed for lack of jurisdiction.

<sup>40</sup> See International Court of Justice Press Release 2002/10 (March 22, 2002).

<sup>41</sup> See “A Casualty of Politics: An Overview of Acts and Projects of Reparation in the Former Yugoslavia,” available at [www.ictj.org](http://www.ictj.org).

<sup>42</sup> In November 2003, Marovic apologized to Bosnia and Herzegovina “any evil or disaster” that anyone from his country caused there during armed conflict. In September 2003 he made a similar apology to Croatia, which the Croatian head of state quickly reciprocated. Both of Marovic’s apologies emphasized

At the purely domestic level, the only material compensation efforts in Serbia and Montenegro have been directed at war veterans and the disabled, rather than civilian victims.<sup>43</sup> As a result, victims have had to seek compensation in the courts, often with the help of NGOs such as the Lawyers Committee for Human Rights and the Humanitarian Law Center, both based in Belgrade.

Although politics may soon begin to normalize in Serbia and Montenegro, it may be a while before reparations appear on the domestic political agenda.

## V. VETTING OF PUBLIC OFFICIALS

The removal of abusive or corrupt public servants and officials through “vetting” procedures can be an important component of the justice reforms that new governments adopt in periods of democratic or post-conflict transition. In common discourse, it generally refers to the examination of individual employment and other records for the purpose of hiring or removing persons in the workplace. In transitional contexts, vetting efforts tend to focus on removing abusers from state security agencies, such as the police and the army, as well as from the judiciary and general civil service.

Vetting has many potential advantages as a transitional justice mechanism. It can help reduce the likelihood of new and ongoing abuses. It can increase public trust and confidence in state institutions. It can also assist in the removal of obstacles to prosecution and help restore the good name of those officials whose reputations were unfairly tainted by association with the “bad apples” in their institution.

Vetting procedures typically involve a thorough background check involving a review of multiple sources of information and evidence to determine whether a particular official has been involved in past abuse. Parties under investigation are made aware of the allegations against them and given an opportunity to reply.

In June 2003, the Serbian parliament passed the “Accountability for Human Rights Violations Act.”<sup>44</sup> The passage of the law was urged by the Civic Alliance, a small party within the then-ruling coalition, reportedly as part of a political deal after the assassination of Prime Minister Djindjic. Other political parties expressed strong opposition to it at the time, even within the governing coalition. As of this writing, the law and the procedures it contemplates remain inoperative.

The law, modeled on the Hungarian lustration law, contemplates two kinds of vetting procedures: one for purposes of firing existing officials (“lustration”) and one for purposes of appointing new officials (“vetting”). The law authorizes the conduct of “lustration proceedings” and “vetting proceedings,” as the case may be, for elected and appointed public officials (including high-ranking members of the police and army), judges, and diplomats. The law calls for the creation of a commission to carry out the work, consisting of nine members: three judges of the Supreme

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the principle of individual, as opposed to state, responsibility. See BBC News, “Belgrade’s cautious apology,” Nov. 13, 2003, available at [www.bbc.co.uk](http://www.bbc.co.uk).

<sup>43</sup> See “A Casualty of Politics: An Overview of Acts and Projects of Reparation in the Former Yugoslavia,” available at [www.ictj.org](http://www.ictj.org).

<sup>44</sup> The full text of the law is available in English at [www.lustration.net/human\\_rights.pdf](http://www.lustration.net/human_rights.pdf).

Court of Serbia, three “prominent legal experts,” a deputy public prosecutor, and two elected deputies of the National Assembly holding law degrees.<sup>45</sup> Commissioners serve for six-year renewable terms, except that deputies serve only as long as they remain in public office. All hold security of tenure equivalent to judges.

The law’s definition of “human rights violations” is very broad, which makes it more susceptible to abuse and manipulation if the law is ever properly implemented. The law appears to exclude war crimes from its scope, and does not apply to lower echelons of the police or military, where vetting is urgently needed. The principle of individual, as opposed to collective, responsibility is clearly established. The law specifically provides that mere affiliation with a “particular political party, organization or group” does not represent grounds for lustration or vetting. Commendably, there is a wide range of procedural guarantees for anyone subjected to a lustration or vetting procedure, including a full right of appeal.

One especially interesting aspect of the law is the procedure for enforcing a decision. The Commission is required to issue a press release and publish in the Official Gazette a description of the violations committed by any person who fails to resign or withdraw his candidacy, as the case may be, within seven days of an adverse decision by the Commission (except where an appeal has been lodged).<sup>46</sup> Furthermore, the same person can become ineligible for a listed position for a period of five years if he fails to resign or withdraw his candidacy, as the case may be, within 30 days of the issuance of the press release.

According to the law, vetting and lustration proceedings will take place in private, and only rarely in public. This is hardly conducive to building public trust. Another problem is that the law fails to create a mechanism for citizens and NGOs to provide information and evidence. This is troubling because in the absence of public input, most evidence will come from the files of security service agencies and other government bodies, which may be unreliable.

One of the main problems with the law, however, is that it would not reach those involved in the worst abuses. When President Milosevic was ousted from power in 2000, successor governments failed to undertake any concrete efforts in the area of vetting. By most accounts, the power brokers of the Milosevic era—the secret police, organized crime, and selected businessmen—continue to control political parties and key sectors of the economy and stall any significant reform efforts. Reducing the power of these groups (which reputedly comprise no more than a few hundred individuals) and removing their messengers from public office would represent an important, but difficult, step in advancing reform.

Regrettably, the momentum ushered in by Milosevic’s ouster from office has largely vanished. The window of opportunity for accountability and reform that seemed to re-open when Prime Minister Djindjic was murdered has also closed. Thus, while a vetting process remains as necessary as ever, the political conditions to implement the vetting law do not appear to exist.

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<sup>45</sup> Regrettably, if predictably, the political opposition in parliament obstructed the appointment of some of the commissioners. As of this writing, the Serbian Parliament has selected eight of the nine commissioners. Opposition parties continue to block the final appointment.

<sup>46</sup> However, it is not clear from the text of the law whether such persons will actually be dismissed from their positions.

## VI. CONCLUSION

For its own sake, and for the sake of long-term regional stability, Serbia and Montenegro must do much more in the area of transitional justice. Fortunately, the June 2004 presidential election produced a victory for reformist forces. As newly elected Serbian President Boris Tadic stated upon hearing the election results, “This election has shown that Serbia knows how to recognize a historic moment...[T]here is no turning back from October 2000.”<sup>47</sup> It is not clear, however, whether the new President is committed to dealing with the past. In addition, his political power is limited by a Parliament dominated by nationalist parties and a Prime Minister who has not demonstrated great commitment to justice for past abuses. Nevertheless, Tadic’s election can only be seen as a sign of hope.

Another encouraging development is the emergence of a reasonably dynamic NGO movement in Serbia and Montenegro in recent years. Although parts of the NGO sector remain weak and divided, overall it stands at visible odds with most of the country’s old political order. Together with reformist stalwarts like Radio TV B92, local NGOs can be expected to play a positive and active role in any transitional justice initiatives.

At the same time, other factors, such as difficult relations with neighboring states and the uncertain status of Kosovo, continue to loom over the body politic. If and when the regional environment improves, however, and as the final status of Kosovo becomes clear, further progress in the areas of truth, justice, reparations, and reform is possible in Serbia and Montenegro. That it is necessary one can already declare without equivocation.

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<sup>47</sup> See BBC News, “Tadic wins Serbia poll,” June 28, 2004, available at [www.bbc.co.uk](http://www.bbc.co.uk).