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POINT/COUNTERPOINT

War Crimes Tribunal Is an Imperative

by Aryeh Neier

Sad to say, the enormity of the crimes that have been committed in the war in Bosnia-Herzegovina is not distinctive in our time. What is



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unprecedented, however, is the extent to which these crimes are known worldwide so soon after they are committed. In this respect, the war in Bosnia differs from World War II when few

Western officials obtained information about Nazi concentration camps and other aspects of genocide, and most of the international public was not well informed. Moreover, because the international community's view of the war in Bosnia is not obscured by the fog of Cold War controversy, there is more clarity about the commission of crimes against humanity and less confusion about culpability than there was in such well-publicized conflicts as those of Vietnam and El Salvador.

Continuous press coverage has contributed to the prominence of the war in Bosnia. More remarkable, however, has been the on-the-scene presence of numerous international noncombatant observers, including UN troops. These troops were sent to assist in the delivery of humanitarian assistance and to observe the war. Their work has placed them in contact with all three sides in the conflict and has permitted them to observe the conduct of the war at close range. They know which officers command the troops shelling Sarajevo, which officers block relief convoys, and which officers commanded detention camps. Much of this information is also known to the thousands of international relief workers who have worked in Bosnia during the war. Their duties have placed them in contact with

opposing sides and periodically required them to cross military lines.

Finally, though their numbers are not great, human rights investigators are making important contributions to the awareness of what is transpiring in Bosnia. On-the-scene investigators documenting crimes against humanity include representatives of numerous international nongovernmental bodies; domestic groups based in cities such as Belgrade, Sarajevo, Zagreb, and Zenica; and intergovernmental bodies.

There is no precedent for such a vast international noncombatant presence with such a close-up view of crimes against humanity as they are being committed. The consequence is that the world knows about the crimes, knows who the victims are, and knows the identity of arch-criminals, such as the Omarska and Keraterm detention camps commanders and those officers responsible for the execution of more than 200 Vukovar hospital patients. Not only are there identities known, but there is no significant controversy about their culpability.

Because we know so much about Bosnia, the establishment of another United Nations (UN) commission to investigate crimes against humanity in Bosnia, but without punitive powers, would be a pointless exercise. There is no great need to fix responsibility for the crimes that have been committed. By and large, as far as the word is concerned, that has already been accomplished. In the Bosnian context, a "truth" commission would amount to a further wringing of the hands by the international community. Having refused to intervene to stop crimes that it knows about all too well, the least that is required from the UN at this point is a good-faith effort to punish those with the highest level of responsibility for the most egregious crimes.

In pointing out these characteristics of Bosnia, it is important to distinguish them from the situation that prevailed in El Salvador, where a UN Truth Commission made an important contribution. Among the characteristic

crimes of the Salvadoran war were death-squad killings and disappearances, perpetrated so that their authors could deny responsibility; that is, they were intended to deceive. Of course, human rights groups and a few journalists identified those responsible, but their accounts were vigorously disputed not only by the Salvadoran government but also by its patron, the government of the United States. In El Salvador, truth became the most important battleground. The Ad Hoc Commission was established to purge the Salvadoran military of gross abuses of human rights. Its success in accomplishing this goal was aided greatly by publication of the Truth Commission's report and, in turn, heightened the effects achieved by the Truth Commission by promoting a punitive result.

In the Bosnian case, it is critical that the war crimes tribunal established by the UN function effectively. For now, it faces two serious obstacles: one is the tepid support it is getting from the UN Secretariat; the other is the difficulty in getting custody of those who will be indicted.

As to the first, pressure on the Secretary General, Mr. Boutros-Ghali,

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The following articles present opposing views on the establishment and effectiveness of the International Criminal Tribunal for the former Yugoslavia. Aryeh Neier, former Director and president of the Open Society Foundations, is a member of the Foundation network. In addition to contributing to the *New York Times*, *The Nation*, and *Foreign Affairs*, he has been a member of investigatory missions to the former Yugoslavia and played a role in the establishment of the IT. He has also been a member of the Human Rights and Prisoners' Rights in the former Yugoslavia Working Group at the Washington College of Law (WCL), The American University. He is currently a member of the American Commission in Geneva and represented the Open Society Foundations at the Human Rights Conference in Vienna in 1998.

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is required to make him comply with the directives of the UN Security Council. As to the second, U.S. ambassador to the UN Madeleine Albright sounded the right note in January when she said that the UN should impose sanctions, or maintain economic and diplomatic sanctions, against countries refusing to turn over for trial those indicted. If that is done, it would be very difficult for defendants to evade trial. The states of the former Yugoslavia will have great difficulty accepting permanent pariah status, such as that of Libya; unlike Libya, they lack oil. Over time, the pressure to yield defendants for trial would become irresistible. Moreover, by itself, indicting someone as a war criminal would be a greater sanction than merely naming that person in a report. An indicted war criminal would never risk

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traveling beyond his country's borders; would be susceptible to political attacks within his own country that focus on his evasion of trial; and would always

have to fear being turned over because of political changes in his country, or because of pressures to secure an end to sanctions or pariah status. The falling out in recent months between Serbian strongman Slobodan Milosevic and his former ally militia leader Vojislav Seselj was indicated when the two traded charges of war crimes.

There seems little question that the UN War Crimes Tribunal *will* succeed. Given the UN's inability, though, to take any other meaningful action to punish those responsible for crimes committed during this conflict, effective prosecution is the last available means for the UN to redeem its own reputation. The open question is whether the UN will overcome its own lassitude and its deference to the interests of a few very powerful states that worry that prosecutions will impede a peace settlement. ☹

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Ethnic Cleanser in Chief," and whose troops are responsible for numerous atrocities throughout Bosnia; Serbian Radical Party leader Vojislav Seselj, who also heads that fascist group's paramilitary wing and is believed to have committed atrocities against civilians throughout Bosnia; and Zeljko "Arkan" Raznjatovic, leader of the paramilitary Serbian Volunteer Guard responsible for the massacre of Muslims in Bijeljina and other atrocities, who was elected to the Kosovo Serbian Parliament, by Serbs in Kosovo, where his followers harass the local Albanian population.

Is it at all plausible that any of these individuals will be brought to justice? Any settlement (if there ever is any) will require their assent and a condition of this assent will almost certainly be immunity to prosecution. Europe and the United States have shown themselves too feeble to insist on anything else.

The process itself is in trouble. There have been numerous delays

and despite the additional \$24 million given by the United States, there is still not enough money. Furthermore, the Western European nations show little enthusiasm for the whole idea,

... If the charges cannot be tried because the defendants refuse to appear, the effort becomes another failure of the international community to advance the rule of law.

making it even more unlikely that they will ever turn anyone over to be tried.

The proceeding might yet do some good. A detailed indictment that would name names and ascribe responsibility and has a mass of supporting

evidence might provide a useful record. Admittedly, this is a very imperfect alternative. But the kind of "truth commission" which operated in El Salvador and which was suggested above for the former Yugoslavia is obviously not in the cards.

Moreover, there are issues of fairness raised by accusing people who will never be tried. Such people will, however, have a chance to challenge the charges by submitting to the tribunal. This is especially true with respect to those accused who are highly placed—they will have no difficulty responding from the comfort of their palaces.

Nevertheless, even such an outcome is worth little. The South Slav tragedy is a catastrophe, not just for its immediate victims, the Muslims, Croats, and Serbs caught in these brutal and cynical political machinations, but also for the hopes of a world rule of law. The Bosnian people, in particular, have suffered too much to have to endure what is likely to be just another episode in a tragic farce. ☹