

THE CONTRIBUTION OF HISTORICAL COMMISSIONS TO DEMOCRACY AND DIVERSITY

Numerous historical or truth commissions have been set up in the last few decades. They have generally contributed to laying the foundations of a new coexistence in context of conflicts. In this regard the recognition of the past events is playing a crucial role, and has often opened up the path to the development of new societal relationships. This article addresses the normative bases of formally constituted historical commissions, briefly analyzing several experiences of such commissions. Finally, the article evaluates whether such a mechanism could be relevant within the normalization process of Armenian-Turkish relations, and its possible benefits for the future of the region.

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More than 50 truth commissions and historical commissions have been set up in the last few decades. Such commissions are designed to meet several imperatives, including: fact-finding and explicit recognition of facts by the perpetrators and society in general, providing satisfaction for the victims, and implementing a series of initiatives in response to the recommendations made by these commissions. These commissions also provide the opportunity to pass on this “jointly accepted or acknowledged historical truth” to future generations, and to identify and protect archives concerning respective events.

Whether they are formal (mandated by governments) or informal (set up by civil society leaders, or even business actors), these commissions have generally contributed to clarifying the nature of events, enabled victims to have their stories recognized, led (at least some) wrongdoers to trials, or to accept their responsibilities, and enabled recognition of those who were the “just” (those who opposed inhuman orders, or who protected the lives of those in danger).¹ They have generally contributed to laying the foundations of a new coexistence. In this regard, the recognition of events of the past plays a crucial role, and can contribute to open up the path to the development of new societal relationships.

Fact-finding also brings individual responsibilities to light, and reveals systemic mechanisms that led to atrocities that were committed in a given context. One of the usual consequences of fact-finding is the transformation of the perceptions, narratives, and attitudes towards the “other,” “enemy,” victim, or perpetrator so that they are not viewed as a compact and homogeneous group. Indeed, relationships can be transformed on the basis of this joint acknowledgement of the facts.

Via such fact-finding processes, a new future can thus be opened. This can be felt as a sort of liberation; it becomes possible to live with history, instead of just be determined by history. This allows those involved or affected by atrocities to be aware of historical facts—or what was formerly wrongly or little known, or even denied—and adopt forward-looking policies that offer sustainable and constructive answers to these dark moments of history by addressing their root causes.

This article addresses the normative bases of formally constituted historical commissions, analyzes several experiences of such commissions, and suggests some conclusions in terms of moving forward. In the final section, the Turkey-Armenia case is briefly touched upon.

¹ The SCNF in France or the Deutsche Bank, for example, both asked historians to investigate their past activities and responsibilities during WWII.

The Right to Know and the Duty of States to Remember

Louis Joinet introduced the concept the “right to know” in 1996, as part of his “principles against impunity”:

This is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember”, which the state must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right.²

The right to know is becoming an emerging practice in complex situations of transition and is gaining prominence in many different ways, including: truth commissions, fact-finding commissions, historical commissions, the protection of archives containing records of human rights violations, the search for missing persons (exhumations, investigations), and the preparation of new history books.

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The “Fact-finding” Dimension

Historical commissions are temporary bodies, generally set up as a result of a governmental or parliamentary decree. These commissions normally operate with a mandate to analyze and explain the nature and scope either of human rights violations, wrongdoings, or atrocities committed during a given period.³ Such commissions have the mandate to find out “what happened to whom, when, where, by

2 Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Louis Joinet pursuant to Sub-Commission decision 1996/119 Principles.
<http://www.unhcr.ch/Huridocda/Huridocda.nsf/0/3beb2ad845c6874c8025666a003d41e2?OpenDocument>
[http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/peasec/peac.Par.0255.File.tmp/DwP%20Rapport%20D.Orentlicher%20\(fr\).pdf](http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/peasec/peac.Par.0255.File.tmp/DwP%20Rapport%20D.Orentlicher%20(fr).pdf)

3 This article essentially deals with formally mandated commissions; other aspects must be analyzed so that the efforts of informal commissions can also contribute to producing positive and tangible results, however this is not the subject of this article.

whom, to identify the consequences, identify and listen to witnesses, identify and protect the documents and archives related to these events” and to “analyze the context (historical, cultural, and political) in which these events took place.” *De facto*, these commissions can contribute to an authoritative (and acknowledged) account of important national or regional events. These commissions generally have no judicial mandate, and it is not their responsibility to establish the proof of culpability. They are responsible for establishing the facts rigorously and independently within the context in which they implement their mandate. They are also tasked to elaborate public policy recommendations.

Individualizing Responsibility

The “fact-finding dimension” contributes to individualizing responsibility and avoiding the generalization of the “other” as the enemy:

During all my life I have been educated to hate the other because of what “they” did to us... I mean of course all of “them” because the facts were never officially established. I was educated to hate “them” as a group, as a collective. At a certain moment in my life, this became a major obstacle for me because it did not give me a basis for a positive personal identity nor did it allow me and my fellow citizens to have a positive national identity. I understood that I had no future.⁴

This generic labeling of “them” and “us” is a general obstacle for personal and social identity. This obstacle exists both for those considered to be part of the “victim group” and those being part of the so-called “perpetrator group.” By attributing and individualizing responsibility, these commissions contribute to individualize responsibility and avoid collective guilt.

Listening to the Survivors and Identifying the “Just”

A further major goal of these commissions is to acknowledge what happened to the victims and thus strengthen their dignity. This is actualized by listening to victims, their families, or survivors, namely “to listen to their voice.” Historical or truth commissions organize hearings in public, unless it is imperative that the victims present their evidence to the commission members in private. This is the “social legitimization and social healing” aspect of their work. The “subjective and narrative truth” constitutes the memory of the events as experienced by the

⁴ Interview with a civil society leader from the region.

victims, the witnesses, and society as a whole. It has the intrinsic quality of testimony, of individual and collective memory, the memory of humanity and inhumanity. Memories and perceptions can differ and even contradict one another, but they do exist in their own right, and do not need to be reduced to facts; rather, they complement the facts. The memory of survivors is woven from thousands of images and sensations that point to the violation of their humanity.

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Furthermore, such commissions are important to illustrate the role of the “just,” the ones that stood up against barbaric acts and attempted to protect the victims. It also gives the possibility to rehabilitate these “just” people. These are what can be called the “rehabilitative functions” of these commissions, part of the social dialogue – a healing and restorative process that contributes to the rebuilding of identity at individual and societal levels.

Generating Public Policies

One important aspect of the reports published by these commissions is their public policy recommendations, that generally combine political, symbolic, restorative, material, and retributive elements, such as: public apologies; reparation programs, institutional reforms, memorialization initiatives (museum, memorials, street names removed or changed, and ceremony of rehabilitation, etc.); the gathering, protection and access of archives; the preparation of new history books; and the implementation of what can be called a reconciliation process, all attuned to the cultural context and the specific needs of societies.

These public policy recommendations are the forward-looking and preventive aspect, i.e. the prevention of recurrences, of the denial of crimes (negationism), and what can be called the societal reconciliation aspect of these commissions. Public policy recommendations have the strongest impact when they are developed with the society at large –in particular the victims and survivors– and negotiated with state institutions at all levels, with the aim of ensuring their implementation and a major degree of survivors’ satisfaction.

Principles and Lessons Learned Regarding the Right to Know

Louis Joinet was quite clear about the functions of these commissions:

As their name indicates, these commissions are not so much intended to deliver justice as to establish truth by decoding “why” and “how” such things could have happened. Their goal, as I see it, is first of all to make a people aware of what was all too often a hidden reality they did not want to see (...). These commissions can facilitate the work of justice, but this is not their principal goal. The reports they produce are more for the sake of memory than of justice, in the sense of providing the principle according to which a people’s knowledge of the history of its oppression belongs to its heritage and as such must be preserved by appropriate measures in the name of the duty to remember, which is incumbent on the state. The aim of these measures is to preserve the collective memory, and in particular to guard against the development of revisionist and negationist theories.⁵

The Decision to Create a Historical Commission Requires Political Maturity

The formal decision to create a historical commission is above all a political act and requires a certain political maturity. Such a commission must arrive at its own conclusions in a completely autonomous and independent fashion, regardless of what its assessment and recommendations could be. In this sense, the creation of a historical commission is a true test of the quality of democracy.

Indeed, if the dominant political forces are not in favor of clarifying the facts or combating denial, there are many methods they can employ to prevent such historical commission from having any real impact: a commission’s mandate may be impossible to fulfill, or it may contain provisions that are not in conformity with international law; there may be no guarantee of the commission’s independence from those in power; its composition may be controversial, with some of its members being parties to the conflict; its funding may not be guaranteed; or the government may decide not to respond to its report, or may even forbid its publication.

Informal Commissions

In many contexts, where the political will is lacking and the powers-that-be refuse to adopt this line of thinking, initiatives to set up informal commissions have emerged with differing degrees of success. For example, this was the case in Guatemala with

5 “Lutte Contre L’impunité: Le Temps des Questions,” [Fighting impunity: Time for Questions], *Droits fondamentaux*, No. 1 (July - December 2001), <http://www.droits-fondamentaux.org/IMG/pdf/df1joiimp.pdf>

the REMHI –*Proyecto Interdiocesano de Recuperación de la Memoria Histórica* - Recovery of Historical Memory– project of the Archdiocese of Guatemala. The results of this project led (a few years later) to the creation of the Commission for Historical Clarification, established by the United

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Nations, which based its work to a large extent on the REMHI project’s findings. There is also the case, for example, of the Greensboro Commission in the United States, which published its report in 2006.⁶ Its task was to “examine the context, causes, sequence, and consequences and to make recommendations for community healing revolving around the tragedy that took place in November 1979 in Greensboro, N.C.”. In the best cases, such informal commissions pave the way for a historical clarification and contribute to calming fears. However, they must have undisputed social, political, and moral legitimacy.⁷ As their conclusions or recommendations are not binding, it can also generate frustration if their work is not formally acknowledged and their recommendations not even discussed in the public sphere.

Principles and Good Practices

When setting up such a commission, several principles are vitally important:

- **Autonomy:** Without complete autonomy and independence *vis-à-vis* the authorities or pressure groups, such commissions will lack credibility, and thus will be unable to perform their task.
- **Composition:** The members of such commissions must be above reproach, with no criminal record. They must not be related to either party in the conflict, must have an excellent reputation as professionals and must be known as honorable and incorruptible.
- **Mandate:** A commission’s mandate must be clear, concise, and achievable within a reasonable time.
- **Judicial responsibility:** Historical or truth commissions do not have a judicial mandate; their findings are not judicially binding, but their conclusions are very relevant and may be used, if needed, by judicial bodies. They can also make suggestions to judicial bodies.

⁶ The Greensboro Truth and Reconciliation Commission, <http://www.greensborotrc.org/>

⁷ The conditions for success of the informal initiatives on the recovery of historical memory should be the subject of another article.

- Recommendations: The commission should be able to make recommendations concerning public policy that are binding for the authorities that gave it its mandate (in the case of an informal commission, this could be considered as binding).
- Publication of the report: The report must be made available as quickly as possible, and if necessary translated, so that society as a whole—in particular the groups most directly concerned— can read and understand it.
- Archives and access to information: The commission must have guaranteed access to archives, victims, and any person or place it deems useful to meet or visit.⁸ On the other hand, access to the commission’s own archives must be regulated when it begins its work.
- Witness protection: There must be guaranteed protection for witnesses and people the commission meets.
- Protection of the commission and its archives: There must also be guaranteed protection for commission members and the commission’s archives.
- Funding: Funding of the commission must be provided by the mandating authority so that the mandate can be carried out to completion.⁹

Historical Memory and the Feeling of Justice

“I want justice to be done. I need an explanation of what has happened and why it has happened.” Victims often express their feeling that “justice has been done” when the circumstances and facts that led to the commission of atrocities, and particularly to the death of their loved ones, have been established. For the “perception of justice” to be fulfilled, the establishment of facts—or the “truth”— is fundamental. In fact, justice, as perceived by survivors, is often not limited to the courts or the punishment of the guilty. Historical or truth commissions not only contribute to the establishment of the facts and give a voice to victims, they also contribute to explaining the machinery and the system that led to the annihilation of others. In a broader sense, historical commissions play a crucial role in paving the way for new identities to emerge – identities that can “live with what happened and will no more be defined only by what happened.”¹⁰

Thus, when governments support these commissions and welcome their reports, putting into effect some or all of their recommendations, the impact can be

⁸ Including subpoena.

⁹ See: Truth Commission, <http://www.truthcommission.org> ; Beyond Intractability, http://www.beyondintractability.org/essay/truth_commissions/

¹⁰ Interview with a victim after having received the report of a commission that was relating to her case.

immeasurable. Citizens will feel more confident that they “have a future”; parties with an interest in maintaining an atmosphere of denial see their influence considerably reduced; dialogue among “us and them” can finally take place without individuals afraid of being labeled a “traitor” to their own people; divergent and alternative histories and identities can also emerge, as well as multiple narratives in which the “us and them” will fade away and give way to individual responsibility for the past and the future. One of the consequences of the good work done by such commissions is the emergence of a space for foundational and fertile dialogue between different narratives and the “truth,” the emergence of a whole range of new vocabulary and attitudes relating responsibility to individuals rather than engaging in collective blaming, dialogue rather than accusations, and diversity rather than the monopoly of a singular, homogenous identity.

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Two Examples of Historical Commissions

Two examples of historical commissions are inspiring because of their impact on democracy. The Swiss Independent Commission of Experts –more generally known as the Bergier Commission, named after its chairman, Jean Francois Bergier– was created in 1996 and presented its report in 2002. Secondly, the Centre for Historical Memory (CMH), is renowned for its impact on peacemaking. The CMH was created in 2007 and presented its general report in 2013. Today it is part of the Historical Memory Centre, a governmental body.¹¹

*The Bergier Commission*¹²

In Switzerland, the so-called Bergier Commission was established in December 1996 through a unanimously approved resolution of the Swiss Federal Assembly (Parliament). Its mandate was “to investigate the volume and fate of assets moved to Switzerland before, during and immediately after the Second World War from a historical and legal point of view, and to present a final report by the end of the year 2001 at the latest.” The Commission’s mandate covered the gold trading and foreign currency transactions conducted by the Swiss National Bank and by private

¹¹ Centro Nacional de Memoria Histórica, <http://www.centrodememoriahistorica.gov.co/>

¹² See: Independent Commission of Experts Switzerland – Second World War (ICE), www.uek.ch

commercial banks. The objects of the investigation were all the assets moved to Switzerland, including insurable and cultural assets, both of the victims of the Nazi regime and of its perpetrators and collaborators. The relations of Swiss industrial and commercial companies with National-Socialist businesses –especially regarding their involvement in Aryanization measures and the exploitation of forced laborers– were also examined.

Another key topic was the Swiss refugee policy in connection with Switzerland's economic and financial relations with the Axis and the Allied powers. The report also included the post-war period, including government measures for the return of unlawfully acquired assets (Washington Accord 1946, the Resolution on the reporting of dormant accounts of 1962). The Commission was an international body with a president, four Swiss and four non-Swiss members (representing Britain, Israel, Poland, and the U.S.), all of whom were appointed *ad personam* on the basis of their professional expertise.

On 22 March 2002, the Final Report was presented in four national languages. The “Bergier Report” has indeed changed the traditional version of the history of Switzerland during the Second World War. It is also important to underline that, by choosing to adopt a clear victim perspective, the Report raised a series of issues centered on personal rights, protection of legal ownership, and restitution that were crucial. Globally, it definitively contributed to the development of a democratic debate and discussions about the relations between the economy and the foreign policy in Switzerland, about relations between Switzerland and the rest of the world, and it is still contributing to shaping the debate in Switzerland about the “national *ethos*.” In this sense, this commission has contributed immensely to (modern) democracy in Switzerland.

The Historical Memory Group in Colombia

In spite of its problematic mandate, the Historical Memory Group has created conditions in which it contributed significantly to a shift in the perceptions of the conflict. It has also created a favorable environment for peace talks, notably by producing a series of reports and public policy recommendations that have had a very concrete and positive impact.¹³

The last chapter of the general report states that the Historical Memory Group has published 24 historical memory reports since the end of 2008, produced in the midst of the internal armed conflict in Colombia:

¹³ “The HMG will study the reasons for the emergence and the development of illegal armed groups” (Law 975/2005, Article 51)

At the heart of these reports are the personal accounts of the victims and their communities. Building on those historical, factual accounts, the reports then go on to reconstruct the context, the circumstances, the structural aspects and the actors that caused the conflict to spread and intensify. Each of the reports highlights the impact and harm that was done both at an individual level and collectively, allowing us to visualize the stories of survival and resistance against armed violence. The collection of reports provides a solid account of a complex internal conflict which has lasted for six decades.(...) The chapter of public policy¹⁴ recommendations acknowledges the efforts, the progress and the work currently being undertaken by various social institutions and organizations within a legal framework designed with the specific intention of consolidating some of the social and political conditions that give recognition to and confer dignity on the victims, and which pave the way for peace and social inclusion. The chapter includes recommendations that can be used to guide and contribute to appropriate decision-making in order to foster a democratic society and lasting, sustainable peace.

The Historical Memory Group HMG is now part of the Historical Memory Centre HMC established in 2011. This governmental center now has a broader mandate: the creation of a national network of “memory initiative and a national museum”; the reception, preservation, and accessibility of archives regarding human rights violations; the ongoing realization of studies on additional aspects or events related to the (still ongoing) conflict; and the reception (and systemization) of information by former armed actors within the framework of demobilization process (the so-called “truth narratives”). The HMC is playing a crucial role at the national level in the current context of the peace process between the government and the guerrilla movements, notably the FARC. Not only has the Historical Memory Group’s report been read attentively by the parties involved in the negotiations, but its public policy recommendations are also debated intensely, and provide an indisputable framework for a serious path towards peace.

Lost Honor or Political Courage in Action?

I was asked to answer whether such a mechanism could be relevant in the context of Armenia and Turkey and why; allow me to share the following observation:

In September 2009, on the occasion of the signature of the “Protocol,” representatives of the Armenian and Turkish governments signed an agreement in which

¹⁴ “General report,” *Centro Nacional de Memoria Histórica*, <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/>

—among other elements— it was mentioned that they had decided “to implement a dialogue on the historical dimension with the aim of restoring confidence between two nations, including an impartial scientific examination of the historical records and archives to define existing problems and formulate recommendations.” While these Protocols have not been ratified, everyone seems to agree that they mark an important step for the region.

Generally, in contexts where the nature of historical events is the subject of a dispute, that leads to an intractable degree of political conflict; historical clarification can be crucial as it can contribute to —eventually— address the future on the basis of commonly acknowledged historical facts. Particularly in context of conflict, historical commissions, when handled according to existing standards and good practice, can indeed contribute to opening up a path for a constructive political process as well as a renewed dialogue based on mutual acknowledgement.

Some people criticize the idea of the creation of a historical commission for “facts that have been clearly established”; one can argue that a joint historical commission would actually lead to the parties in dispute to officially agreeing on what happened. Some other people say that, they do not see the benefits of such a commission, rather they view it as a danger for “national security,” one can argue that this effort would facilitate clarification of what happened, would individualize responsibility, and thus, avoid any form of collective “condemnation.”

Diversity has been the richness of the region in the past. Accordingly, the key to its bright new future lies in its people’s capacity to develop a new societal *ethos* based on a constructive management of diversity. The acknowledgement of what occurred in the past would definitively be one of the main pillars of such a constructive process, a magnificent symbol of resilience for the whole region, and a fundamental base for new future perspectives in the region.