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WAR CRIMES AND SPIRITUALITY: TO PROSECUTE OR TO FORGIVE AND RECONCILE

Conducting investigations on war crimes has a clear goal of establishing facts on crimes, perpetrators, and victims. On the other hand, the question of forgiveness and reconciliation, as essential conditions for re-establishing the coexistence of former parties at war which continue to live together, in the same community, country, and society (or next to each other), is something completely different. Investigating crimes, establishing facts, and finding and prosecuting individuals for committing those crimes, is an exact, measurable category. Forgiveness and reconciliation are not. By questioning the real effects of war crimes trials in post-conflict societies, this article argues that, for a peaceful and lasting foundation for the future life in post-conflict societies, a legal approach to the atrocities committed is not sufficient. In addition, there is a need to find a way to forgiveness and reconciliation, without which societies can always return to the “dark past”. The New Testament says that only the truth will set us free, but is that immanent to the human being? Can a human being truly forgive, or is mercy only reserved for divine beings? Can and should the victims forgive their torturers, the ones who burned down their homes, killed their beloved ones, destroyed their lives and burdened them with memories that do not fade away? In countries where past conflict resulted in mass atrocities and where, following some peace agreement, the former parties at war did not go separate ways but continued to live in the same country, this inevitable reality is a burden, if not even a risk to the existence and rebuilding of the post-conflict society. To a great extent, the situation is the same for neighboring societies (countries). But no matter what, the question is whether war crimes trials and punishments for war criminals will eliminate the consequences of those crimes, allow the victims to free themselves from that victimhood, and societies at war to find peace and rebuild.

Key words: *war crimes, justice, spirituality, forgiveness, reconciliation.*

Original article

INTRODUCTION. Human lives are much more than causing pain and suffering, as it is obvious that life goes on, even after the gravest crimes and suffering. Without that, life itself would not make much sense. Everything would disappear in the moment of death, life would be nothing more than waiting for the inevitable disappearance into nothing, and the murderers would exult forever over their victims (Horkheimer, 1970). Is it then too much to expect everyone living in one society to have an awareness about having a better future? And while the books speak of the “final” judgment, they also call people not to allow the murderers to exult in innocent victims and to revive as much as possible the words: “...God himself will always be with them. He will wipe every tear from their eyes, and there shall be no more death or mourning, wailing or pain, [for] the old

order has passed away”¹. To be equitable². To do what is right. Because the goal of human life is simple. To be happy. Every human being aspires to happiness and does not want to suffer, and the highest attainable level of inner calm comes from love and compassion (The Dalai Lama, 2009). There is no doubt that in post-conflict societies they can only be achieved through forgiveness and reconciliation. Without that, society will just continue waging war using other means (Šimić, 2023).

The question of whether killing and violence, mental and physical abuse, destruction of people’s lives and property causes any damage, is only a rhetorical question. Whoever watches at least a low-budget film about war and dictatorships,

¹ The New American Bible (2011). Washington: The Confraternity of Christian Doctrine.

² The Qur’an (2008). Oxford: Oxford University Press.

which abounded in the societies of this civilization, and especially if he had the misfortune of living in such a society, is aware that death, violent torture, killing, abuse, mistreatment, and robbery leave deep traces on the physical body and people's psychological health. In addition to people's health, such events also leave traces on the material assets of people who find themselves in these events, but also on societies that find themselves in conflict, because their shared values are damaged or destroyed (Šimić, 2023).

PURPOSE AND OBJECTIVES OF THE RESEARCH. The term "justice" is, too often in today's world, associated with the work of the court (mostly criminal ones). In that sense, and that is to be observed in post-conflict societies, it is associated with expectations that "justice will be done" once the court reaches a verdict, the perpetrator is sent to jail, and society magically erases the consequences of those crimes. In real life, this is far from the truth. All over the world, we can observe prolonged conflicts that have been lasting for decades, and people who are born and dying in a state of conflict no matter whether the criminal prosecutions have been brought or not. Furthermore, in many post-conflict societies, we can observe that dozens or hundreds or sometimes even thousands of war crimes trials have been held, but society, within or in correlation with neighboring societies or states, is still in conflict. Finally, we can see that even the gravest atrocities that were committed during the Second World War are mostly overcome in present-day Europe and the World, not only because of war crimes trials following the Second World War covering a small portion of those crimes but much more due to the social efforts made by the societies (countries). In that sense, this article is arguing that for lasting, peaceful and cooperative (not just coexisting) life within post-conflict society or between past enemies in the neighboring countries at war, much more is needed than just to prosecute (some) war crimes. That doesn't mean by no way that prosecution or war crimes are not necessary in post-conflict settings, to the contrary, it means that those prosecutions are just one, maybe even smaller, part of the creation of a peaceful future for past enemies. That other, larger portion of the activities are to be done in some other fields within the society, with a simple goal. Forgiveness and reconciliation based on truth and justice are the only solid ground for the development of post-conflict societies. To be able to achieve that goal, post-conflict societies must develop a much broader, much more humane approach to establishing justice in post-conflict societies.

METHODOLOGY. To be able to analyze all the questions raised in this paper, complex methods typical of contemporary scientific writing will be used. It will include an analysis of the effects of war crimes trials conducted in post-conflict societies and post-conflict times and their impacts on the reconciliation of those societies. Further sociological, political, medical, philosophical, and other understandings of the consequences of mass atrocities in society will be presented so the complexity of those consequences is fully revealed and understood. In addition to that, basic concepts of the most represented spiritual teachings of the world will be examined and compared in correlation with the needs of contemporary societies, particularly post-conflict ones. Finally, all these findings will be analyzed individually and in mutual connection, and conclusions will be synthesized upon establishing facts.

RESULTS AND DISCUSSION. The consequences of war crimes and mass atrocities in a society (individual and collective) are complex and multidimensional. They span from the simple destruction of property to the psychological consequences on individual human beings and their societies. Finally, it can result in the death of the individual, but also in the society ceasing to exist. If those individuals will continue to live, and society to exist, they will inevitably face the consequences of the atrocities suffered, and try to overcome them. The outcome of that process, difficult and painful, will have a significant influence on the future of individuals and their societies.

Medical-psychological perspective

Therapists Van der Hart, Nijenhuis and Steele (2006) stated that if the victims are to regain control over their lives, it is necessary to find and empower the belief in what happened, the experience they have survived, and find new strength within, if only temporarily, for the explanation of previous events. For the victim, events causing trauma need to be "real" rather than "imaginary" to be pushed far in the back of their memory. According to the authors, this kind of approach requires tremendous effort from the victim and many of the victims never overcome the psychological state caused by the traumatic event. To do this, Van der Hart, Nijenhuis and Steele (2006) believe that the victims need to find a "new" beginning and make new connections between themselves and the world, the ones that had been cut by traumatic events. Victims, in that way, find a new path from the isolation from society caused by anger and life, and although hardly "wounded", they can find its meaning and value. If the victim experienced trauma in an early phase of life, and

has expected a long period of biological life, the necessity for this is even greater.

However, is it possible to “forgive” for all “evils”, trauma, and suffering, so the victim can find relief from anger against the perpetrator, and find peace, freed from poisoned thoughts and actions? That is not a simple question. That question is even more complicated when social circumstances after the conflict are characterized by social instability, unresolved disputes (which have led to the conflict), unresolved “peace agreements”, or exist long after the nominal end of the conflict. Furthermore, there is an important question looking for an answer. Do we have to “forgive” those “others” who do not want to forgive “us” and, is that a sign of weakness (as characterized by Nietzsche, 2007) or a sign of ultimate strength and liberation?

For people living in post-conflict societies, it is more than obvious that many victims will never find the inner strength for overcoming experienced trauma. Some of the victims will probably never even look for that strength, living in the belief that trauma has marked their life, that there is no salvation from that mark, so all they have to do is to wait for the biological end of their life. Others are looking for strength in different places (religion, medical help) but for all of them, the path to salvation from trauma is long and difficult, requiring effort, without which there is no healing. On the other hand, unconditional devotion of the victims to freeing themselves from the role of the victim requires the rejection of that role in the first place, so they could be free from conditional liberation, of conditions that are eventually on the side of the perpetrator and be free from the hopes that may never come.

The perspective of the perpetrator is a bit different from the victim's. Threatened with criminal prosecution, long-term punishments, but also with shame, a perpetrator, reacting instinctively, tries to avoid all these “traps”. But, even free from criminal prosecution, the human mind is not made to forget. Committed offences and harms are living in the human being and “following” them all of his life, and according to many spiritual beliefs, even in the afterlife. Even more radically, according to some of them, the human being will have only one life in the whole eternity. Having all this in mind, would it then be better not to avoid your confrontation with the committed crimes and search for forgiveness, or hope that a punishment would be served when the crimes could not have been avoided?

It is no surprise then that victims and perpetrators have different perceptions of the events turning them into the role of victim and perpetra-

tor. Victims perceive events as acts with serious consequences, unforgivable, and immoral, often motivated only by brutality and cruelty. On the contrary, a perpetrator of crimes perceives events as those beyond his power, diminishing consequences, dividing guilt among many sides often justifying their behavior as expected and justified in given circumstances. It is obvious that such perceptions, different in their essence, seriously influence the potential process of forgiveness and reconciliation between the perpetrator and the victim (Baumeister, Stillwell, Wotman, 1990).

But forgiveness should be in no case confused with forgetting and denial. Smedes (1984) described forgiveness colorfully as “a dangerous road to avoid surgical treatment of the heart called forgiveness”, while Hunter (1978) believed denial could be used to avoid pain caused by trauma, and for avoiding it, necessary effort needs to be invested in “real” forgiveness. Moreover, according to Hunter (1978), denial in its ultimate manifestation can lead to a situation where the victim believes that they have forgiven their perpetrator, but in reality, the victim is not able to overcome their anger. The process of forgiveness could not even start until the pain and consequences of a traumatic event are not accepted and recognized (Fitzgibbons, 1986). Contrary to Nietzsche's (2007) opinion, it seems that forgiveness is not a sign of weakness but ultimate courage and effort. But that effort must be mutual including both victims and perpetrators, having in mind that the question of guilt is not only a legal question, but also encompasses much broader responsibilities including political, moral, and metaphysical ones (Jaspers, 2001).

Spiritual perspective

Spirituality and religion play a significant role in the life of many people around the world. It is not of crucial importance which of the religions they formally belong to, or if they are “institutional believers” who follow (fully or partially) prescribed rules of the chosen faith. Even without that, customs and behaviors are marked by many motives and characteristics of the beliefs existing in some areas, sometimes even without the awareness of the people in question. Having all this in mind, it is evident that the role of the spiritual and religious communities cannot, and indeed must not, be neglected when it comes to the question of forgiveness for terrible crimes such as war crimes. This is even more important to emphasize since we know that many of those crimes are committed by members of one religious community against members of some other religious community. Sadly, some of the most terrible crimes were even motivated by such factors. Most

of those religions and beliefs, however, in their essence proclaim forgiveness for the crimes as the path to overcoming “evil” committed. Therefore, an adherent of any religion, regardless of being a Christian, Muslim, or Hindu, who is not willing to accept the presence of the Holy in other religions, is in danger of misunderstanding its religion (Karić, 1996). None of these religions, none of the beliefs, justifies the injustice and evils committed against other human beings, even those who believe “in something else”.

In the example of Buddhist, Christian, and Islamic traditions, it is well observed that the concept of “forgiveness” and “reconciliation” plays a dominant role. These traditions have been taken as an example, but these concepts are to be found in many other spiritual beliefs and teachings all around the world.

According to Buddhism, there are the Four Noble Truths about human life: the truth of suffering (Dukkha, suffering exists in the life of every living creature), the truth of the origin of suffering (Samudāya, suffering comes from desire (*tanhā*)), the truth of the cessation of suffering (Nirodha, there is a way to extinguish desire, which causes suffering, and that is to liberate oneself from attachment) and the truth of the path to the cessation of suffering (Magga, there is the way to end the suffering). According to Buddhist teaching, the cause of suffering lies in selfishness, self-affirmation, and desire for life, all of which lead to reincarnation in new life. Understanding and eradicating that desire leads to overcoming the suffering in life. All this can be achieved by following the Eightfold Path: Right Understanding, Right Intention, Right Speech, Right Action, Right Livelihood, Right Effort, Right Mindfulness, and Right Concentration. Following this path, and intentionally not collecting data about everything we do or fail to do (karma), it is possible to escape selfishness, self-affirmation, blindness of life, and suffering. If that “nying-je chenmo” (great compassion) is to be taken as an ideal, based on the simple cognition that, if I wish to be happy and avoid suffering, all others wish the same, understanding of that truth serves as a constant reminder against our selfishness and governs our life behavior. It will also remind us that we will not achieve much if we are kind and generous only because we expect something in return (Gjatso, 2003). But, as we can see in our world, this simple truth, in a life full of obstacles, fears, misfortunes, and suffering, is not easily achieved. However, saying that every trouble in life is simply a result of karma, would be like admitting that humans are completely powerless to influence the course of their life. If so, then there would be no reason for hope, but

we could just leave ourselves to our destiny. Our reaction to suffering is only up to us (Gjatso, 2003). Out of all of this, it is simple to recognize Buddhist attitude toward forgiveness: Remember all good things that you have done, forgive anyone in your life and ask for forgiveness from anyone you might hurt (Rinpoche, 2012). But suffering does not necessarily have to make humans cold-hearted, powerless, and bitter. On the contrary, suffering can open a new understanding of compassion toward other living creatures. Every human being is then a creator of their karma, and that karma is not decided in advance. The karma of our past lives has decided our birthplace, but where we are going to go from here depends only on our actions.

In the Christian tradition, the term “forgiveness” and the concept of forgiveness occupy a central place. Although often mixed with terms such as “justification”, “redemption”, and “reconciliation”, forgiveness always leads to reconciliation and reconciliation results from a mutually forgiving experience. For Christians, the concept of divine forgiveness, directed through human beings, is a form of love that should characterize the fullness of life in the community and beyond (Worthington Everett, 1998). The overriding thought of the Christian idea of forgiveness is the God who lives in the community of a peaceful, unselfish existence, and therefore ready to bear the burden of forgiveness to restore humanity in the Kingdom of God. This means, taking into account human sins and wickedness that God’s love extends to the reconciliation of the achieved by-gone forgiveness. In response, human beings are called upon to become better, embodying that forgiveness through specific habits and actions that are directed to remember the past truthfully, to repair the broken, to unify what has been split, and to reconcile and renew connections. Moreover, forgiveness is not just a spoken word, but undertaken action or a sense to unleash the path of life to God and others. As such, the Christian approach to forgiveness is not simple, or primarily focused on the forgiveness of sin, but rather on the repair of the broken, the establishment of unity – with God, with one another, and with the whole creation of God (Jones, 1995). God, by forgiving sins to an imperfect man, gives a definite example to that man how to behave and how to earn “eternal” life. To illustrate this, words from the Bible could be quoted: “Stop judging and you will not be judged. Stop condemning and you will not be condemned. Forgive and you will be forgiven”¹.

¹ The New American Bible (2011). Washington: The Confraternity of Christian Doctrine.

The Qur'an, the holy book of Muslims, speaks about good and kindness towards other people, even those who are not Muslims themselves: "God does not forbid you from being kind and acting justly towards those who did not fight with you, nor expelled you from your homes. God indeed loves those who are just"¹. The idea of good is a universally recognized human value. No matter if we are looking at the cited texts from Qur'an, Bible, Buddhist scriptures, or other spiritual texts, kindness as a universal value is ever-present.

All of the above undoubtedly raises the following questions: Will we and can we forgive one another for all the offenses we committed against each other? And if we do not, will we be able to live in a happier and better future, without the fear of war and the crimes that come inevitably with it? It is not easy to answer these questions. At first glance, it is noteworthy that they are multilayered and that an attempt to answer them requires an approach of considering political, philosophical, cultural, and psychological aspects as important determinants.

Looking through a prism of the definition of politics, defined as the activity of state governance in the broadest sense, that is, the art and mode of government, the political community or institution, or the system of institutions that act for the public good or the well-being of the entire community², politics is an inevitable factor in understanding mass crimes in conflicts and indispensable in preventing their recurrence, but also in abandoning the policy that leads to them. A simplified observation of this definition shows that this art and mode of governance should be for the "welfare of the community", and hence for all its members. Unfortunately, there are other ways of running a state and community. Those policies are focused on individuals (or individual groups) over the common good of the entire society, inevitably creating tensions inside a community or with other communities. Events from 1992 to 1995 in Bosnia and Herzegovina can be used as a typical example. Thus, Lieberman (2006) refers to the events in BiH as "collective dissonance". According to Lieberman (2006), collective dissonance is the behavior and attitude that arose from the simultaneous existence of two different ideas, or because of the existence of someone's behavior that is in opposition to the strong convictions of someone else. But resolving the question of how a neighbor becomes an exe-

cutioner is not that simple. According to Lieberman (2006), a neighbor can only become a bloodthirsty person when put in a long-term historical story of opposing and fighting different national and ethnic groups. This story of ethnic hatred, which has been going on for centuries, and the mutual blame for violence and betrayal has been present for a lengthy period, sometimes obscure, sometimes hidden, but always present. According to him, the one who is "on the other side of the story" should be destroyed for the last time. The past and the present have merged into one, and acquaintances, neighbors, and friendships at the personal level have lost any sense, drowned in a wider picture of hatred of entire ethnic groups.

By looking at philosophy as a general and systematic thinking activity that seeks an explanation of the fundamental principles of the world's survival, of a person's purpose and action and as a reflection and problematization of general laws of nature, society and opinion, and aspiration for the comprehension of the totality of the present³, it is possible to come to metaphysical elements of the crimes committed, their perpetrators and victims, and their consequences. Here we could deal with the general meaning of human life and the meaning of the existence of a person who has subjected his being and existence to something like a crime and the other who became the victim of such an action. Is it worthwhile dedicating such a precious human life to something as unworthy as to cause pain and suffering to others? Is that the meaning of human existence? Do people ever think about that when they engage in such an activity? And do people think about the consequences of their actions when they dare to harm other human beings? These issues are very often transcendental and almost entirely beyond the legal process in war crimes cases. But, far from being unimportant. Their answer provides the basis for setting the firmest judgments about the existence of a community, its foundations, and the possibility of forgiveness among its members, which is more philosophical than a legal issue. Because, to forgive is much more than saying, "I forgive you". Augsberger (1981) describes forgiveness as one of the hardest things in the world. There is a lot more in the game than the words themselves. To abandon justified rage and hurt, to think about betrayal and traitors in a completely new way, to give up the deserved right to revenge, all of this requires a change at many levels: cognitive, affective, behavioral, willingness, and spiritual.

¹ The Qur'an (2008). Oxford: Oxford University Press.

² Enciklopedija, opća i posebna u 20 knjiga (2005). Zagreb: Pro leksis.

³ Ibid.

Culture is defined as the totality of spiritual formations and material accomplishments, value judgments and public norms, social institutions, organizations and forms of behavior of people in a community. Regardless of the biological, psychological, and other movements and dispositions of persons, a culture needs to be adopted through learning and communicating within the social community, transfer, and further developed¹. As such, culture is very important as the backbone of activities such as establishing the truth, dealing with the past, and changing exactly those norms of behavior that led to the possibility of committing a crime, or to its denial and justification. But culture is not just that. According to another definition, it is also the type or scope of the spiritual development of an individual in the community with the necessary qualities in relation to the other². In the light of this definition, culture is defining how each individual acts toward other members of the community, which, among other things, is also based on the cultural heritage of the past generations. This legacy can be burdened with tragic events, but it must not be taken as a model of behavior without evaluating previously adopted norms, since such an approach would deny any possibility of improving relations within society and focus only on the tragic parts of a common past, making moving forward in relationships between people and communities impossible.

If we understand psychology as a study of human behavior, psychological processes, and psychological traits and thoughts³, it is undeniable that psychology plays an indispensable role in perceiving the phenomenon of mass crimes in conflicts. “Are people predisposed to be criminals? How does a person become a criminal? Can a person truly repent for what they did, rectify injustice, and become a worthy human being? Do people get born to be victimized? Can we forgive injustice against us?” are just some of the questions. Observing the psychological aspects of war crimes, it is certainly necessary to set these questions apart from the perspectives of the victims and perpetrators, and then from a possible common perspective. Feelings such as anger, fear, hurt, shame, and suffering are the most prominently felt by the victims. With anger comes the knowledge that the person was helpless in the past. Fear comes from understanding that terrible things can happen again. With hurt our value comes into question. Hidden in the feeling of

dread, there is a sense of shame. With each of these feelings of suffering, the pain from the past continues to affect the present (Worthington Everett, 1998). All these feelings, especially anger and vengeance, are very intense. Referring to revengeful destruction, Fromm (1992) considers this to be a spontaneous response to the suffering of a person, or members of the group with whom they identify. This type of destruction typically occurs after the damage is done (it is not a defense against the perilous danger, but a subsequent reaction) and it is much more intense, very often cruel, lively, and insatiable. This sort of revenge is called “thirst for vengeance”. In addition to why revenge is such a profound and respected passion, Fromm (1992) reaches a series of interesting conclusions. He thinks revenge is a kind of act that a person uses to magically destroy the work of the one who committed it, expressing it with the widely-present notion that the criminal “paid his debt” with the punishment served. Though a person often cannot defend themselves from harmful exploits, in their desire for vengeance, they are trying to magically negate the injury. However, Fromm (1992) notes in the end that a person takes justice in their hands when God and secular authorities fail as if by this act the person rises to the role of God and Angel of revenge.

The perpetrator looks at the acts committed through a largely different perspective from the victim. Not only is the perpetrator in the post-event phase confronted with a “real threat” of being submitted to criminal procedure, but also, crimes as such, particularly the grave ones, are generally something that is widely socially despised. The perpetrators and crimes as such are rather denied than praised. In all of this, surely, the victim cannot be the only factor in forgiveness and reconciliation. The one who committed the crimes has not only a moral but also a human obligation to make even greater efforts for what has been done. It is perfectly clear that only criminal trials, especially legally and formally, which do not respect the truth and do not respect the victim as one of the focal parts of the proceedings, will not yield results that will enable the coexistence of the parties at war in the future. Not only simple coexistence but life in the full meaning of the word can be difficult to achieve if there is a burden of such serious crimes committed between the members of a society who “did not” make peace sincerely and fully and move on. Much effort is needed for this approach. It is paved with heavy introspective analysis and acceptance of its deeds that are not conditioned by the works of “others”. Unfortunately, there are

¹ Ibid.

² Ibid.

³ Ibid.

still rare examples of this kind of approach in post-conflict societies all around the world. Very often, people living in these areas still do not realize that the cycle of crimes that have been in existence for centuries cannot be broken by new crimes. It can only be broken by a decisive departure from the theory that crimes have been committed only by “others”. From the idea that “we” will “prosecute” “our” “offenders” only if “others” do the same, and that “we” must forget all crimes we did pointing only to the crimes of the “others”. Instead, deepest remorse for the crimes committed needs to be offered to the victims, looking for sincere forgiveness from those who have been suffering because of “us” and “our” crimes, sincerely offering the same.

But the question of “What to do and how to move one?” remains. And it is not a philosophical, multifaceted question to be dealt with in the spirit of contemplation about life. This question is “usual and every day” for all people living in post-conflict countries. Because, without answering this question, not only is there no peace for society, but it is not to be found also for every one of its members. The approaches to address this issue are very different in different countries: from the efforts that led to total bloodshed avoidance, which occurred in South Africa, to Rwanda where 135,000 people were still in prisons in 2000 accused of taking part in the genocide, to complete amnesty that took place in Mozambique at the end of the 17-year long civil war in 1992. On the other hand, Bosnia and Herzegovina could be taken as an example of a country with the historical record of war crimes trials. Although more than 1000 persons were prosecuted for war crimes until the year 2023¹, 28 years after the formal end of the war, Bosnia and Herzegovina is still a deeply divided country along the lines (real and imaginary) of the former enemies from the 1992–1995 war.

Many scientists, therefore, believe that the only way to solve this question is through forgiveness. But not some mere imaginary forgiveness, through words spoken without real meaning and dedication, but genuine forgiveness, as a prerequisite for moving forward. As noted, cultures and spiritual teachings of the world support this approach, since violence raises violence, and revenge turns the righteous victim into the perpetrator of the crime and resumes the vicious cycle of the burden of the past. Human beings are created with the power to remember the past but without the power to change it. Likewise, they have the power to imagine the future, but without

the real ability to control it (Arendt, 1969). As Tillich (1963) pointed out, alienation contains the creation of distance among the once close people, which was caused by the fact that one side hurt the other side. The victim feels this act as is a violation and a moral offense, a violation, and a sense of hurt makes it morally unacceptable for the victim to pursue a relationship of trust with the perpetrator. This necessarily arises from the fact that the victim wants a kind of moral satisfaction. The victim wants to see the perpetrator suffer, at least as much as they suffered and were victimized, in short – a vengeance. But revenge is almost inevitably frustrating. Because now the initial victim becomes a perpetrator. The new victim now seeks moral satisfaction, so both sides become both the perpetrator and the victim, which makes the cycle of revenge never-ending. For this, there is forgiveness. And reconciliation begins with forgiveness.

CONCLUSIONS. After all that has been said, one question is evident, “What is to be done?”

There are no better words to start with than the words of one of the victims of war crimes:

“Life was once so beautiful.

Carefree and joyful.

Playful in the never-ending flowery fields of my childhood.

Illuminated by the love and care of my parents.

It was about the beautiful, carefree life in your own home.

And then one day.

It all disappeared” (Šimić, 2016).

We, as human beings, should show compassion to all living beings who have suffered because of war crimes (and other inhuman acts), as well as to all other living beings. By doing that, we show our respect, but also a responsibility that we have toward each other as human beings who feel and suffer, so we could help each other to eliminate that suffering. Apart from that, we cannot be ignorant towards the feelings of other living beings we share our life with. That relationship needs to be active towards all living beings, contrary to “declaratory” compassion that does not mean much in real living circumstances.

In the scope of our professional capabilities, we should do all that we can to contribute to the elimination of the horrors committed during the times of conflict and use our professional knowledge and expertise as well as we can for the benefit of the entire community and ourselves personally. Regardless of occupation or profession, none is insignificant in efforts to eliminate those consequences. Only through such a multidisciplinary approach, will it be possible to create a comprehensive network of activities that will

¹ War Crimes Trials Database. URL: www.warcrimesdatabase.net (accessed 15 June 2023).

cover society in its entirety. That kind of approach will not only eliminate the consequences of past events but will also create necessary conditions for a peaceful future.

Each of us, on our individual level, the level of the members of our societies, should pay respect to our society, its culture, people, and history. By doing that, we are not supposed to be “blind” nationalists who do not see anything but “our own”, but simply stand on the side of justice. On the side of each member of our society who experienced injustice, to ensure the creation of a society where not a single member will be abused or suffer at the hands of other members of that society.

As members of this world, we can only strive toward ideals of justice and righteousness for each living being, particularly for those who suffer. Our life commitment should be to do all that is in our power to contribute to the elimination of that suffering. Our life in this world is connected, today more than ever before, and through our activity we can, and should contribute and strive to these ideals. After all, these ideals make us what we are – human beings.

To all those who have lived in post-conflict societies full of crimes and victims, it is more than clear that victims can hardly make this possible without the help of society. That is precisely the link that is present or missing in societies suffering from great traumas, which find or do not find the strength to overcome their past and move on.

Very often in our world, “forgetting” and “forgiveness” are promoted for cheap political purposes, as a justification and precondition for the further existence of the society that was in conflict. Furthermore, those who committed crimes say that “we cannot live in the past” and that life needs to go on. They also say that insisting on establishing the facts and prosecution of war crimes is some kind of an “insult” and “labeling” of those who committed crimes. This may be observed in many post-conflict societies. Having this in mind, it is reasonable to ask the following question, “Is it then better for the post-conflict society and in the interest of ‘normalization’ of the circumstances in the society (political and other), to leave all the past to “the great oblivion” so that perpetrators could feel better and be prepared to take part in rebuilding of the society (they had previously destroyed) regardless of the victims, who obviously, according to their understanding, found themselves ‘in the wrong time and at a wrong place’, and as such, are just collateral damage?”

In the formula of oblivion, perpetrators are the only ones who are victorious, all others are losers. Victims. Truth. Forgiveness. Reconciliation. None of it can be built on the ground of false forgetting, because, as history has shown us, there is no forgetting, and there should not be. Instead, forgiveness needs to be built on solid grounds of remembrance, compassion toward victims and their suffering, reminders, as memories tend to fade, and on the commitment to peace and respect of the former parties at war, but this time on completely different grounds. There cannot be forgiveness and reconciliation without the inner feeling of the victims that suffering found its serenity.

Considering that very idea, former enemies should think profoundly and carefully choose future steps. Many former parties at war, even long after the war, show a lack of respect and understanding for the needs of the “other side”, and by doing that, they postpone the only possible way to overcome the problem. Without sincere remorse for crimes and wrongs committed and sincere search for forgiveness with full commitment to non-recurrence, it is impossible to create a society where all the citizens feel safe, and where the people remember with compassion the suffering of “their own” and “those others”. To be completely honest, these are hard and long processes. Forgiveness and reconciliation take time, sometimes entire generations. Sometimes people who lived through suffering are unable to overcome that and honestly forgive, so these processes are not to be rushed. It is necessary to always remember that there was a moment in time when human beings were not human beings worthy of dignity and compassion for “those others”. When they were Nothing. When they were something to be exterminated from “the face of the Earth”. Without mercy. Without regret. Without remorse. Something that needed to be done. And it was.

To forgive is not a sign of weakness but ultimate strength and courage. To condition your forgiveness with somebody else’s forgiveness is unacceptable hesitation to do the only right thing. To do so, people all around the world need to find the strength to change. The change that will lead to societies in which people will find peace. Not only an economic one. But much more importantly, the spiritual one. The one that will enable people to live with each other, respecting their differences. A society that will create conditions for all living beings to live a fulfilled and great life. Where no one will be discriminated against on any ground.

REFERENCES

1. Arendt, H. (1969). *The human condition*. University of Chicago Press.

2. Augsberger, D. (1981). *Caring enough to forgive: Caring enough not to forgive*. Herald Press.
3. Baumeister, R. F., Stillwell, A., & Wotman, S. R. (1990). Victim and perpetrator accounts of interpersonal conflict: Autobiographical narratives about anger. *Journal of Experimental Social Psychology*, 59, 994–1005. <https://doi.org/10.1037/0022-3514.59.5.994>.
4. Fitzgibbons, R. P. (1986). The cognitive and emotional uses of forgiveness in the treatment of anger. *Psychotherapy*, 23, 629–633. <https://doi.org/10.1037/h0085667>.
5. Fromm, E. (1992). *The Anatomy of Human Destructiveness*. Holt Paperbacks.
6. Gjatso, T. (2003). *Drevna mudrost, savremeni svet*. Narodna knjiga Alfa.
7. Horkheimer, M. (1970). *Die Sehnsucht nach dem ganz Anderen, Eine Interview mit Kommentar von H. Gumnior*. Furche.
8. Hart, V., Nijenhuis, E., & Steele, K. (2006). *The Haunted Self, Structural Dissociation and the Treatment of Chronic Traumatization*. Norton.
9. Hunter, R. C. A. (1978). Forgiveness, retaliation, and paranoid reactions. *Canadian Psychiatric Journal*, 23, 167–173.
10. Jaspers, K. (2001). *The Question of German Guilt*. Fordham University Press.
11. Jones, L. G. (1995). *Embodying forgiveness: A theological analysis*. Eerdmans.
12. Karić, E. (1996). *Ljudska prava u kontekstu islamsko-zapadne debate*. Sarajevo.
13. Lieberman, B. (2006). Nationalist narratives, violence between neighbors and ethnic cleansing in Bosnia-Herzegovina: Case of Cognitive Dissonance? *Journal of Genocide Research*, 8(3), 295–309. <https://doi.org/10.1080/14623520600950013>.
14. Nietzsche, F. (2007). *On the Genealogy of Morality*. Cambridge University Press.
15. Rinpoche, S. (2012). *The Tibetan Book of Living and Dying*. Harper.
16. Smedes, L. B. (1984). *Forgive and forget: Healing the hurts we don't deserve*. Harper & Row.
17. Šimić, G. (2016). *The Disintegration of the Soul*. Amazon.
18. Šimić, G. (2023). *Tranzicijska pravda*. Sveučilište VITEZ.
19. The Dalai Lama (2009). *My Spiritual Journey*. HarperOne
20. Tillich, P. (1963). *Systematic theology*. Harper and Row.
21. Worthington Everett, L. Jr. (1998). *Dimensions of Forgiveness*. Templeton Foundation Press.

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ВОЄННІ ЗЛОЧИНИ І ДУХОВНІСТЬ: СУДИТИ ЧИ ПРОБАЧИТИ І ПРИМИРИТИСЯ

Проведення розслідувань воєнних злочинів має чітку мету встановлення фактів про злочини, злочинців і жертв. З іншого боку, питання прощення і примирення як необхідних умов відновлення співіснування колишніх воюючих сторін, які продовжують жити разом в одній громаді, країні, суспільстві (або поруч одна з одною), є абсолютно іншою справою. Розслідування злочинів, встановлення фактів, пошук і притягнення до відповідальності осіб за скоєння цих злочинів – це точна, вимірювана категорія. Прощення та примирення – ні. Ставлячи під сумнів реальні наслідки судових процесів над воєнними злочинами у постконфліктних суспільствах, доведено, що для створення мирного і міцного фундаменту для майбутнього життя недостатньо лише правового підходу до скоєних злеств. Крім того, необхідно знайти шлях до прощення і примирення, без яких суспільства завжди можуть повернутися до «темного минулого». У Новому Заповіті сказано, що тільки правда звільнить нас, але чи притаманна вона людині? Чи може людина по-справжньому прощати, чи милосердя притаманне лише божественним істотам? Чи можуть і чи повинні жертви прощати своїх мучителів, тих, хто спалив їхні домівки, вбив їхніх близьких, зруйнував їхні життя і обтяжив їх спогадами, які не зникають? У країнах, де минулий конфлікт призвів до масових злеств і де після укладення мирної угоди колишні воюючі сторони не пішли різними шляхами, а продовжили жити в одній країні, ця неминуха реальність є тягарем, якщо не ризиком для існування і відновлення постконфліктного суспільства. Значною мірою ситуація є аналогічною і для сусідніх

суспільств (країн). Однак питання полягає в тому, чи зможуть судові процеси над воєнними злочинами і покарання воєнних злочинців усунути наслідки цих злочинів, дозволити жертвам звільнитися від цієї віктимності, а суспільствам, що перебувають у стані війни, знайти мир і відновитися.

Ключові слова: *воєнні злочини, справедливість, духовність, прощення, примирення.*

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