

## “Rescues for Humanity”: Rescuers, Mass Atrocities, and Transitional Justice

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### ABSTRACT

This article is probably the first work to explore systematically the commemoration of rescuers from a human rights and transitional justice perspective. It argues that the documentation and commemoration of acts of rescuers during mass atrocities should become an integral part of the human rights response to such atrocities. These undertakings could make important contributions to the goals of post-conflict reconstruction, especially in relation to conflict-transformation between communities, and to confronting the role of passive bystanders. The article first develops the concept of “rescues for humanity” to elucidate the significance of rescues in the transitional justice framework and, after reviewing existing initiatives, it moves on to identify the potential benefits of such undertakings, as well as the challenges and risks involved in the documentation of rescues.

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## I. INTRODUCTION

This article, probably the first work to explore systematically the commemoration of rescuers from a human rights and transitional justice perspective, argues that the documentation of rescues during mass atrocities should become an integral part of the human rights response to such atrocities. The international human rights community's set of conceptual and practical tools used in the aftermath of genocides and conflicts—often referred to as the “transitional justice toolkit,” and including measures such as prosecutions, truth commissions, and reparations programs—has thus far neglected the potential inherent in the commemoration of rescues for contributing to the goals of post-conflict reconstruction. Recording and disseminating rescue narratives can assist in conflict-transformation between communities and in confronting the role of passive bystanders. Given the centrality of these goals to transitional justice, rescuers deserve sustained attention from transitional justice scholars and practitioners.

The following section explains how rescues fit into a transitional justice framework. It develops the concept of “rescues for humanity” to denote the special features of mass-atrocity rescue, a mirror image of crimes against humanity. The section also suggests several factors that have so far delayed the incorporation of the issue into the transitional justice field. The third section maps existing initiatives honoring rescuers in Israel, Rwanda, and Bosnia. Section IV identifies and analyzes the potential gains from such projects. The first of these is *rescue-memory as reconciliation*: the contributions to conflict-transformation between communities. The second is *rescue-memory as denunciation*: the encouragement of societal reckoning with the role of passive bystanders. The fifth section identifies several challenges and potential pitfalls such initiatives would face in practice. Based on an analysis of concerns related to commemoration of Holocaust rescuers, and especially rescuers in Rwanda, it conceptualizes three themes in such critiques: *rescue-memory as displacement*, *rescue-memory as myth*, and *rescue as an ambiguous category*.

The research presented here, which is based on a wide range of sources—including interviews held in Bosnia, Germany, and Israel—is anchored in several theoretical perspectives developed in recent years by scholars of human rights and transitional justice. The first of these is a critique of the often limited and rigid format of human rights reporting. Authors writing from this perspective do not question the normative tenets of human rights, but rather express dissatisfaction with the formulaic and self-constrained manner in which much of human rights advocacy, in particular reports by human rights NGOs and truth commissions, is presented. Common critiques include an over-emphasis on legalism, thin and de-contextualized descriptions of events, a mechanical categorization of individuals as either

victims or perpetrators, and a failure to take into account the effects (or lack thereof) of human rights reporting on readers and societies beyond elite decision makers and the judicial system.<sup>1</sup> As will be shown below, the issue of documenting rescues illuminates many of the limitations and restrictions evident in current mainstream human rights advocacy. However, the issue could also serve as a catalyst for possible changes.

A second starting point for this research is the tension between individual and collective accountability, a tension which has animated much of the transitional justice literature recently. One line of inquiry focuses on the inadequacy of trials, which are premised on individual responsibility, as a response to mass atrocities, which are made possible only through collective action. The very nature of mass atrocities—genocides, war crimes, crimes against humanity, and other forms of widespread political violence—relies upon organized, systematic action taken by collective entities. Thus, while not objecting to trials of individuals, authors have expressed frustration with the way this main tool of transitional policies insufficiently addresses the collective responsibility of societies and communities.<sup>2</sup>

Another standpoint that has highlighted the tension between individual and collective measures focuses on the need to achieve reconciliation and transformation of relations between collective entities and communities in the aftermath of conflicts and atrocities. Trials and other measures that address individuals have been deemed insufficient to meet the challenge of changing collective attitudes.<sup>3</sup> These themes are central to the analysis

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1. STANLEY COHEN, DENIAL AND ACKNOWLEDGEMENT: THE IMPACT OF INFORMATION ABOUT HUMAN RIGHTS VIOLATIONS 4, 5, 111 (1995); Stanley Cohen, *Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims*, 18 HUM. RTS. Q. 517 (1996); Richard A. Wilson, *Representing Human Rights Violations: Social Contexts and Subjectivities*, in HUMAN RIGHTS, CULTURE AND CONTEXT: ANTHROPOLOGICAL PERSPECTIVES 134, 145, 155 (Richard A. Wilson ed., 1997); RICHARD A. WILSON, THE POLITICS OF TRUTH AND RECONCILIATION IN SOUTH AFRICA 254 (2001); Martha Huggins, *Reconstructing Atrocity: How Torturers, Murderers, and Researchers Deconstruct Labels and Manage Secrecy*, HUM. RTS. REV., Dec. 2000, at 50, 52 (2000); Bruna Irene Seu, "Your Stomach Makes You Feel That You Don't Want to Know Anything About It": *Desensitization, Defense Mechanisms and Rhetoric in Response to Human Rights Abuses*, 2 J. HUM. RTS. 183 (2003); Ron Dudai, "Can You Describe This?" *Human Rights Reports and What They Tell Us About the Human Rights Movement*, in HUMANITARIANISM AND SUFFERING: THE MOBILIZATION OF EMPATHY 245 (Richard Ashby Wilson & Richard D. Brown eds., 2009).
  2. Mark A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity*, 99 NW. U.L. REV. 539, 540 (2005); GERRY SIMPSON, LAW, WAR AND CRIME 54–78 (2007); George P. Fletcher, *Liberals and Romantics at War: The Problem of Collective Guilt*, 111 YALE L.J. 1499, 1557 (2002); MARK OSIEL, MAKING SENSE OF MASS ATROCITY 18–22 (2009).
  3. Laurel E. Fletcher & Harvey M. Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 HUM. RTS. Q. 573, 579 (2002); Jodi Halpern & Harvey M. Weinstein, *Rehumanizing the Other: Empathy and Reconciliation*, 26 HUM. RTS. Q. 561, 563–64 (2004).

developed below, which argues that commemoration of rescuers can assist inter-communal reconciliation, as well as contribute to highlighting the role of bystanders as an element in addressing the collective responsibility of communities and societies.

Finally, and building on the perspectives above, this article is situated within a trend of rethinking the conceptual and practical parameters of transitional justice. Authors in this vein have suggested moving “beyond legalism” in order to achieve a “thickening of transitional justice,”<sup>4</sup> to incorporate new methods of memorialization,<sup>5</sup> and to involve new actors, such as civil society groups, in “bottom-up” processes.<sup>6</sup> Critiques emphasize the importance of local mechanisms and perceptions over unreflective reliance on pre-existing international models,<sup>7</sup> and identified “the need for bespoke solutions to different transitions rather than ‘off-the-shelf’ models.”<sup>8</sup> In an emblematic summary of this state of mind, a group of influential authors recently argued that “if transitional justice is indeed to become transformative, then the ‘toolkit’ that has become the menu of transitional justice options must be expanded and evolve into interventions that reflect a broadened view of responses to human rights violations.”<sup>9</sup> This article takes up the challenge and suggests that addressing the legacy of rescues can contribute to such a new, expanded vision of transitional justice responses.

## II. CONCEPTUALIZING “RESCUES FOR HUMANITY”: RESCUERS AND THE TRANSITIONAL JUSTICE FRAMEWORK

Albert Battel, a German lawyer, was fifty-one years old in July 1942 when, as a reserve officer in the German army, he was stationed in Przemysl in south Poland as the adjutant to the local military commander. When the SS prepared to launch their first large-scale “resettlement” (liquidation) action

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4. Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34 J. L. & Soc’y 411 (2007).
  5. SEBASTIAN BRETT ET AL., MEMORIALIZATION AND DEMOCRACY: STATE POLICY AND CIVIC ACTION (2007), available at [http://ictj.org/sites/default/files/ICTJ-Global-Memorization-Democracy-2007-English\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Global-Memorization-Democracy-2007-English_0.pdf).
  6. Louis Bickford, *Unofficial Truth Projects*, 29 HUM. RTS. Q. 994, 995 (2007); Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35 J. L. & Soc’y 265 (2008); Ron Dudai & Hillel Cohen, *Dealing with the Past When the Conflict is Still Present: Civil Society Truth-Seeking in the Israeli-Palestinian Conflict*, in LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE 228 (Rosalind Shaw & Lars Waldorf, with Pierre Hazan eds., 2010).
  7. LOCALIZING TRANSITIONAL JUSTICE, *supra* note 6.
  8. Kieran McEvoy & Lorna McGregor, *Transitional Justice From Below: An Agenda for Research, Policy and Praxis*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 1, 2 (Kieran McEvoy & Lorna McGregor eds. 2008).
  9. Harvey M. Weinstein et al., *Stay the Hand of Justice: Whose Priorities Take Priority?*, in LOCALIZING TRANSITIONAL JUSTICE, *supra* note 6, at 27, 47–48.

against the Jews of Przemysl, Battel took a huge risk and ordered the bridge which served as the only access into the Jewish ghetto to be blocked for SS movement. He used army trucks to whisk away up to 100 Jews from the ghetto.<sup>10</sup> Elisabeth Abegg, a German teacher at a Berlin school, hid Jews in her small flat, undeterred by being summoned to an interrogation by the Gestapo.<sup>11</sup> Battel and Abegg are among thousands who have been recognized in the last decades by Yad Vashem, the Israeli Holocaust Memorial Authority, as “righteous among the nations.”<sup>12</sup>

Therese Myrabayovul, a sixty-seven year old Hutu who worked as a midwife, hid eighteen Tutsis in her house during the Rwandan genocide, notwithstanding constant threats from Hutu militiamen who heard rumors about her actions. Father Celestin Hakizimana sheltered hundreds of Tutsis in the St. Paul Pastoral centre in Kigali. The stories of Myrabayovul and Hakizimana are among the many stories of Hutus who protected Tutsis during the genocide which were collected by African Rights in a report titled *Tribute to Courage*.<sup>13</sup> Several individuals who risked their lives to protect people from different ethnic groups during the wars in the former Yugoslavia were honored by the Sarajevo-based Gardens of the Righteous Worldwide (GARIWO).<sup>14</sup>

Cases of individuals taking risks during genocides and mass atrocities to help people from other ethnic or religious groups also take place beyond these three high-profile contexts. Turks risked their lives to help Armenians during the Armenian genocide.<sup>15</sup> During the massacres of Sikhs in 1984 in India, “some Hindu neighbours sheltered Sikh families; a home of a Hindu family was burnt down . . . because they had given refuge to their Sikh neighbors.”<sup>16</sup> During the 2002 massacres in Gujarat many Hindu families risked their lives to provide shelter to the Muslims under attack;<sup>17</sup> even during the worst Hindu-Muslim violence neighbors still tried to save neighbors, irrespective of their religion.<sup>18</sup> Sinhalese helped Tamils during the anti-Tamil

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10. Yad Vashem, The Righteous Among the Nations, Dr. Albert Battel, *available at* <http://www1.yadvashem.org/YV/en/righteous/stories/battel.asp>.
  11. Yad Vashem, The Righteous Among the Nations, Elisabeth Abegg, *available at* <http://www1.yadvashem.org/yv/en/righteous/stories/abegg.asp>.
  12. Yad Vashem, The Righteous Among the Nations, About the Program: Honoring the Righteous, *available at* [http://www1.yadvashem.org/yv/en/righteous/honoring\\_the\\_righteous.asp](http://www1.yadvashem.org/yv/en/righteous/honoring_the_righteous.asp).
  13. See *generally* AFRICAN RIGHTS, RWANDA: TRIBUTE TO COURAGE (2002).
  14. See Gardens of the Righteous Worldwide [GARIWO], *available at* [http://www.gariwo.net/eng\\_new/](http://www.gariwo.net/eng_new/).
  15. Richard G. Hovannisian, *Intervention and Shades of Altruism During the Armenian Genocide*, in THE ARMENIAN GENOCIDE: HISTORY, POLITICS, ETHICS 173, 197 (Richard G. Hovannisian ed., 1992).
  16. HARSH MANDER, UNHEARD VOICES: STORIES OF FORGOTTEN LIVES 160 (2001).
  17. See *generally* HARSH MANDER, FEAR AND FORGIVENESS: THE AFTERMATH OF MASSACRE (2009).
  18. ASHUTOSH VARSHNEY, ETHNIC CONFLICT AND CIVIC LIFE: HINDUS AND MUSLIMS IN INDIA 276 (2002).

massacres in Sri Lanka.<sup>19</sup> As Adam Jones writes in his general work on genocide: “The historical record is replete with accounts of brutal perpetrators, and bystanders . . . [b]ut it is also filled with testimonials to the brave souls who interceded to save total strangers (as well as friends and acquaintances) from genocide.”<sup>20</sup> In all these cases, individuals acted against the mainstream of their communities by helping members of a targeted group.

Before addressing the instrumental benefits of engaging with such acts as part of the human rights response to mass atrocities, a conceptual argument for the importance these acts assume within a transitional justice framework will be presented.

### A. Rescues for Humanity: The Uniqueness of Rescues During Mass Atrocities

Mass atrocities are qualitatively different from other crimes,<sup>21</sup> and transitional justice—the response to mass atrocities—differs from ordinary justice.<sup>22</sup> A central argument of this article, in turn, is that although acts of selfless heroism and sacrifice for the sake of others can—and do—take place in many contexts, such as jumping into a river to save a drowning person or entering a burning building to pull people out, acts of rescue carried out during episodes of mass atrocity have a unique meaning, their importance amplified beyond the individual action.

The reasons that acts of rescue during mass atrocities acquire this significance may be understood through an analogy with the concept of crimes against humanity. The notion of crimes against humanity is premised on the idea that some crimes, if committed in certain circumstances, become more than just ordinary crimes against individuals: they become crimes against the very idea of humanity. They “aggrieve not only victims and their own communities, but all human beings, regardless of their community . . . . [T]he phrase suggests that these offences cut deep, violating the core humanity that we all share and that distinguishes us from other natural beings.”<sup>23</sup> “A crime against humanity is a crime against ‘humaneness’ that offends certain general principles of law and which becomes the concern of the international community.”<sup>24</sup> An important aspect of this concept is that a single act such as murder, normally an ordinary crime, can become a crime against humanity

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19. Olivia Stokes Dreier, *Relevance of Understanding Rescue Behavior for Peacebuilding Programs*, Speech at Conference on Genocide, Rescue, and Prevention at Yale University (8 May 2009), available at [http://www.karunacenter.org/documents/keynotes/FILE\\_7\\_-\\_Yale\\_talk.doc](http://www.karunacenter.org/documents/keynotes/FILE_7_-_Yale_talk.doc).

20. ADAM JONES, *GENOCIDE: A COMPREHENSIVE INTRODUCTION* 275 (2006).

21. Drumbl, *supra* note 2.

22. RUTI G. TEITEL, *TRANSITIONAL JUSTICE* 4 (2000).

23. David Luban, *A Theory of Crimes Against Humanity*, 29 *YALE J. INT'L L.* 85, 86 (2004).

24. KRIANGSAK KITTICHAISAREE, *INTERNATIONAL CRIMINAL LAW* 85 (2001).

if perpetrated as part of a widespread or systematic attack directed against a civilian population.<sup>25</sup>

In the same way that crimes against humanity offend the very idea of humanity, acts of rescue, accomplished against a background of widespread and systematic violence, affirm the idea of humanity. They become rescues *for* humanity. If crimes against humanity violate the very core elements of human decency, rescues such as those described above affirm it. The International Criminal Tribunal for the former Yugoslavia (ICTY) has defined crimes against humanity as “crimes of a special nature to which a greater degree of moral turpitude attaches than to an ordinary crime.”<sup>26</sup> The corollary to this is that acts of rescue in the context of mass atrocities are rescues of a special nature, to which a special degree of moral recognition should be attached.

The crimes to which transitional justice responds are “extraordinary,” due to their scope and targeting of collective identities;<sup>27</sup> the rescues from such crimes are extraordinary as well. If crimes against humanity (as well as war crimes and genocides) are, as the preamble to the ICC statute provides, “of concern to the international community as a whole,” rescues for humanity should also be of concern to the international community, their significance resonating beyond the national borders in which they took place. As a result, they also correspond to international norms rather than local laws: a crime against humanity remains an international crime even if it did not violate domestic law; by extension, rescues for humanity deserve international appreciation whether or not they were against local legislation at the time.<sup>28</sup>

Crimes against humanity are often set apart from ordinary crimes by their magnitude, but the defining feature of the distinction, as mentioned above, is the overall context in which the crimes were committed. This context, which also applies to large scale war crimes and other serious human rights abuses, is captured by the concept of “system crimes”: large-scale crimes requiring a high degree of organization, carried out as part of an officially sanctioned policy, based on mobilization of a large number of participants, and affecting large numbers of victims.<sup>29</sup> This context informs the concept of mass atrocity rescues as well.

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25. *Id.* at 90. A similar logic can apply to the concepts of genocide and war crimes.
  26. Prosecutor v. Du [KO TADI], Case No. IT-94-1-A, Appeal Judgment, ¶ 271 (Int'l Crim. Trib. for the Former Yugoslavia, 15 July 1999).
  27. See generally MARK A. DRUMBL, *ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW* (2007).
  28. It is important to note that rescuers themselves would not necessarily articulate the meaning of their acts in the way described here and, from their perspective, their acts were not necessarily about “affirming humanity.” This does not, however, change the way such acts can be recognized externally. This is similar to the commission of crimes against humanity, where the perpetrators would rarely see themselves as “offending humanity.”
  29. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS [OHCHR], *RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: PROSECUTION INITIATIVES 11–12* (2006); *SYSTEM CRIMINALITY IN INTERNATIONAL LAW* (André Nollkaemper & Harmen van der Wilt eds., 2009).



One implication of this context is that during mass atrocity the figure who emerges is that of the *rescuer as deviant*. The acts of rescue described above have special dimensions that make them a particular form of behavior, different from the other types of voluntary risky behavior, such as saving drowning people in “ordinary” times. Those who were protected and saved during mass atrocities came from different ethnic or religious groups than those of the savers, during periods where such differences were elevated and enforced. Most importantly, in the context of officially endorsed system crimes, such rescues were often illegal and punished severely.<sup>30</sup> The background of these rescues is therefore the very opposite of “ordinary” acts of rescue, for which the rescuer gains society’s adulation and reverence.<sup>31</sup>

As Samuel Oliner and Pearl Oliner have noted: “Holocaust rescue activity differed from altruistic behaviors rooted in approved social norms. In the context of World War II, the rescue of Jews was legally prohibited, and broad extra-legal norms were at best ambivalent and at worst supportive of Nazi policies. Rescuers could anticipate little external approval.”<sup>32</sup> Such rescuers thus act against the mainstream of their society in a way that would often be illegal, but in any case would be seen as a form of deviancy. If in “ordinary” rescues, individuals are saved from natural disasters or accidents, in the mass atrocity rescues described above people are saved not from accidents but from premeditated projects of murder and violence instigated by the society in question. The prevalent norms in society would support the commission of the abuses—and oppose rescue attempts. As a result, such acts garner heightened practical and symbolic value.

## B. Rescuers as Transitional Justice Blind Spots

Several factors may have hampered or delayed the incorporation of rescuers commemoration into the mainstream transitional justice toolkit. While Section V addresses concrete challenges for practitioners working on the issue, this section outlines several initial hurdles that have likely hindered its integration into the human rights and transitional justice framework to begin with. These factors include the nature of the field’s historical origins, the limitation of the normative framework of human rights, and the issue’s lack of political championing. While these factors account (at least partly) for the current state of affairs and should inform the shaping of future policies, they should not be seen as preventing further development.

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30. See, for example, the case of the Serb rescuers who were prosecuted for protecting Bosniaks, presented in the text accompanying footnote 181, *infra*.

31. SAMUEL P. OLINER & PEARL M. OLINER, *THE ALTRUISTIC PERSONALITY* 6 (1988).

32. *Id.* at 6–7.



The first reason rescues were neglected by the transitional justice field might be related to the history of the discipline. Although post-Holocaust justice measures have been a key inspiration to transitional justice scholars and advocates, the field of transitional justice was largely shaped by its roots in the mid to late 1970s and 1980s in responding to the challenges of transitions in two specific contexts: transitions from military dictatorships in Latin America, especially in Argentina and Chile, and the aftermath of communist regimes in Eastern Europe.<sup>33</sup> These challenges created and informed the field's basic concepts, categories, and vocabulary—for example, the lingering fixation with the question of amnesties, the modalities of truth-recovery based on the question of disappearances, or the neglect of economic justice—which have continued to be central in later years, even as the contexts varied. The field's theoretical tenets and practical tools were formed fairly rapidly at that juncture and reflected the experience of Argentina, Chile, and Eastern Europe.<sup>34</sup> This experience did not include a prominent ethnic dimension or the types of communal violence in which the rescues described above occur. Rescues were therefore absent at a critical juncture for the intellectual and practical development of the field. This is likely to have contributed to a continuing lack of attention to the issue even as the field has expanded and moved into new contexts, dominated by ethnic violence and identity-based conflicts, where rescues could have potentially entered the transitional policy framework. However, as the field continues to develop and search for new techniques that move beyond the initial framework,<sup>35</sup> no overriding reason prevents the evolution of transitional justice and more engagement with the issue of rescues.

A second factor that has likely delayed incorporation of rescuers narratives is the transitional justice movement's focus on legal concepts and techniques, including the adoption of "legalism" as the prism through which to analyze events and devise policies.<sup>36</sup> A purely legalistic focus is incapable of adequately recognizing the role of rescuers: their actions—and the inaction of those bystanders who did not become rescuers—cannot fully be captured in legal terms or addressed through courts. While a moral or religious perspective might help evaluate the choices of rescuers, the law generally cannot condemn those who did not rescue and cannot praise those who did.<sup>37</sup> As Kirsten Hastrup argues, when law becomes the predominant

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33. Paige Arthur, *How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RTS. Q. 321, 348 (2009).

34. *Id.* at 343.

35. See, e.g., Bickford, *supra* note 6, at 997; McEvoy & McGregor, *supra* note 8, at 411.

36. McEvoy, *supra* note 4.

37. Even when there is no risk to a potential helper, there is no universal law on the duty to rescue. Some European countries and a handful US states recognize a duty to assist—in so called "Good Samaritan laws"—though such laws are consciously rejected elsewhere,

standard of value, “ever more social, political and cultural values are expressed in or measured by legal terms at the expense of other normative systems and public moral debates . . . . [T]he explication of justice and ethics in legal terms leaves out vast areas of moral agency.”<sup>38</sup> In the arena of transitional justice, an exclusively legal lens leads to a myopic focus on punishing perpetrators and campaigning for the rights of victims, with acts of rescue remaining a blind spot.

More specifically, the normative framework of human rights is, perhaps counter-intuitively, generally ill-equipped to engage with heroic rescuers. As Joseph Raz notes, rights-based morality is limited and does not allow for the significance of praiseworthy actions “beyond the call of duty.”<sup>39</sup> In legal and practical terms, the human rights framework focuses on the rights of the individual in relation to the state: that is the essence of the human rights architecture. Although holding states (and sometimes non-state armed groups or corporations) to account is the key for human rights, notions of individuals’ duties or responsibilities are neglected and, at times, actively rejected by the human rights movement.<sup>40</sup> Beyond his or her rights, the legalism which permeates much of the human rights framework makes the individual a subject of international human rights law only in its narrowest sense, international criminal law—i.e., individuals can be prosecuted for international crimes in international courts—but otherwise ignores the individual.<sup>41</sup> The working practices of human rights organizations, centered on holding states to account, make it difficult by and large to accommodate the praising of rescuers. For example, human rights reports, which serve as a central vehicle of human rights advocacy, follow rigid genre rules<sup>42</sup> and stories of acts of humanity and kindness are likely to be edited out even when mentioned by witnesses to atrocities. Just as proclamations of admiration and praise are beyond the normal role of courts, they also remain outside

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including in the United Kingdom and in a majority of US states. Even where “Good Samaritan laws” are in place they are rarely used and often ridiculed. See, e.g., Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS UNIV. L. REV. 77 (2005); Phillip W. Romohr, *A Right/Duty Perspective on the Legal and Philosophical Foundations of the No-Duty-To-Rescue Rule*, 55 DUKE L.J. 1025 (2006).

38. Kirsten Hastrup, *Representing the Common Good: The Limits of Legal Language*, in HUMAN RIGHTS IN GLOBAL PERSPECTIVE: ANTHROPOLOGICAL STUDIES OF RIGHTS, CLAIMS AND ENTITLEMENTS 16 (Richard Ashby Wilson & Jon P. Mitchell eds., 2003).
39. JOSEPH RAZ, *THE MORALITY OF FREEDOM* 196 (1988).
40. INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *TAKING DUTIES SERIOUSLY: INDIVIDUAL DUTIES IN INTERNATIONAL HUMAN RIGHTS LAW* (1999); Ben Saul, *In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities*, 32 COLUM. HUM. RTS. L. REV. 565, 617 (2001).
41. Andrew Clapham, *The Role of the Individual in International Law*, 21 EUR. J. INT’L L. 25, 27 (2010).
42. Ron Dudai, *Advocacy with Footnotes: The Human Rights Report as a Literary Genre*, 28 HUM. RTS. Q. 783, 783–84 (2006) (book review); Dudai, “*Can You Describe This?*,” *supra* note 1.

the purview of the broader human rights machinery, including, for example, the UN human rights committee and similar bodies.

While these factors can explain what has been thus far a blind spot, they are not insurmountable hurdles. Shifts in practice and norms occur regularly in the human rights world and human rights organizations already occasionally work beyond the constraints of international law. Amnesty International's (AI) concept of "prisoners of conscience" is one important example. Additionally, there is a growing practice among international human rights NGOs, such as AI and Human Rights Watch (HRW), of granting awards to human rights defenders. Although the recipients are in a different category than rescuers, the custom does show the potential of NGOs as outlets for positive recognition of individual behavior.<sup>43</sup>

Another important development is the 1998 UN declaration on human rights defenders,<sup>44</sup> which includes an invitation to positive action.<sup>45</sup> Smaller local human rights organizations are also doing relevant creative work. For example, Rajan Hoole describes how the Sri Lankan organization, University Teachers for Human Rights, deviated "from the well-trodden path of human rights reporting" and acknowledged military officers "who acted with humanity" and spared civilian lives.<sup>46</sup> In addition, extra-legal tools such as commemoration and memorialization are gaining prominence in transitional justice work.<sup>47</sup> Human rights advocates thus have the potential to move beyond the self-imposed constraints of a legalistic perspective and work with the issue of rescues.<sup>48</sup>

Finally, the political setting in the aftermath of genocides and conflicts is often not conducive to establishing initiatives on rescuers. The experience of

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43. See, e.g., News Release, Human Rights Watch, Global: Human Rights Watch Honors Seven Activists, available at <http://www.hrw.org/news/2011/08/09/global-human-rights-watch-honors-7-activists>.

44. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted 9 Dec. 1998, G.A. Res. 53/144, U.N. GAOR, 53d Sess., 85th plen. mtg., Agenda Item 110(b), U.N. Doc. A/RES/53/144 (1999).

45. "Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics." *Id.* art. 11.

46. Rajan Hoole, *Sri Lanka: Ethnic Strife, Fratricide and the Peace vs. Human Rights Dilemma*, 1 J. HUM. RTS. PRAC. 120, 125 (2009).

47. BRETT ET AL., *supra* note 5, at 1.

48. In addition, while the limitations of the human rights framework are important in this context, the relevant strengths of international human rights law should also be pointed out. The essence of many rescue activities is to disobey or violate local laws; the international law of human rights can serve to guide, legitimize, and give normative orientation to such acts, serving as a neutral and external point of reference. This could also have practical manifestations, for example giving asylum to those persecuted as a result of their rescue activity.

transitional justice shows that political pressure and mobilization by affected groups, especially groups of victims and survivors, often drives transitional justice measures.<sup>49</sup> However, rescuers themselves would rarely if ever come together in the aftermath of atrocities to form a pressure group acting for their own benefit. Victim groups and members of persecuted communities more generally could be indifferent or even hostile to dedicating resources for the commemoration of rescuers from the perpetrator group, and in any case are unlikely to prioritize such an endeavor. Members of perpetrator groups, on the other hand, can also be hostile to the idea of commemorating rescuers, for a number of reasons: they may be set on denying that atrocities took place;<sup>50</sup> commemoration of rescuers could undermine the “alibi” of passive bystanders; or perpetrator groups could simply be ideologically hostile to the rescuers. In short, it is often the case that no champion for rescuers emerges in post-conflict situations and this gap is likely to have negatively impacted the development of relevant measures.

A dearth of relevant tradition, explicit legal frameworks, and political pressure—three of the main sources of transitional justice policies—has thus led to the marginalization and underdevelopment of rescues as an issue in transitional justice. Rescuers, however, are by no means the only category of protagonists neglected by transitional justice: the issue of informers in political or ethnic conflicts has for similar reasons remained under-explored by transitional justice commentary.<sup>51</sup>

Despite real and potential barriers facing the issue of rescuers within the transitional justice framework, important normative and practical shifts in the discourse could signal a higher likelihood that the topic will now be taken on. The obstacles identified above should not prevent new emphasis on such measures. The next section addresses a growing trend in this direction, and given the potential benefits of such measures, these efforts should become more prominent.

### III. EXISTING INITIATIVES DOCUMENTING RESCUERS: A MAPPING

This section maps existing initiatives to commemorate rescuers in three contexts: the Holocaust, the Rwandan genocide, and the genocide and atrocities during the wars of the former Yugoslavia. These range from official, state-led projects to bottom-up initiatives led by NGOs and civil society, and incorporate various forms of documentation and commemoration.

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49. David Backer, *Civil Society and Transitional Justice: Possibilities, Patterns and Prospects*, 2 J. HUM. RTS. 297, 301–02 (2003).

50. See, e.g., Hovannisian, *supra* note 15, at 174.

51. For discussion of informers and transition, see Ron Dudai, *Informers and the Transition in Northern Ireland*, 52 BRIT. J. CRIM. 1, 49–50 (2012).

### A. Post Holocaust: State-Led Formalized Commemoration Process

The project of identifying and commemorating non-Jews who helped Jews during the Holocaust—the “righteous among the nations”—undertaken by Yad Vashem, the Israeli Holocaust Remembrance Authority,<sup>52</sup> is by far the most extensive, developed, and influential project of its kind. Indeed, it is a unique enterprise in the global landscape of commemoration.

Several measures taken in the aftermath of World War II and the Holocaust have become, even after decades of hiatus, central points of reference for the human rights and transitional justice field: the Nuremberg Tribunal as a reference point for international prosecutions; the de-Nazification policies in Germany for vetting procedures; the reparation agreement between Germany and Israel for reparation measures; or the Eichmann trial in Israel for universal jurisdiction. All these measures had flaws and weaknesses, and cannot automatically be applied to contemporary contexts, but their example has become highly influential and they provide at least a starting point for discussions of similar mechanisms.<sup>53</sup>

The “righteous among the nations” project has not yet become as prominent and, indeed, references to it in the general transitional justice literature are thus far virtually non-existent. However, like the other measures mentioned above, it serves as the natural starting point for discussions of commemorating rescuers in other contexts. Its influence can be seen in the fact that the term “righteous” is already being frequently used to describe rescuers in other contexts. For example, the French term for the righteous among the nations, *Les Justes*, has been often used to describe rescuers in Rwanda<sup>54</sup> and writers on rescuers during the Armenian genocide have also used the term “righteous.”<sup>55</sup> Several current interventions on rescuers in post-conflict countries refer explicitly to the “righteous among the nations” as their inspiration: for example, the work of Gardens of the Righteous Worldwide (GARIWO) in Bosnia and Penal Reform International’s (PRI) project on rescu-

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52. See, generally, Yad Vashem, About Yad Vashem, available at <http://www1.yadvashem.org/yv/en/about/index.asp>.

53. For example, Pierre Hazan locates the “genesis of transitional justice” in the Nuremberg trials, the reparation program, and the Eichmann trial. PIERRE HAZAN, *JUDGING WAR, JUDGING HISTORY* 13–28 (Sarah Meyer de Stadelhofen trans., 2010) (2007). Therese O’Donnell links the Nuremberg trials and de-Nazification program to the “birth of transitional justice.” Therese O’Donnell, *Executioners, Bystanders and Victims: Collective Guilt, the Legacy of Denazification and the Birth of Twentieth-Century Transitional Justice*, 25 *LEGAL STUD.* 627, 628 (2005).

54. See, e.g., JEAN HATZFELD, *MACHETE SEASON: THE KILLERS IN RWANDA SPEAK* 114–17 (Linda Coverdale trans., 2005) (2003).

55. DONALD E. MILLER & LORNA TOURYAN MILLER, *SURVIVORS: AN ORAL HISTORY OF THE ARMENIAN GENOCIDE* 182 (1993).

ers in Rwanda.<sup>56</sup> The context in which Yad Vashem's project has operated is profoundly different from the aftermath of the conflicts in Bosnia, Rwanda, and elsewhere; perhaps most importantly in this context, the survivors of the genocide who migrated to Israel were separated from the perpetrators and bystanders. However, the example Yad Vashem has set is frequently evoked in other contexts and its rich experience provides valuable lessons to those initiating similar projects elsewhere.<sup>57</sup>

The existence of rescuers during the Holocaust has been well-documented: "Many of those Jews who survived Nazi rule and occupation in Europe between 1939 and 1945 owed their survival to non-Jews."<sup>58</sup> Between tens and hundreds of thousands of non-Jews risked their lives to help Jews survive.<sup>59</sup> Some of the common forms of help included hiding Jews in one's house or on one's property, providing false papers and identities, and assisting Jews to escape outside of Nazi-occupied areas.<sup>60</sup>

The commemoration of "righteous gentiles" was among the tasks included in the 1953 legislation which established Yad Vashem.<sup>61</sup> The impetus for this undertaking seems to have come from individual survivors.<sup>62</sup> Little was done on that front in the first decade afterwards, but in 1962, stimulated—like many other Holocaust commemoration policies—by the Eichmann trial, the first individuals were recognized as "righteous among the nations" and a public commission was set in place to supervise such recognitions.<sup>63</sup> The work has continued ever since, with the fall of communism in Eastern Europe in the late 1980s facilitating the unearthing of many new stories through a large pool of archives, testimonies, and communication. By the end of

56. See GARIWO, Gardens of the Righteous Worldwide (homepage), available at [http://www.gariwo.net/eng\\_new/](http://www.gariwo.net/eng_new/); PRI, Summary, Gacaca and Reconciliation: Kibuye Case Study 1, available at <http://www.penalreform.org/publications/gacaca-and-reconciliation-kibuye-case-study-1>.

57. The overall story of Holocaust commemoration in Israel is complex, and also includes many problematic aspects, such as the way Holocaust memory is sometimes manipulated and used to legitimize Israel's abuses in the Israeli-Palestinian conflict. See TOM SEGEV, *THE SEVENTH MILLION: THE ISRAELIS AND THE HOLOCAUST* 422–35 (Haim Watzman trans., 2000) (1991). These questions are, however, beyond the scope of this article, which focuses only on the Righteous Among the Nations project and its potential relevancy to other countries.

58. MARTIN GILBERT, *THE RIGHTIOUS: THE UNSUNG HEROES OF THE HOLOCAUST*, at xvi (2003).

59. OLINER & OLINER, *supra* note 31, at 1.

60. NECHAMA TEC, *WHEN LIGHT PIERCED THE DARKNESS: CHRISTIAN RESCUE OF JEWS IN NAZI-OCCUPIED POLAND* 70–72, 125 (1986); EVA FOGELMAN, *CONSCIENCE & COURAGE: RESCUERS OF JEWS DURING THE HOLOCAUST* 6–8 (1995).

61. *Martyrs' and Heroes' Commemoration (Yad Va-Shem) Law, 5713–1953*, \_\_ LSI \_\_ (1953–1954) (Isr.). KMK 13 .18713 OSU

62. Interview with Irena Steinfeldt, Director of Righteous Among the Nations Section, Yad Vashem, The Israeli Holocaust Memorial Authority, in Jerusalem, Israel (Sept. 2008) [hereinafter Steinfeldt Interview]. See also Yad Vashem, About the Program: Program History, available at <http://www1.yadvashem.org/yv/en/righteous/history.asp>.

63. Yad Vashem, About the Program, *supra* note 62.



2010, Yad Vashem had recognized 23,788 individuals as righteous, many of them posthumously.<sup>64</sup>

Several features of this project are of particular interest as a model for the identification and commemoration of rescuers. First, the project has strict criteria for recognizing individuals as “righteous.” These include the following: active involvement of the rescuer in attempting to save Jews; humanitarian motivation (excluding those who assisted for payment, to convert Jews, or to adopt children, as well as those who did it as a result of general resistance activity not aimed at saving Jews); and the ability to be authenticated by first-hand testimony and other reliable evidence.<sup>65</sup> A public commission, headed by a Supreme Court Judge, examines each case and grants—or declines to grant—the recognition as righteous.<sup>66</sup> This commission is thus a variation on war crimes tribunals: adjudicating acts of humanity, rather than crimes.

Those recognized as righteous (or their families if they are no longer alive) receive a certificate of honor in ceremonies—either in Israel or in the rescuer’s home country—that often attract media coverage.<sup>67</sup> There are also memorials for righteous individuals in Yad Vashem itself (the tree-lined Avenue of the Righteous is among the first scenes a visitor to Yad Vashem would encounter) and elsewhere, and their stories are included in numerous public education projects.<sup>68</sup>

The commemoration of non-Jews who helped Jews during the Holocaust has extended beyond the Yad Vashem project. It is included, for example, in the US Holocaust Memorial Museum in Washington, D.C.<sup>69</sup> and, in another high-profile example, a plaque commemorating the French righteous was added in 2006 to the Pantheon in Paris.<sup>70</sup> One recent project of particular

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64. See Yad Vashem, *The Righteous Among the Nations, About the Righteous: Statistics*, available at <http://www1.yadvashem.org/yv/en/righteous/statistics.asp>.

65. Yad Vashem, *The Righteous Among the Nations, About the Program: How to Apply*, available at [http://www1.yadvashem.org/yv/en/righteous/how\\_to\\_apply.asp](http://www1.yadvashem.org/yv/en/righteous/how_to_apply.asp).

66. Steinfeldt Interview, *supra* note 62; MORDECAI PALDIEL, *THE PATH OF THE RIGHTEOUS: GENTILE RESCUERS OF JEWS DURING THE HOLOCAUST 5* (1993); Yad Vashem, *The Righteous Among the Nations, About the Program: The Commission for the Designation of the Righteous*, available at <http://www1.yadvashem.org/yv/en/righteous/commission.asp>.

67. Yad Vashem, *The Righteous Among the Nations, About the Program: Honoring the Righteous*, available at [http://www1.yadvashem.org/yv/en/righteous/honoring\\_the\\_righteous.asp](http://www1.yadvashem.org/yv/en/righteous/honoring_the_righteous.asp).

68. Yad Vashem, *The Righteous Among the Nations, About the Righteous: Commemorative Sites*, available at <http://www1.yadvashem.org/yv/en/righteous/commemoration.asp>; Yad Vashem, *The International School for Holocaust Studies, International Projects and Partnerships*, available at [http://www1.yadvashem.org/yv/en/education/international\\_projects/index.asp](http://www1.yadvashem.org/yv/en/education/international_projects/index.asp).

69. United States Holocaust Memorial Museum, *Topics to Study: Rescue*, available at <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005185>.

70. James Mackenzie, *France Renders Homage to Wartime Saviors of Jews*, SAN DIEGO UNION TRIB., 18 Jan. 2007, available at <http://legacy.signonsandiego.com/news/world/20070118-0514-france-holocaust-.html>.



relevance is the Silent Heroes Memorial Center in Berlin, which conducts research identifying Germans who risked their lives to help Jews and commemorates their actions.<sup>71</sup> It includes an exhibition and public education projects, but does not honor individual rescuers in the Yad Vashem model.<sup>72</sup>

## B. Rwanda: A Multifaceted and Fragmented Process

During the genocide in Rwanda, “[s]ome Hutus paid the ultimate price—their lives—for their solidarity with their Tutsi relatives, friends and neighbours. The extremists’ propaganda was unequivocal that those who helped Tutsi were helping the enemy, and hence would be regarded as the enemy . . . . There are many, many cases of Hutus who died for protecting Tutsis.”<sup>73</sup> While Hutu opposition politicians and journalists who were killed during the genocide became its “visible” victims, there were also “countless *non-visible* Hutu who saved Tutsi once the genocide began.”<sup>74</sup> Villia Jefremovas described “acts of human kindness” during the genocide, where people were saved by Hutus: “Beyond the drama of perpetrators and victims of these crimes . . . there are many experiences left unreported. Amongst them lie the forgotten stories of humanity.”<sup>75</sup>

Attention to the issue of commemorating rescuers in the Rwandan genocide has grown gradually over the last decade, though efforts remained fragmented and often fraught with controversy. The various actions and initiatives for the commemoration of rescuers could be grouped under three categories: those led by international NGOs, those led by survivors associations, and those led by the Rwandan government.

The first systematic effort to identify individual rescuers and record their stories was probably the project by African Rights, an international human rights organization. In 2002, it published a 300 page report titled *Tribute to Courage*, documenting acts of rescue during the genocide and naming “men and women who risked their lives to save others.”<sup>76</sup> This report “has played an important part in drawing attention to such people.”<sup>77</sup> Two years later,

71. Silent Heroes Memorial Center, *available at* <http://www.gedenkstaette-stille-helden.de/english.html>.

72. Interview with Barbara Schieb, Silent Heroes Memorial Center, in Berlin, Germany (Nov. 2009) [hereinafter Schieb Interview].

73. AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE 590 (1994).

74. NIGEL ELTRINGHAM, ACCOUNTING FOR HORROR: POST-GENOCIDE DEBATES IN RWANDA 97 (2004).

75. Villia Jefremovas, *Acts of Human Kindness: Tutsi, Hutu and the Genocide*, ISSUE: A JOURNAL OF OPINION, No. 2, at 28, 28 (1995).

76. AFRICAN RIGHTS, RWANDA: TRIBUTE TO COURAGE, *supra* note 13.

77. Ervin Staub, *Preventing Violence and Generating Humane Values: Healing and Reconciliation in Rwanda*, 85 INT’L REV. RED CROSS 791, 795 (2003), *available at* [http://www.icrc.org/eng/assets/files/other/irrc\\_852\\_staub.pdf](http://www.icrc.org/eng/assets/files/other/irrc_852_staub.pdf).

another international organization, PRI, also published a report focusing on the acts of rescuers.<sup>78</sup> PRI explicitly acknowledged Yad Vashem as a model; it referred to rescuers as “righteous” and included detailed information on the “righteous among the nations” project in an appendix to the report.<sup>79</sup>

Several organizations of genocide survivors have also begun to honor rescuers. For example, IBUKA, an association of survivors organizations, has begun collecting testimonies to identify rescuers and, in August 2007, awarded certificates of recognition to individuals who saved Tutsis in 1994, one posthumously, and four to living persons, in a ceremony at the Gisozi memorial site.<sup>80</sup> In December 2007, the survivor organizations IBUKA, AVEGA, and Memos, honored fourteen rescuers in a ceremony in Kigali.<sup>81</sup> In April 2008, Memos organized a ceremony for a priest who saved lives during the genocide.<sup>82</sup>

In addition, the Rwandan government has directly initiated some forms of acknowledging rescuers, for instance including rescuers in the annual genocide commemoration in 2003.<sup>83</sup> The genocide memorial centre in Kigali includes a section on rescuers<sup>84</sup> and the “heroes” commemorated in the “Annual Day of Heroes” inaugurated by the government also include genocide rescuers.<sup>85</sup> President Kagame paid homage to rescuers in his speech for the tenth anniversary of the genocide.<sup>86</sup> Finally, a recently-launched archive of testimonies from the genocide, established by the Rwandan government, includes a few testimonies from rescuers.<sup>87</sup> Notwithstanding all these activities, rescuers have not become national heroes in Rwanda<sup>88</sup> and efforts to identify and commemorate them, remain, at this stage, patchy, uncoordinated, and plagued by some specific controversies, as will be discussed in more detail in Section V, below.

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78. PRI, REPORT ON MONITORING AND RESEARCH ON THE GACACA. THE RIGHTEOUS: BETWEEN OBLIVION AND RECONCILIATION? EXAMPLE OF THE PROVINCE OF KIBUYE (2004) [hereinafter PRI, THE RIGHTEOUS].
79. *Id.* at 65–67.
80. See *IBUKA Bestows Honour to Persons Who Saved Tutsis*, HIRONDELLE NEWS AGENCY, 6 Aug. 2007, available at <http://www.hirondellenews.com/content/view/9759/437/>.
81. See *Fourteen Honoured for Bravery During 1994 Genocide*, HIRONDELLE NEWS AGENCY, 17 Dec. 2007, available at <http://www.hirondellenews.com/content/view/10434/461/>.
82. Florence Mutesi, *Pastor Showered with Gifts for Saving People*, NEW TIMES (RWANDA), 10 Apr. 2008, available at <http://allafrica.com/stories/200804100165.html>.
83. Staub, *supra* note 77.
84. See the memorial website at Kigali Memorial Centre, Windows of Hope, available at <http://www.kigalimemorialcentre.org/old/centre/exhibition/windowsofhope.html>.
85. Edmund Kagire, *Rwanda: Heroes' Day to be Celebrated at Village Level*, NEW TIMES (RWANDA), 1 Feb. 2011, available at <http://allafrica.com/stories/201002010604.html>.
86. Valerie Rosoux, *The Figure of the Righteous Individual in Rwanda*, 58 INT'L SOC. SCI. J. 491, 496 (2006).
87. See Genocide Archive Rwanda, Rescuer Testimonies, available at [http://www.genocide-archiverwanda.org.rw/index.php/Category:Rescuer\\_Testimonies](http://www.genocide-archiverwanda.org.rw/index.php/Category:Rescuer_Testimonies).
88. Rosoux, *supra* note 86, at 497.

### C. Bosnia: Initial Civil Society Initiatives

The wars of the former Yugoslavia between 1991 and 1995 involved numerous ethnic massacres and episodes of genocide.<sup>89</sup> However, some individuals from the various groups—Serbs, Croats, Bosniaks—also helped people from other groups, often taking risks in doing so. As Helmut Smith writes, “there were many instances in Bosnia of people of one ethnic group rescuing people from another group. In some of the areas where the attacks on Muslims were most vicious, for example, the Prijedor area in late spring and summer 1992, many Muslim survivors tell stories of being helped at some point by Serbs.”<sup>90</sup> Especially during the early phases of the war, when armies took over new territories aiming at “ethnic cleansing,” people hid members of other ethnic groups or intervened to shield them from attacks.<sup>91</sup>

Recognition that documenting and commemorating such acts of rescue could be an important element of post-conflict policies surfaced several times since the end of the wars. In discussions of a prospective truth commission for Bosnia, which were held in 1999 and 2000, it was recommended that “documenting acts of humanity” should be among the tasks of such a truth commission: “the Commission will attempt to document the stories of the *real* war heroes, i.e., those individuals of all ethnic groups who, despite grave risks, resisted ethnic cleansing and acted to protect victims of other ethnic groups.”<sup>92</sup> According to Neil J. Kritz and Jakob Finci, at the time of these discussions governmental authorities, including members of the presidency and NGOs from all sides, endorsed this idea.<sup>93</sup> Kritz emphasized that

[i]n Bosnia, if a truth commission is established, all stakeholders have agreed that its mandate will include a requirement, in the context of documenting the atrocities that occurred, to also expose the positive stories of individuals on all sides of the conflict who took risks to protect fellow citizens from other ethnic groups from abuse.<sup>94</sup>

A survey of human rights NGOs in the former Yugoslavia about a potential truth commission also found that “[m]any of the groups spoke about the importance of a TRC in gathering facts for a national historical record and

89. SUSAN WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995).

90. HELMUT WALSER SMITH, *THE HOLOCAUST AND OTHER GENOCIDES: HISTORY, REPRESENTATION, ETHICS* 184 (2002).

91. Interview with Snjezana Filipovic, Research and Documentation Center [RDC], in Br ko, Bosnia (July 2008) [hereinafter Filipovic Interview].

92. Neil J. Kritz & Jakob Finci, *A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time Has Come*, 3 INT’L L. FORUM 50, 53 (2001) (emphasis added).

93. *Id.* at 53–54.

94. Neil Kritz, *The Rule of Law in Conflict Management*, in *LEASHING THE DOGS OF WAR: CONFLICT MANAGEMENT IN A DIVIDED WORLD* 401, 415 (Chester A. Crocker, Fen Osler Hampton & Pamela Aall eds., 2007).

collecting positive stories from the war."<sup>95</sup> While a truth commission is yet to be established in Bosnia, the recognition of the importance of commemorating rescuers in such preliminary discussions is significant. It may reflect a broader understanding within civil society in the region regarding the value of such stories. Indeed, while an official truth commission has not yet materialized, several civil society and local projects have begun to fill the gap with projects on rescuers.

A leading initiative in this vein is the Sarajevo-based GARIWO, established in 2001. GARIWO grew out of the work of Svetlana Broz, a physician and a well-known figure in the region, being the granddaughter of Marshal Tito. Broz began collecting stories of people helped by members of other ethnic groups during the war, published a book with such testimonies, and later established GARIWO. GARIWO's initial aim was to establish a physical memorial in the form of a "garden for the righteous in Sarajevo," which would be analogous to the Yad Vashem project in Jerusalem. The unstable political situation in Bosnia has delayed this plan, but the organization continues to research and educate on "civil courage," with direct and acknowledged inspiration from the Yad Vashem project.<sup>96</sup> The organization maintains the aim of commemorating "righteous persons, from all ethnic groups in BiH, who scorned danger and risked his or her life or the lives of family members to defend others of different ethnic groups who were unfairly persecuted."<sup>97</sup> One of their current initiatives is the Dusko Kondor Civil Courage Award, an annual award named after a human rights activist and staff member of GARIWO who was assassinated in 2007.<sup>98</sup> While those awarded are not exclusively war-time rescuers, the majority of those recognized thus far are individuals who acted as rescuers during the war.<sup>99</sup>

A second civil society initiative is the project on "positive stories," undertaken by the Research and Documentation Center (RDC), a Bosnian NGO known for its meticulous research on human rights abuses during the war (including a database of the victims of the war in Bosnia and an atlas of war crimes). The "positive stories" project aims to collect, document, and publish the stories of Bosnian citizens who aided each other during the war regardless of ethnic or religious background in an effort to save lives and protect rights. The project focuses on collecting testimonies on such actions and later disseminating them to the public.<sup>100</sup>

95. KRISTEN CIBELLI & TAMY GUBEREK, *JUSTICE UNKNOWN, JUSTICE UNSATISFIED?: BOSNIAN NGOs SPEAK ABOUT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA* 20 (2000).

96. Interview with Adnan Ramic, GARIWO, in Sarajevo, Bosnia (July 2008) [hereinafter Ramic Interview].

97. GARIWO Sarajevo, *Projects*, available at [http://www.gariwo.org/site/index.php?option=com\\_content&view=article&id=14:projects&lang=bs-BA](http://www.gariwo.org/site/index.php?option=com_content&view=article&id=14:projects&lang=bs-BA).

98. Dusko Kondor Award for Civil Courage, available at [http://www.norveska.ba/News\\_and\\_events/Society-and-Policy/Dusko-Kondor-Award-for-Civil-Courage-2011/](http://www.norveska.ba/News_and_events/Society-and-Policy/Dusko-Kondor-Award-for-Civil-Courage-2011/).

99. *Id.*

100. Filipovic Interview, *supra* note 91.

Finally, another example is the commemoration of Srdjan Aleksic. Aleksic, a swimmer and an amateur theatre actor, was serving in the Bosnian-Serb army in the town of Trebinje.<sup>101</sup> In January 1993, he witnessed four fellow soldiers beating his friend, Alen Glavovic, because he was a Bosniak. Aleksic raced to protect his friend and his fellow soldiers began beating him instead; he slipped into a coma and later died. His friend Glavovic managed to escape. In 2007 the Helsinki Committee for Human Rights in Bosnia and Herzegovina posthumously awarded Aleksic with the Charter of Helsinki Committee “for exceptional contribution to protection of human rights and their promotion.”<sup>102</sup> A documentary about him was made in 2008,<sup>103</sup> a street in Sarajevo was named after him, and in 2009 another street was named after him in Novi Sad, Serbia’s second largest city.<sup>104</sup> Aleksic’s father attended the ceremony in Novi Sad and in a speech said he hoped young people “see Srdjan as a symbol of kindness.”<sup>105</sup>

As the examples above indicate, the issue of rescuers is increasingly recognized in Bosnia, but as in Rwanda it has thus far remained largely outside of the mainstream of transitional justice policies and under the radar of the international human rights community.<sup>106</sup> The next section will demonstrate why incorporating the issue into mainstream human rights responses to mass atrocities will contribute to achieving some of the main goals of transitional justice policies.

#### IV. RECONCILIATION, ACCOUNTABILITY, TRUTH: THE IMPORTANCE OF COMMEMORATING RESCUERS

Many would support the concept of a stand-alone moral duty to remember and commemorate the actions of rescuers, independently of any additional

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101. Zarko Radoja, *Sećanje na Srdana [Memory of Srdjan]*, E-NOVINE, 16 Oct. 2008, available at <http://www.e-novine.com/index.php?news=17983>.

102. See Press Release, Helsinki Committee for Human Rights in Bosnia and Herzegovina, Charter of Helsinki Committee for Srdjan Aleksic (27 Mar. 2007), available at <http://www.bh-hchr.org/Statements/e27-03-07.htm>.

103. SRĐO (Radio Television of Serbia broadcast 2007).

104. Drazen Remkovic, *Film Celebrates Young Serb Who Died Defying Hatred*, BALKAN INSIGHT, 4 July 2011, available at <http://www.balkaninsight.com/en/article/film-celebrates-young-serb-who-died-defying-hatred>; Igor Jovanovic, *Tribute to a Modern-Day Hero*, SOUTHEAST EUROPEAN TIMES, 25 Aug. 2009, available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2009/08/25/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2009/08/25/feature-01).

105. *Id.*

106. Another example for recognizing acts of humanity, beyond these three contexts, is the “Heroes Summit” which was held in Burundi in 2004, honoring individuals who took risks to protect members of other ethnic groups during the conflicts in Burundi. The project was credited with transforming “many who were called traitors by their own group into popular celebrities.” CHARLES VILLA-VICENCIO, PAUL NANTUYA & TYRONE SAVAGE, BUILDING NATIONS: TRANSITIONAL JUSTICE IN THE AFRICAN GREAT LAKES REGION 28 (2005).

benefits. However, in the context of devising human rights policies in post-conflict situations, the call for commemorating rescuers should be grounded in an instrumental framework and support the broader goals of transitional justice. In the aftermath of conflicts there are huge, and often conflicting, demands on the international community, governments, and civil society. Resources, personnel, funding, and political will are always limited and attention is often focused on duties toward victims, on the attempts to bring perpetrators to justice, and beginning institutional democratic reforms. Proposals to focus some attention on rescuers must therefore be based on an analysis that points out the potential wider benefits of such interventions. The following analysis will demonstrate that commemorating rescuers can assist in achieving many of the oft-identified goals of transitional justice and post-conflict reconstruction. The analysis explores two main themes—*rescue-memory as reconciliation* and *rescue-memory as denunciation*—and it briefly explores the issue of rescuers and truth-recovery.

### A. Rescue-Memory as Reconciliation: Rescuers and Conflict-Transformation Between Groups

Transitional justice policies consider reconciliation a key goal,<sup>107</sup> particularly in contexts where the conflict was based on ethnic, religious, or national divisions. In such cases the improvement of inter-community relations is a key component in the effort to prevent a recurrence of violence, for the aftermath of such conflicts leaves a legacy of distrust and betrayal.<sup>108</sup> Ethnic and religious conflicts are often characterized by extreme prejudice towards the opponent group, which is often viewed monolithically and collectively dehumanized. Protracted violence leads to and builds on pervasive stereotyping of an opposing group: it “involves closing one’s mind toward the other’s experience, and presuming that one can already predict the other’s behavior (‘they’ll never change’).”<sup>109</sup> In the aftermath of war, many people lose “the ability to individualize rather than stereotype”<sup>110</sup> and all members of the opponent group, by virtue of sharing an ethnic, national, or religious identity, are perceived to be murderers. The reduction in political violence during transitions out of such conflicts is too often not complemented by a reduction in stereotyping and prejudice, a fact which complicates conflict-transformation. Fear, mistrust, and stereotyping can reignite violence or

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107. ERIN DALY & JEREMY SARKIN, RECONCILIATION IN DIVIDED SOCIETIES: FINDING COMMON GROUND (2007).

108. Dean Ajdukovic & Dinka Corkalo, *Trust and Betrayal in War*, in MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY 287 (Eric Stover & Harvey M. Weinstein eds., 2004).

109. Halpern & Weinstein, *Rehumanizing the Other*, *supra* note 3, at 569.

110. *Id.* at 583.

continue patterns of discrimination and exclusion. In turn, “reconciliation in divided societies depends in large part on whether the processes they employ are able to contribute successfully to redefining the antagonistic collective identities and hostile relationships.”<sup>111</sup>

The dissemination of stories about rescuers could be one useful tool in reconstructing inter-community relations. Commemoration of rescuers can lead to what has been defined as “rehumanizing the other,” a key task for transitional policies.<sup>112</sup> Such dissemination of rescuer stories could be a particularly useful means of meeting the challenge “to individualize and particularize and thereby challenge the major aspects of dehumanization.”<sup>113</sup> Showing that some members of the “enemy” group have not only not been perpetrators, but in fact risked their lives to help people from the other group, can surely contribute to re-humanizing inter-ethnic perceptions. It can work toward countering the prejudice that all Hutus, Serbs, or Croats are murderers or support violence, individualizing rather than stereotyping the other group.

Indeed, individualizing guilt—blaming individuals rather than whole ethnic groups—has been identified as one of the goals of post-conflict war crimes trials.<sup>114</sup> The former president of the International Criminal Tribunal for the former Yugoslavia (ICTY), Antonio Cassese, has argued: “trials establish *individual responsibility over collective* assignment of guilt, [i.e.], they establish that not all Germans were responsible for the Holocaust, nor all Turks for the Armenian genocide, nor all Serbs, Muslims, Croats or Hutus but individual perpetrators.”<sup>115</sup> The commemoration of rescuers can assist in achieving the very same goal. Documenting acts of humanity is “a powerful complement to the process of determining individual criminal accountability: together, they comprise the two sides of the same coin of rejecting collective blame.”<sup>116</sup>

The commemoration of cross-group acts of humanitarianism is a way to demonstrate the futility of strict us/them worldviews and loyalties, showing that ethnic divisions are often as much manufactured as natural. Acknowledgment of Hutus who resisted the genocide, or Serbs who resisted the abuses, powerfully rejects an ultra-nationalistic vision. Invoking the figure of the rescuer and stories of rescuers’ actions can promote a transformation

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111. Nevin T. Aiken, *Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland*, 4 INT’L J. TRANSITIONAL JUST. 166, 167 (2010).

112. Halpern & Weinstein, *Rehumanizing the Other*, *supra* note 3, at 579.

113. *Id.* at 567.

114. GARY JONATHAN BASS, *STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS* 297–98 (2000).

115. Antonio Cassese, *Reflections on International Criminal Justice*, 61 MOD. L. REV. 1, 6 (1998).

116. Kritz & Finci, *supra* note 92, at 53.



of society and relations between communities. Such an argument was put forward in relation to rescuer stories in Bosnia:

These kind of stories are the only thing that can make the process of reconciliation complete. If you have real examples of others who were “good,” people can develop their own opinions about the other nation, not just listen to the media and to leaders who are talking in language of hate and stereotypes. That’s why it’s the only way, when you heard about someone, when there are good people in the other side, they’re not all bad—and we’re not all good, that’s another thing—that’s the only way to make the process of reconciliation work.<sup>117</sup>

Kritz and Finci made a similar point:

If Bosnian society is to really reconstruct itself, its citizens need to be informed not only of the crimes committed, but also, against that backdrop, of the potential for goodness and brotherhood which remained even in the midst of barbarity and insanity . . . . [T]hese accounts will make it harder to divide people.<sup>118</sup>

Mirsad Tokaca, the director of RDC, said that the examples of mutual help and solidarity people from all three ethnic groups provided to each other during the war, sometimes risking or losing their lives, “will bust the stereotypes on inter-ethnic war.”<sup>119</sup>

In the Rwandan context, “humanizing the ‘other,’ . . . giving the Hutus a more human image in the eyes of Tutsis,” was identified as a key goal.<sup>120</sup> It was suggested that “a direct and immediate means of doing so” could be that “Hutus who had saved the lives of Tutsis during the genocide, and in some cases were killed as a result, be acknowledged and included in the yearly commemoration of those tragic events.”<sup>121</sup> Those Hutu who resisted the regime “demonstrate that the genocide perpetrator’s binary construction of Rwanda (‘the Hutu vs the Tutsi’) was not ‘natural,’ but had to be imposed” and “the acknowledgment of Hutu who resisted ‘Hutu Power’ remains a powerful rejection of the vision of Rwandan society proclaimed by the perpetrators of the genocide.”<sup>122</sup>

Another potentially positive outcome could be that representatives of a victims’ group who commemorate rescuers from their opponent’s group can also alleviate fears that the victims are all set on revenge. The president of IBUKA, an association of survivors of the Rwandan genocide, said on the occasion of awarding certificates to Hutu rescuers: “These certificates are a

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117. Ramic Interview, *supra* note 96.

118. Kritz & Finci, *supra* note 92, at 53.

119. Interview by Vesna Peric Zimonjic with Mirsad Tokaca, Founder of the Regional Documentation Centre, in Sarajevo (14 June 2010), available at <http://ipsnews.net/news.asp?idnews=51809>.

120. Staub, *supra* note 77, at 795.

121. *Id.*

122. ELTRINGHAM, *supra* note 74, at 97 (emphasis removed).

proof that IBUKA is not an institution of revenge but of unity and reconciliation."<sup>123</sup> There are also indications that part of the impetus for starting the actual operation of the Yad Vashem project, almost a decade after the project was mandated by legislation, was the wish to avoid an image of Israel and the Jewish people as exclusively vengeful in the wake of the abduction, trial, and execution of Eichmann.<sup>124</sup>

The example of rescuers can also be used to legitimize other reconciliation attempts by relieving animosity against those who interact with members of other groups, for in post-conflict societies "people fear social ostracism if they reconcile with other ethnic groups."<sup>125</sup> The ability to point out cases of rescuers among the "enemy" group can help those who are attacked for seeking reconciliation with previous enemies.

Naturally, disseminating stories about rescuers is not a magic solution for post-conflict societies. These stories must be told across gaps of mistrust, fear, hatred, and sometimes indifference. In and of themselves they will not be able to immediately transform all members of society, but as a component of broader conflict-transformation policies, rescuers stories offer a potentially powerful way to at least erode the more extreme forms of prejudice. They can challenge rigid perceptions of the other group and destabilize strict worldviews based on unchanging identities. Stories of rescuers can be an important factor contributing to the creation of alternative narratives about the past conflict, which can challenge collective attitudes. In short, reconciliation and transformation of relations between groups and communities is a key—though often elusive—goal of transitional justice policies and stories of rescuers are an important and hitherto under-explored resource for achieving that goal.

At the same time, it is important to note that the commemoration of rescuers is not without risks to inter-group relations. Rescuers may be framed as an exception that proves the rule, their positive actions used only to reinforce prejudice against the majority in their community. A critique along these lines was sporadically leveled at Yad Vashem's project. Omer Bartov, for example, argues that "the state's official recognition of 'righteous gentiles at Yad Veshem' merely highlights the alleged essential characteristics of the majority."<sup>126</sup> Likewise, Peter Novick thinks that "[t]he intention of most commemoration of the 'righteous minority' has been to damn the vast 'unrighteous majority' . . . promoting a wary suspicion of gentiles."<sup>127</sup> Novick,

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123. See *IBUKA Bestows Honour to Persons Who Saved Tutsis*, *supra* note 80.

124. HANNA YABLONKA, *THE STATE OF ISRAEL VS. ADOLF EICHMANN* 192 (2004).

125. Halpern & Weinsten, *Rehumanizing the Other*, *supra* note 3, at 581.

126. OMER BARTOV, *GERMANY'S WAR AND THE HOLOCAUST: DISPUTED HISTORIES* 179 (2003).

127. PETER NOVICK, *THE HOLOCAUST IN AMERICAN LIFE* 180 (1999).

however, provides no evidence for his claim that promoting suspicion has been the intention of the commemoration, nor that it has been the effect of such commemoration. Indeed, in the context of the Holocaust a “wary suspicion of gentiles” is probably a result of the Holocaust itself rather than commemoration of righteous gentiles.<sup>128</sup> While Novick’s critique seems unfounded in this specific case, it does highlight the risk such commemorations can pose of creating a strict dichotomy between rescuers/righteous and others in a way that can stigmatize the rest of the group. Policies regarding rescuers should be cautious of this danger.

### **B. Rescue-Memory as Denunciation: Rescuers and the Response to the Legacy of Passive Bystanders**

How to address the role and culpability of passive bystanders—those who did not participate directly and actively in atrocities, but also did not act to stop or mitigate them—is one of the most challenging aspects of transitional justice policies. Bystanders often form the majority during genocides.<sup>129</sup> While “currently there are no mechanisms to respond to the way in which bystanders are implicated,” acknowledging the example of rescuers can be a new, useful, and creative tool to advance societal reckoning with the topic of bystanders, helping to fill the gap in approaches to the issue.<sup>130</sup>

Bystanders, in most cases, do not incur criminal guilt. The challenge stemming from the inability to use legal tools to address most cases of passivity in the face of mass abuses was identified early on<sup>131</sup> and has remained a key theme in transitional justice debates. Other interventions, which go beyond prosecutions, have also often failed to address the legacy of bystanders in a meaningful way. The South African Truth and Reconciliation Commission, perhaps the most important and wide-ranging transitional justice mechanism, was powerfully criticized for its failure to address the complicity and passivity of apartheid’s bystanders and beneficiaries.<sup>132</sup> For

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128. *Id.*

129. Arne Johan Vetlesen, *Genocide: A Case for the Responsibility of the Bystander*, 37 J. PEACE RES. 519, 520 (2000).

130. Fletcher & Weinstein, *Violence and Social Repair*, *supra* note 3, at 580.

131. KARL JASPERS, *THE QUESTION OF GERMAN GUILT* (E.B. Ashton trans., 1947).

132. By largely ignoring the structural abuses of the apartheid system and focusing on direct perpetrators of exceptional and spectacular violence, the Truth and Reconciliation Commission provided a narrative of denial to the many who fail to stop violence, who were involved in the design and implementation of apartheid policies, or who simply benefited from operating and living in privileged positions. See PAUL GREARDY, *THE ERA OF TRANSITIONAL JUSTICE: THE AFTERMATH OF THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA AND BEYOND* (2011); Wilson, *THE POLITICS OF TRUTH AND RECONCILIATION*, *supra* note 1.

all the developments in transitional justice policies to address consequences of mass atrocities, the field “has largely failed to confront bystanders with the tragic consequences of their passivity” and “[t]he promise of transitional justice to inaugurate a state’s commitment to addressing past violence will not be fully realized unless we innovate the transitional justice tool kit in order to directly engage this overlooked but critical population.”<sup>133</sup>

Addressing the bystander issue is a “critical element in the process of social reconstruction”<sup>134</sup> and there is a need to stimulate some kind of reckoning process among bystanders who were compatriots of the perpetrators.<sup>135</sup> Documenting and commemorating rescuers would be a creative way to accomplish this task. Demonstrating to bystanders, through the mirror of rescuers’ narratives, that some of their number knew about abuses and attempted to prevent or ameliorate them can help invalidate the “alibis” of the passive bystanders. Stories of rescuers can catalyze a societal debate on the legacy of the past and become a medium through which societal reckoning with the past can be encouraged. As PRI put it in the context of Rwanda: “The Righteous are living proof that a choice was possible.”<sup>136</sup> A similar point was made in relation to post-war Germany: “rescuers are examples for what was possible during the Nazi period.”<sup>137</sup> Presenting concrete and reliably documented examples of individuals acting against abuses perpetrated by their leaders and communities can be a powerful argument—both morally and empirically—that silence in the face of genocide and atrocities was not an inevitable position.

A particular challenge in reckoning with the legacy of past atrocities derives from the way in which bystanders commonly rationalize their inactions, claiming, for example, that it was impossible for “ordinary people” to know that atrocities were taking place, or that it was impossible for individuals to do anything to stop them, and thus seeking to evade any form of responsibility.<sup>138</sup> Using rescuers as a counterexample, demonstrating that knowledge and action were indeed possible and could potentially answer such rationalizations. Even in the most difficult political and social situations, “[t]he existence of rescuers informs us . . . that individuals are not entirely powerless.”<sup>139</sup> Documenting acts of rescue “proves that helping was possible.”<sup>140</sup> Thus, the demonstration that some individuals did not succumb

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133. Laurel E. Fletcher, *Facing Up to the Past: Bystanders and Transitional Justice*, 20 HARV. HUM. RTS. J. 47, 47 (2007).

134. Fletcher & Weinstein, *Violence and Social Repair*, *supra* note 3, at 615.

135. Fletcher, *Facing Up to the Past*, *supra* note 133, at 51.

136. PRI, THE RIGHTEOUS, *supra* note 78, at 19.

137. Schieb Interview, *supra* note 72.

138. See STANLEY COHEN, STATES OF DENIAL: KNOWING ABOUT ATROCITIES AND SUFFERING (2001).

139. OLINER & OLINER, *supra* note 31, at 2.

140. PALDIEL, *supra* note 66, at 6.

to prevailing trends in society could become a way to press bystanders to confront their inaction.

It should also be noted that honest engagement with the legacy of passive bystanders has additional benefits. For example, it can enhance the willingness of a community to establish a program of reparation to victims, which entails, even if implicitly, acknowledging some form of collective responsibility towards the victims. As Laurel E. Fletcher has argued, “[b]ystander acknowledgment may also generate support for collective forms of acknowledgment, such as public apologies, and buttress political will for systemic reforms that strengthen human rights.”<sup>141</sup> Thus, commemorating rescuers can contribute both directly and indirectly to accountability.<sup>142</sup>

### C. Truth-Recovery: Rescuers and Establishing the Historical Record

The documentation of rescuers is also part of the broader goal of establishing the truth about past conflicts and abuses. Transitional justice advocates have paid increasing attention to the “right to truth,” arguing that society, as such, has the right to know the full picture regarding past abuses.<sup>143</sup> Documenting rescues can be seen as part of a duty to realize this right. Snjezana Filipovic, from RDC in Bosnia, highlighted the importance of insisting that stories about rescuers are “part of the facts, part of the truth—since we’re involved in truth-seeking. We had people who managed to act like that. This is part of the story.”<sup>144</sup> In addition, identifying and commemorating rescuers is one of the best antidotes to denial of genocides. A former director of the Department for the Righteous Among the Nations at Yad Vashem, Mordecai Paldiel, pointed out that rescuers stories “give credence to survivor accounts, thereby dealing a mighty blow to Holocaust deniers.”<sup>145</sup>

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141. Laurel E. Fletcher, *From Indifference to Engagement: Bystanders and International Criminal Justice*, 26 MICH. J. INT’L L. 1013, 1029 (2005).

142. It should be noted that there could be a tension between using the figure of the rescuer in order to foster reconciliation and using it in order to confront the role of bystanders. In both cases the rescuers are invoked to de-homogenize collective groups. However, where promoting reconciliation is the focus, the main audience consists of members of the victim group and the rescuers are used to counter the notion that the other group are all perpetrators; where the focus is on bystanders, however, the main audience consists of members of the group in whose name the atrocities were carried out and the rescuer is used to counter alibis for inaction.

143. *See Promotion and Protection of Human Rights: Study on the Right to the Truth. Report of the Office of the United Nations High Commissioner for Human Rights*, U.N. ESCOR, Comm’n on Hum. Rts., 62d Sess., Agenda Item 17, U.N. Doc. E/CN.4/2006/91 (2006).

144. Filipovic Interview, *supra* note 91.

145. “A Journey of Discovery”: *Righteous Department Director Retires After 24 Years*, YAD VASHEM JERUSALEM Q. MAG., Spring 2007, at 16, available at [http://www1.yadvashem.org/yv/en/pressroom/magazine/pdf/yv\\_magazine45.pdf](http://www1.yadvashem.org/yv/en/pressroom/magazine/pdf/yv_magazine45.pdf).

While this section demonstrates that documenting and commemorating rescuers can make novel and effective contributions to many of the goals of transitional justice, the next section will identify and explore the risks and challenges involved in such undertakings.

## V. CHALLENGES, POTENTIAL PITFALLS, AND THE COMPLEX STORY OF “RWANDA’S SCHINDLER”

Like any human rights measure taken in the aftermath of conflicts and atrocities, documenting and disseminating rescuer stories is a difficult and sensitive enterprise that could fail to discernibly impact the situation and could even result in negative, counter-productive effects. This is also true of other measures, such as prosecutions or truth commissions, and the commemoration of rescuers should be seen as part of this complex framework. The positive subject-matter of such initiatives should not lead to a perception that the commemoration of rescuers is somehow a wholesome and innocent undertaking, bound to succeed. In exploring the potential challenges and pitfalls of rescuer commemoration, this section identifies three themes: *rescue-memory as displacement*; *rescue-memory as myth*; and “*rescuer*” as an *ambiguous category*.

Many of the potential pitfalls of such interventions can be illustrated by the responses to the actions of Paul Rusesabagina, the claimed hero of the events depicted in the film *Hotel Rwanda*.<sup>146</sup> While some elements of this story reflect the particular Rwandan context, the story also neatly illustrates broader themes and will be used here to articulate some general potential problems relating to the commemoration of rescuers.<sup>147</sup>

Rusesabagina, a Hutu, was a hotel manager in Kigali at the outbreak of the genocide. According to many accounts, he saved hundreds of Tutsis from the genocide by allowing them to hide in the hotel and resourcefully protecting them from the Hutu militias.<sup>148</sup> He was made famous when a flattering portrayal of him became the basis for a 2004 American film, *Hotel Rwanda*.<sup>149</sup> He also published an autobiography<sup>150</sup> and became a well-known figure in the United States and Europe; among other accolades, President Bush

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146. HOTEL RWANDA (Lion’s Gate Entertainment & United Artists 2004).

147. For another type of analysis of Rusesabagina’s story, see generally Lena Khor, *Human Rights and Network Power*, 33 HUM. RTS. Q. 105 (2011).

148. Mathew Stein & Magnus Mazimpaka, *Who is the Real Paul Rusesabagina?*, THE INDEPENDENT (KAMPALA), 1 July 2011, available at <http://allafrica.com/stories/201107041322.html>.

149. HOTEL RWANDA, *supra* note 146.

150. PAUL RUSESABAGINA WITH TOM ZOELLNER, AN ORDINARY MAN: AN AUTOBIOGRAPHY (2006).

awarded him the US Presidential Medal of Freedom in person in 2005.<sup>151</sup> He was often dubbed, in the West, “Rwanda’s Schindler.”<sup>152</sup>

What seems at first glance a textbook case of commemorating a rescuer is in fact much more complex, for in Rwanda itself the reception of Rusesabagina was different than in the West. His status as a hero was contested and rejected by some survivors as well as by President Kagame, and his celebratory treatment in the West often caused outrage.<sup>153</sup> Some of this can be explained as politics: Rusesabagina, who left Rwanda to live in Belgium, became an outspoken critic of the Rwandan government, accusing it among other things of oppressing political opponents,<sup>154</sup> and the current Rwandan government is particularly intolerant of any such political dissent. However, the story also reveals several difficult structural factors that would challenge any rescuers commemoration. These are underlying tensions that cannot be easily avoided, but rather have to be acknowledged and managed—something that did not happen successfully in the Rwandan case. Using Rusesabagina’s story, three such challenges are explored here: the challenge of not focusing on rescuers at the expense of victims; the challenge of confirming the credibility of rescuers stories; and the problem of defining who should be recognized as a rescuer.

### A. Rescue-Memory as Displacement: The Risk of a Misplaced Emphasis on Rescuers

The first potential pitfall regarding the commemoration of rescuers is that it would result in initiatives that focus too exclusively on rescuers, leading to bitterness, alienation, and resentment from victims, as well as painting an overly rosy and sentimental picture of the past. This seems to be at the root of some of the resentment that accolades to Rusesabagina triggered in Rwanda. For example, Odette Nyiramirimo, a Rwandan Senator and genocide survivor, said that Rusesabagina “had hijacked heroism at the expense of those who suffered during the genocide.”<sup>155</sup> The claim of “hijacking heroism” was echoed by Francois Xavier Ngarambe, the President of IBUKA,<sup>156</sup> and

151. Stein & Mazimpaka, *supra* note 148.

152. For one example among many, see Tom Hagler, *Rescued by an African Schindler*, *SUNDAY TIMES* (LONDON), 6 Feb. 2005.

153. Arthur Asiimwe, “Hotel Rwanda” Hero in Bitter Controversy, *REUTERS*, 4 Apr. 2007, available at <http://www.reuters.com/article/2007/04/04/us-rwanda-genocide-film-idUSL0420968620070404>.

154. Stein & Mazimpaka, *supra* note 148.

155. Sulah Nuwamanya, *Genocide Ghost Haunting Hotel Rwanda “Hero,”* *NEW TIMES* (RWANDA), 21 May 2006, available at <http://allafrica.com/stories/200605220367.html>.

156. See Terry George, *Smearing a Hero*, *WASH. POST*, 10 May 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/09/AR2006050901242.html>.



there has been some bitterness among survivors regarding the claim that rescuers, rather than survivors, are the “true heroes of the genocide.”<sup>157</sup> The premise of such claims seem to be that the victims of the Rwandan genocide should remain at the forefront of genocide remembrance and that rescuer commemoration could distort history by creating an overly positive picture of events.

This tension is not unique to Rwanda and periodically has been part of the commemoration of Holocaust rescuers. For example, in 1994 the *New York Times* reported that “a tendency in recent years to focus on the rescue of Jews by gentiles is alarming some survivors and scholars, who complain that the enthusiasm for rescue may spill over into the distortion of history.”<sup>158</sup> Raul Hilberg, the leading Holocaust historian, said he found “the emphasis on rescue misleading.”<sup>159</sup> Martin Gilbert also wrote that the “[f]ocus on the righteous is not universally welcomed,” citing a Holocaust survivor who wrote him, in response to a request for stories of rescuers, that “enough is being written on Christian help to rescue Jews. I feel that the focus is shifting away from the crimes.”<sup>160</sup>

This hazard is not completely avoidable, but it could be reduced—or, regrettably, aggravated. In Rusesabagina’s case, that the awards and recognition came from abroad, rather than from Rwanda, are likely to have made things worse. Genocide survivors were not consulted before he was recognized as a hero in American and European eyes. That the most popular representation of the genocide in the West—after all, *Hotel Rwanda* reached a wider audience than any academic book on the topic—was the story of a rescuer, not of a victim, led to resentment. Rusesabagina’s award from the US government, whose inaction during the genocide itself is widely seen in Rwanda as having contributed to the magnitude of the killings, may have been particularly unhelpful.

In contrast, the fact that Yad Vashem was initiated and operated by representatives of the survivors has contributed widely to its legitimacy and authority. With commemorating rescuers being only part of a larger undertaking of commemorating the Holocaust, Yad Vashem cannot be blamed for neglecting victims or of minimizing the memory of the killings in any way. This pitfall is also evaded by the Silent Heroes project in Berlin, whose format of commemorating rescue weaves together the stories of individual rescuers and those they rescued in a way that avoids an exclusive focus on the rescuers themselves. In addition, the project pointedly includes stories of

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157. Rosoux, *supra* note 86, at 494.

158. Diana Jean Schemo, *Good Germans: Honoring the Heroes. Hiding the Holocaust*, N.Y. TIMES, 12 June 1994, available at <http://www.nytimes.com/1994/06/12/weekinreview/ideas-trends-good-germans-honoring-the-heroes-hiding-the-holocaust.html>.

159. *Id.*

160. GILBERT, *supra* note 58, at xviii.

unsuccessful rescues, where hidden Jews were discovered and killed, which further resists overly sentimental impressions. RDC's positive stories project also seems fairly immune to such risks because the organization spent years documenting the horrors of the war and compiling a database of the wars' victims.<sup>161</sup> It is thus much less likely to be accused of sentimental distortions or of not taking the plight of victims seriously enough.

## B. Rescue-Memory as Myth: The Fact-Finding Challenge

A second challenge of rescue documentation illustrated by the Rusesabagina episode is that of reliable documentation of rescuers' actions. Rusesabagina's credibility has been contested, a fact that led to much of the controversy surrounding the story. Some survivors said that "it is not true that Rusesabagina saved all the people in Milles Collines" and claimed "[i]t is factual that Rusesabagina never barred any Interahamwe militias from attacking the hotel."<sup>162</sup> There were claims that Rusesabagina—and those who championed him—embellished the events and exaggerated his heroism,<sup>163</sup> as well as conflicting accounts in this regard from individuals who were in Kigali at the time.<sup>164</sup> This question mark over the credibility of the story further undermined the potential of Rusesabagina's story to have a positive impact in Rwanda.

While it is beyond the scope of this article to assess the historical accuracy of the conflicting narratives relating to Rusesabagina, it is important to identify the challenge of credible documentation of rescue. While human rights research has developed agreed-upon and commonly-used tools, protocols, and burden-of-proof standards for fact-finding of human rights abuses, no analogous tools exist for the documentation of good deeds. A "forensic science" of documenting rescue has yet to emerge. There is a need to develop an adequate methodology for such tasks, as well to ensure that the dissemination of rescuers stories—and the recognition of individual rescuers—is done in a way that minimizes the likelihood of counter-claims and contestations.

In this aspect as well, Rusesabagina's is a cautionary tale. Giving an account of rescue in a Hollywood-style movie and a book written by the

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161. United States Institute of Peace, *A Multimedia Online Atlas of War Crimes in Bosnia-Herzegovina*, available at <http://www.usip.org/print/publications/multimedia-online-atlas-war-crimes-in-bosnia-herzegovina>.

162. Charlotte Kyakwa, *Where is Rusesabagina's Sacrifice?*, *NEW TIMES (RWANDA)*, 1 Mar. 2006, available at <http://allafrica.com/stories/200603010708.html>.

163. Rosoux, *supra* note 86, at 491.

164. Meisha Perrin, *Rusesabagina's Story Questioned During Speech at University of Central Florida*, *UMUVUGIZI*, available at <http://umuvugizi.wordpress.com/2011/05/28/rusesabaginas-story-questioned-during-speech-at-university-of-central-florida/>.

rescuer himself are probably among the least credible formats for establishing beyond doubt acts of humanity. The reality in the aftermath of genocides and mass-atrocities is, almost inevitably, that the majority of victims were not helped by members of the opponent groups and they are bound to approach stories of rescuers with some measure of skepticism. Ensuring credibility is therefore a crucial challenge. Some basic principles can already tentatively be identified. For example: testimony from those rescued is generally considered reliable, while testimony from rescuers is treated with more caution and normally would not suffice in and of itself to confirm the validity of a rescue story.<sup>165</sup>

### C. “Rescuer” as an Ambiguous Category: The Dilemma of How High to Raise the Bar

A closely related question that can haunt commemoration of rescuers is an exact definition of who, exactly, could and should be properly labeled a rescuer. While a common feature of mass atrocity rescuers is that they operate in the context of system crimes, what threshold of behavior is required for designation as a rescuer remains a difficult question. One specific claim by which “survivors of the Hotel des Mille Collines have disputed Rusesabagina’s version of events” was that he charged money from the people he saved.<sup>166</sup> Others claimed that he was selective in the people he sheltered, preferring his friends and relatives.<sup>167</sup> Whatever their veracity, these claims illustrate a set of problems central to the commemoration of rescuers. What type of behavior is required from a rescuer, and what behavior should prevent individuals from being claimed as rescuers, are common and difficult questions in this enterprise. These questions are related to the limitations of the human rights normative framework: while this framework provides universal standards for determining victims and perpetrators, there are no such universal standards on rescuers.

Several contentious categories can be identified: those who rescued in a not purely humanitarian manner, but for money or other benefits; those who were selective, rescuing some but not others; and those who rescued some individuals, yet participated in the killings of others. Mahmood Mamdani writes of rescuers during the genocide in Rwanda that “[s]ome were indeed textbooklike heroes,”<sup>168</sup> but there are also more ambivalent stories “about

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165. Steinfeldt Interview, *supra* note 62.

166. Asiimwe, *supra* note 153.

167. Kyakwera, *supra* note 162.

168. Mahmood Mamdani, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA* 220 (2002).

the Hutu who saved a friend or a colleague in one place, only to go and join the killings in another."<sup>169</sup> According to Jefremovas, "a given individual could fill several roles . . . killers sometimes helped others escape; and resisters sometimes could turn killers."<sup>170</sup> The perception that such behavior was common has hampered the commemoration of rescuers in Rwanda because many survivors treat stories with suspicion, believing that rescuers acted in their own personal interest and that, even if they did rescue some people, they also killed or abandoned others.<sup>171</sup> Such phenomena are not unique to Rwanda. In Bosnia "[t]here are examples of people who rescued certain favored Muslims, while participating in or even directing attacks on other Muslims."<sup>172</sup> Many people who helped Jews during the Holocaust were far from true humanitarians: rescues sometimes had a "dark side" and motivations were not always pure.<sup>173</sup>

How should such cases be treated? To a large degree it should depend on the goals of interventions in the specific context, as well as on the methods of commemoration. In Yad Vashem, where the recognition of rescuers is manifested in the granting of awards, the threshold remains high. Individuals who acted in expectation of money or for other motives do not receive the righteous title. People who were not directly at risk or who acted indirectly are also not entitled to the award.<sup>174</sup> While this model does not have to be followed in all other contexts, the important factor is the clarity and transparency of the criteria necessary for the designation, and these principles should inform other efforts to commemorate rescuers. The types of actions required from those applying for the award, as well as the types of actions that could disqualify them, are well-defined (even if their interpretation in specific cases can be debated). The process for responding to applications is also clear and the fact that the public committee handling applications is headed by a Supreme Court Justice lends it authority and legitimacy. Indeed, the appointment of a judge to head the commission may have reflected an understanding that the task of designating people as rescuers is complex and nuanced, involving grey areas and difficult determinations.<sup>175</sup>

It is interesting to note that the elaborate process in Yad Vashem was developed in response to a controversy regarding none other than Oscar Schindler himself. Many of those who claim Rusesabagina as "Rwanda's Schindler" are perhaps unaware that this could be a reference not just to a

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169. *Id.* at 221.

170. Jefremovas, *supra* note 75, at 28.

171. PRI, *THE RIGHTEOUS*, *supra* note 78, at 15.

172. SMITH, *supra* note 90, at 184.

173. Bob Moore, *The Rescue of Jews from Nazi Persecution: A Western European Perspective*, 5 J. GENOCIDE RES. 293, 306 (2003).

174. Steinfeldt Interview, *supra* note 62.

175. *Id.*

symbol of rescuer, but also to the controversy in the process of making such a symbol. When Schindler was among the first twenty individuals designated as Righteous Among the Nations in 1962, a controversy broke out when some survivors accused him of financial opportunism (similar to charges leveled at Rusesabagina).<sup>176</sup> He did not appear in the first ceremony where the title was awarded, though he received it later on after other survivors intervened on his behalf. Afterwards, “[l]earning a lesson from the controversy, the institution established an independent and permanent public commission to evaluate the merits of each proposed Righteous,” which has “developed an intricate and cumbersome process of authentication.”<sup>177</sup>

While the exact definitions used by Yad Vashem are not necessarily appropriate in all contexts, the principles of clarity, transparency, and legitimacy are important. In contrast, the situation of rescuers in Rwanda seemed to be plagued by the absence of well-defined criteria behind rescuers commemoration, as well as a lack of clarity and transparency in relation to the aims and methods of identifying individuals as rescuers.

Decisions and choices regarding who should be “disqualified” from rescuer status—for example, whether taking money from those shielded is sufficient to disqualify one from recognition—should be part of a societal debate and reflect the needs and goals of the interventions in the particular context. At the same time, caution should be exercised not to raise the bar too high and recognize only perfect heroes. Absolute and consistent heroism is rare. Some selectivity in rescue activity is almost inevitable—no individual can rescue every potential victim—and it is not surprising that people might take higher risks to save friends and relatives than they would to save strangers. Nor is it surprising that individuals do not maintain the same level of risk-taking over long periods. In addition, in cases of genocide and protracted and systematic violence against minorities, people who are compromised by some connection with the regime (such as Schindler, a member of the Nazi party) are often exactly those who retain the ability to save potential victims, whereas consistent opponents of genocidal regimes are themselves targeted and would rarely be in a position to save others from killings.

In any case, conceiving of “rescuers” as a single and rigid category would be unhelpful. One of the important critiques directed at reports by human rights organizations and truth commissions is that they often tend to essentialize and simplify complex individual identities, for instance through a simple dichotomy that presents people as either perpetrators or

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176. *Hero or Traitor? Oskar Schindler Still Divides*, DEUTSCHE WELLE, 28 Apr. 2008, available at <http://www.dw-world.de/dw/article/0,,3297686,00.html>.

177. SUZANNE VROMEN, HIDDEN CHILDREN OF THE HOLOCAUST: BELGIAN NUNS AND THEIR DARING RESCUE OF YOUNG JEWS FROM THE NAZIS 126 (2008).

victims, or by seeing people as purely passive victims rather than as active survivors.<sup>178</sup> Correspondingly, one-dimensional presentations of rescuers are also best avoided.

#### **D. Responding to Challenges: Taking Rescuer Commemoration Forward**

One perspective that offers a useful framework for parsing these issues is to focus on the acts more than the persons: on the rescues more than the rescuers. Focusing on the story of the rescue rather than the rescuers could integrate the perspective of the rescued-survivor more easily and would limit discussions of the rescuer's often-elusive motives and overall character. Essentially, it is the acts, not the personality, that need to be documented, recognized, and honored.

Simplistic and naïve approaches to rescuer commemoration must clearly be avoided. Not all rescuers are saints, the task of documenting rescue is not straightforward, and the success of rescuers commemoration in positively impacting the society in question is not inevitable. However, it is important to also recall that the inherent tensions in such undertakings can be amplified and exaggerated by local actors. The benefits of recognizing acts of humanity—proving that not all members of an ethnic group were murderers, pointing to the responsibility of bystanders—are exactly why these projects would be opposed and manipulated by some segments of post-conflict societies: “Nationalist extremists who oppose the peace process would prefer to bury such stories of cross-ethnic valor and humanity (of which there are many), because these accounts will make it harder to divide people.”<sup>179</sup> The frustrating reality is that some post-conflict communities not only fail to celebrate rescuers as heroes, but continue to shun them and treat them as traitors, even years after the end of conflict.<sup>180</sup> This is not, however, a reason to give up on such initiatives: the hostility sometimes directed at rescuers reveals the potential strength of their stories and should serve as a reason to pursue, rather than abandon, projects honoring them.

The documentation and commemoration of rescues during genocides and mass atrocities have the potential to contribute to many of the goals of transitional justice. While some initiatives have been pursued in several post-conflict situations, on the whole they remain fragmented and unsupported, and the international human rights community has not yet embraced

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178. Tristan Anne Borer, *A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa*, 25 *HUM. RTS. Q.* 1088 (2003).

179. Kritz & Finci, *supra* note 92, at 53.

180. Ramic Interview, *supra* note 96; Filipovic Interview, *supra* note 91.

this issue. Such initiatives should be supported and extended to more post-conflict situations. It is time to make this an integral part of the transitional justice toolkit and the human rights response to mass atrocities.

Such an effort would involve many challenges and potential pitfalls, as detailed above, and should not be undertaken naïvely. Nevertheless, human rights practitioners working in post-conflict situations are used to addressing conceptual, practical, and ethical challenges while developing other policies, such as war crimes trials, reparations programs, and truth commissions: the challenges involved in commemorating rescuers are not insurmountable. Indeed, in comparison to other transitional justice mechanisms, the commemoration of rescuers seems less risky and certainly less expensive. The commemoration of rescuers should not take priority over other pressing concerns, but if even a fraction of transitional justice's international circuit of conferences, workshops, manuals, reports, grants, and consultancies were dedicated to this issue, the challenges would become easier to resolve and programs more effective.

## VI. CONCLUSION: THE FORGOTTEN RESCUERS

Of the tens of thousands of documents collected by the ICTY, perhaps one of the most poignant still remains largely unknown. Traces of it appear in an obscure footnote in the supporting materials for the prosecution of Drago Nikolić, a Bosnian-Serb army commander involved in the genocide that took place following the fall of Srebrenica in July 1995. The footnote mentioned a series of statements by several of the very few survivors of the Srebrenica massacres. These four young Bosniaks managed to flee a massacre and were then aided by two Serbs who came across them accidentally and gave them shelter, food, and directions to a safer region. The survivors were later captured by Serb forces and killed in circumstances that remain unclear. Their rescuers were caught by the Serb military police and prosecuted by the wartime Serb authority for "aiding the enemy." Records of their prosecution—which included statements from the survivors, taken before they were killed—remained in a footnote in an expert report that was commissioned by the ICTY Office of the Prosecutor as part of the case against Nikolić. Refik Hodzic, an ICTY outreach officer and film-maker, came across the footnote by chance and went on a journey trying to find the relatives of the Bosniaks, their captors, and their rescuers. The journey turned into a powerful documentary film, titled *Statement 710399*.<sup>181</sup>

The film locates the search for the rescuers within the general situation of post-war Bosnia. Rather than falling into the trap of focusing too much

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181. STATEMENT 710399 (XY Films 2006).



on the rescuers, the film depicts the broader difficult reality and ongoing problems in contemporary Bosnia. The search for the rescuers also exposes the continuing failed search for the bodies of the disappeared, the impunity war criminals still enjoy, the poverty and unemployment faced by many of those who survived the war, the lingering mistrust and hostility between ethnic groups, and the difficult legacies within groups and even within families. The film does not use the rescuers to paint a sentimentalized or overly optimistic picture of war-time or post-war Bosnia and their story does not expiate the horrors of the war. Instead, it uses the rescuers as a beacon of humanity against a background of inhumanity, showing that choice was possible even at the war's darkest moments. Doubts over credibility hang over many rescuers stories, but not over this one. Perhaps ironically, the prosecution of the rescuers during the war gives the strongest credibility to their story. The Serb war-time authority, which chose to prosecute the "crime" of protecting people from massacres, inadvertently left the rescue story with a credible record.

The use of this record by the ICTY exposes a complex role for international justice mechanisms in this regard. The story may not have been unearthed without the comprehensive efforts of the ICTY prosecutors in amassing volumes of information to succeed in the complex task of achieving a conviction in an international tribunal. Without this immense undertaking by the international community, the story may never have come to light. The ICTY must be commended for this. At the same time, this story exposes the limitations and weaknesses of the tribunal and the thinking it embodies.

First, the rescue story was unearthed only incidentally. If a tiny fraction of the ICTY's resources had been spent on proactively searching for rescuers stories, many more would have been found. Second, having come across this story, the ICTY apparatus was content with keeping it virtually unknown. The ICTY made no effective efforts to disseminate the story: rather than situating this rescue story prominently on the record, and thus assisting in the promotion of peace and truth—among the ICTY's goals—the story remained, literally, a footnote. Finally, and perhaps most importantly, no discernable efforts were made by the ICTY in relation to the current fate of these rescuers. This, indeed, is the most difficult issue revealed by *Statement 710399*. Not only are these acts of rescue not commemorated and acknowledged in their community, but the rescuers are still considered traitors in their community, intensely hated, and still live in danger of attack. Fearing for their safety, the rescuers refuse to allow their faces to be filmed more than a decade after the official end of the war.

The story of the rescuers depicted in the film exposes a hollow aspect in the promise of international justice. The argument for the ICTY—and the approach it represents more broadly—is that as long as those who committed crimes against humanity are unpunished, justice and peace will not be

attainable. Assessing the validity of this argument is beyond the scope of this article, but it does identify an additional challenge: as long as those few who took risks to act with humanity during the Bosnian war and beyond are still being *punished*, justice and peace might be equally unattainable. Attending to this challenge should become one of the next major tasks for the international human rights community.