

# Truth and Reconciliation in Post-Conflict Ukraine

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**Abstract:** *This article deals with the effectiveness of a potential Truth and Reconciliation Commission in the case of Ukraine. A framework of common factors, which can either influence the effectiveness of a commission positively or negatively, is provided by analysing the cases of TRCs which were very successful and by considering the factors which contributed to their success, as well as the less successful cases and the factors which contributed to their lack of success. Subsequently, the previous ways truth and reconciliation have been addressed in the case of Ukraine is explored before the potential effectiveness of a future TRC in Ukraine is considered. The future of the conflict remains in the balance, as does the future of the post-conflict environment. However, a TRC in the Ukrainian case is highly possible as positive factors such as a broader transitional justice strategy and international support for post conflict reconstruction are important. This is also true for the negative factors, such as potential Western war fatigue or weariness, a potentially disengaged and/or distrustful society, especially if the TRC fails to be politically independent. Much will depend on the staff of the TRC and the procedures they follow.*

**Keywords:** *Ukraine, Donbass, conflict, peace, truth, reconciliation*

## Introduction

This article deals with the effectiveness of a potential future Truth and Reconciliation Commission in the case of Ukraine. The events of Euromaidan and the subsequent conflict, including notable Russian aggression, are well known and matters of record. What had developed in the East of Ukraine was sometimes termed a frozen conflict (Grossman 2018; Legucka 2017; Rojansky 2016), although this terminology has been disputed at least as much as it has

been supported (De Waal & Von Twickel 2020; Fournier 2018). However, the conflict which occurred between 2014 and 2022 (termed Ukraine's unnamed war), ultimately laid the foundation for the full-scale invasion of Ukraine (Arel & Driscoll 2022). Russia's justification for launching the full-scale invasion centred on claims of threat from the West, but Russia also explicitly named the genocide of the people of Donbas, the illegitimacy of the Ukrainian regime and its Nazi character as causes of the war (Kumankov 2023). Such claims, coming almost a decade after the events of 2014, and after almost a decade of localised conflict, highlight the question of how to reintegrate those who have not been living under Kyiv's rule for a considerable amount of time.

The position of the Ukrainian government has been clear: all land must be de-occupied (Zelensky 2022), and 1991 borders must be returned (Dex 2022); notably, this is a position with which the now deceased Russian opposition leader Navalny also eventually concurred (Pelechaty 2023). The Ukrainian leadership has been clear that Russia must be brought to justice throughout the war (Maupas 2023; Politi 2022). However, previous cases, such as post-conflict former Yugoslav states (Clark 2013; Rovcanin 2021), indicate that justice alone is not enough. Therefore, this article considers a potential Truth and Reconciliation Commission in the case of Ukraine and its possible effectiveness. The idea of a Truth and Reconciliation Commission (TRC) and how it might contribute towards a lasting peace has received little attention, with the issue of Peace, Truth, and Reconciliation in Ukraine being discussed at Berkley, for example (BCRPWA 2016).

The focus of this article is on a potential future TRC in the East of Ukraine. Importantly, the most significant violence has taken place in the East and its residents have been living under the so-called people's republics; and as such, it is where a truth and reconciliation commission may be most needed. However, if Crimea is one day returned to Ukrainian control, a self-declared goal towards which the Ukrainian government is planning (Neukam 2023; Petrenko 2023), a truth and reconciliation commission will certainly be required there too. While some details of its needs, design and realisation may differ, in principle the foundational approach ought to be fundamentally similar.

In order to answer the research question, several issues must be worked through – starting with the situation in Ukraine and moving on to provide a framework of effectiveness for TRCs. By analysing the cases of TRCs which were very successful and considering the factors which contributed to their success, as well as the less successful cases and the factors which contributed to their lack of success, it is possible to provide a framework of common factors which can either influence the effectiveness of a commission positively or negatively. Subsequently, the previous ways truth and reconciliation has been addressed in the case of Ukraine are considered, despite these having been insufficient undertakings. Finally, the potential effectiveness of a TRC in

Ukraine is considered. Although Ukraine is currently some distance from being a post-conflict state, it is important to consider such issues ahead of time – that is, beginning a TRC in the post-conflict environment may well be too late to produce optimal results.

## **The conflict in Eastern Ukraine**

Following the violent downfall of the Yanukovich government during ‘the Euromaidan’ in February 2014, and the secessions and Russia’s annexations of the Crimean autonomy and Sevastopol city in March 2014 with the help of Russian military intervention, a conflict emerged in Donbas (Katchanovski 2016). At that time, pro-Russian separatists, with direct involvement of groups of armed Russians, seized power in most of Donbas (the Donetsk and Luhansk Regions) and, in early April 2014, proclaimed the Donetsk People’s Republic (DNR) and the Luhansk People’s Republic (LNR) (Katchanovski 2016).

The conflict in the following years saw a high level of irregular forces. Some conceptualised Ukraine’s response, which relied heavily on ‘volunteer battalions’ as a crowdsourced war (Hunter 2018). The self-organised paramilitary groups which came to be known as volunteer battalions were considered to be the first to the frontlines, the significance of their role in countering aggression and shaping Ukraine’s future both in terms of social change and reform of the security and defence sector was also noted (Bulakh, Senkiv & Teperik 2017). However, once the conflict had approached a stalemate, gaining control of the volunteer battalions became a top priority for the Ukrainian government (Käihkö 2018). The state did experience some success in its attempts to rein in the militias by undermining, co-opting, incorporating and coercing them; however, the volunteers continued to play a role in both Ukrainian society and the security sector for the unforeseeable future (Käihkö 2018). Similarly, Ukraine became a training ground for Russian PMCs, allowing them to prepare PMCs for future missions in Syria (Sukhankin 2019).

The conflict which occurred between 2014 and 2022, termed Ukraine’s Unnamed War, ultimately laid the foundation for the full-scale invasion of Ukraine (Arel & Driscoll 2022). Russia’s justification for the full-scale invasion of Ukraine included descriptions of the west as challenging Russia’s unique spiritual values and revising the results of the Second World War, as well as carrying the wrong values, therefore posing a threat to Russian values, culture and civilisation (Kumankov 2023). In addition to the threat from the West, Russia also named the genocide of the people of Donbass, the illegitimacy of the Ukrainian regime and its Nazi character as causes of the war (Kumankov 2023).

The length and complexity of the conflict which occurred in Eastern Ukraine means that should Ukraine be successful in retaking control of the territory, questions about how to reintegrate the territory and the people must be an-

swered. As in the case of Crimea, it is simply impossible to punish everyone (Brennan & Kuklychev 2023). This is where a Truth and Reconciliation Commission (TRC) could form part of the solution. The main goals of a TRC are typically ‘to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past’ (Hayner 2011: 21). To greater or lesser extents, it is possible to see how all of these may be applicable to the Ukrainian case. Some victims and survivors may find that a truth commission does not so much tell them new truths as formally recognise and acknowledge what has been denied before (Hayner 2011: 21). Ukraine and Ukrainians could undoubtedly benefit from such a process.

A TRC could help address such issues as the mutually exclusive identities and ideologies which developed in Ukraine out of differing perspectives on the past, Russia’s role in Ukrainian history and the future development of relations with the West (Matveeva 2016). Other causes of grievances with the government in Kyiv may have included the institutional design of Ukraine, which has been argued to have been unfavourable to the Russian population in the East and Southeast of the country (Loshkariov & Sushentsov 2016). Adverse views on the Euromaidan protests also contributed to the establishment of alternative authorities in regions where the Ukrainian government lacked a monopoly on the use of force (Loshkariov & Sushentsov 2016). Other research has indicated that ethnic identity does not produce polarised preferences in Donbass, but it is a relevant factor in shaping political attitudes (Giuliano 2018). Rather than Russian language or pro-Russian foreign policy issues, it also seemed that local concerns, exacerbated by perceived abandonment by Kyiv, motivated local residents to support separatism (Giuliano 2018).

It is also important to note that for those who supported the government in Kyiv and the realignment of the country in international relations and other reforms, the actions of individuals often created a deep psychological feeling of betrayal – both in Crimea (Sheremet 2014) and the east of the country (Interfax-Ukraine 2014). Such feelings are rarely contained to high profile cases of passport burning (Sheremet 2014) or police crossing over to work with the separatist republics, indeed public intellectuals can fall victim to allegations that they are traitors (Zaharchenko 2018). The difficulty of ending the war and embracing separatist regions that many see as a ‘hive of traitors’ has been noted (Dixon & Gryvnyak 2020).

In the Ukrainian case, there is clearly much for the citizenry to process. Some may argue that justice will be enough, especially given the ICJ case of Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening) (ICJ 2023). However, previous cases indicate that justice alone is not sufficient. For

example, the International Criminal Tribunal for the former Yugoslavia (ICTY) has operated since 1993, but more recently the lack of non-judicial mechanisms for determining the facts has drawn criticism (Rovcanin 2021); moreover, there has been growing recognition within BiH that it is necessary to think outside the retributive justice box and to explore other truth-seeking options (Clark 2013). What the Yugoslav case clearly shows is that retributive justice alone is unlikely to be sufficient. While Bosnia was largely the victim of the Yugoslav wars and retributive justice often focuses on the perpetrators, truth-seeking is still needed; it remains important, especially for the victims.

The Ukrainian case, as the largest and highest profile conflict in Europe since WWII, represents a highly suitable case to explore the effectiveness of TRCs. Although Ukraine is currently still far from being a post-conflict state, it is important to consider such issues ahead of time, as only beginning to consider a TRC in the post-conflict environment may well be too late to produce optimal results. Doing so also allows for the prediction of factors which may influence the effectiveness of a commission positively and negatively. Heading into the creation of any TRC, these factors ought to be borne in mind and actively considered throughout the process in order to realise the best possible results.

## **Framework of effectiveness**

The primary concern of this article is the effectiveness of truth and reconciliation commissions and how these issues are likely to manifest in the case of Ukraine. Although the focus here is on the Ukrainian case, public debate about whether or not truth and reconciliation commissions really work and their continued establishment have been notable developments – with more than 40 countries establishing them in the last three decades (Ibhawoh 2019). Indeed, the growth of truth and reconciliation commissions is so marked that articles have been written solely to explore their increased popularity (Parker 2007). Furthermore, as Wiebelhaus-Brahm (2010: 3) outlined, ‘over the past twenty years, a growing consensus has developed that the truth commission can be an effective tool in the construction of a post-conflict society that is more democratic and more respectful of human rights’. The popularity of TRCs suggests that they ought to be considered in cases of conflict; however, in order to address the effectiveness of TRCs, it is important to first consider the definition, purpose and context of TRCs.

A truth commission is a temporary body established with an official mandate to investigate past human rights violations, identify the patterns and causes of violence, and publish a final report through a politically autonomous procedure (Bakiner 2016: 24). There are five fundamental characteristics that distinguish a truth commission. Firstly, it operates for a limited period of time; secondly, it publishes a final report summarising the main findings and making recom-

mendations; thirdly, it examines a limited number of past events and violations, including patterns, causes and consequences, that occurred over a period of time; fourthly, it enjoys autonomy from direct intervention by political actors; finally, it must be official in character, meaning that a state institution or an international organisation authorises the commissioners to undertake the truth-finding task (Bakiner 2016: 24–26). The legal mandate must include the types of violations to be investigated; the time period to be examined; the parties to be examined; the territory where violations took place (González & Varney 2013: 25). Furthermore, the legal framework needs to be both strong and flexible (González & Varney 2013: 25). Functions may include gathering information, conducting educational outreach activities, offering policy proposals, supporting the justice system and promoting communal or national reconciliation (González & Varney 2013: 23–24).

The main goals of a TRC are typically ‘to discover, clarify, and formally acknowledge past abuses; to address the needs of victims; to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past’ (Hayner 2011: 20). The objectives of TRCs tend to be the establishment and explanation of facts; protection, recognition and restoration of the rights of victims; and positive social and political change (González & Varney 2013: 23). However, it is important to note that the context is essential, as such measuring success is difficult and usually means judging a truth commission on its own terms (Wiebelhaus-Brahm 2010: 8). When considering the context, some have separated TRC into transitional and non-transitional truth commissions (Bakiner 2016: 35); however, there is greater possible variety in transitional justice context: ongoing conflict, fragile state, occupied territory, pacted transition, successor government, consolidated democracy (Destrooper, Gissel & Carlson 2023). The most likely to apply to Ukraine are ongoing conflict, with conflicted state and very contested political authorities; fragile state, with contested political authority; or occupied territory, with the state occupied and political authority imposed and contested (Destrooper, Gissel & Carlson 2023).

The issue of the effectiveness of TRCs cannot be addressed in a meaningful and systematic way without providing a framework within which to consider the factors that influence the effectiveness of TRCs. Despite the popularity of and broad international consensus on the multiple positive effects of TRCs, assessing their effectiveness can be challenging due to the fact that there are virtually no established mechanisms for measuring or assessing the overall success of the commissions in achieving their stated objectives (Hirsch, MacKenzie & Sesay 2012). In order to provide a framework of effectiveness, successful and unsuccessful (or less successful) cases are reflected on. The factors which contributed towards their success, or proved to be barriers to their success, require drawing out of these previous cases. Having reflected on these cases

and relevant factors, a summary of the factors influencing the effectiveness of TRCs is provided.

## **Success**

Firstly, the successful cases of TRCs are reflected on, with a focus on which factors contributed towards their success. The five strongest truth commissions have been judged to be South Africa, Guatemala, Peru, Timor-Leste and Morocco (Hayner 2011: 27). Even among these successful cases, South Africa is widely viewed as having set the standards for truth and reconciliation commissions, as in South Africa's publicly televised TRC proceedings, sometimes dismissed as the 'Kleenex Commission', white perpetrators and black victims came face-to-face (Ibhawoh 2019). A particular element of the TRC's success was its ability to generate a high degree of civil society mobilisation and public debate (Bakiner 2016: 170). The effects of this can be seen in the scale of testimonies: the commission took testimony from over 21,000 victims and witnesses, 2,000 publicly; indeed, the media coverage was intense with print, radio and television covering the commission daily (Hayner 2011: 28). Innovative measures included these public hearings, but also thematic and institutional hearings, focusing on specific incidents, contexts and professional sectors (Bakiner 2016: 172). It is also important that before entering government the ANC set up commissions to investigate its own conduct during apartheid, being highly critical of the rights violations committed by the liberation forces in various internment camps and elsewhere in South Africa (Christie 2000: 34).

The TRC in Guatemala took place following a brutal 36-year-long war which saw 5,000 persons disappear, more than 600 highland villages wiped off the map, 200,000 Guatemalan refugees flee to Mexico and more than 1 million Guatemalans internally displaced (Ross 2004). The commission was controversial throughout its existence, but after working for 18 months it produced its final report, 'Memory of Silence' in February 1999 (Ross 2004). Interestingly, the TRC in Guatemala was given a weak mandate, without even the power of subpoena, but turned the ambiguity of its founding documents into a strength and 'reinvigorated the struggles for truth and accountability, despite successive governments' inattention to the findings and recommendations' (Bakiner 2016: 173–175). The Guatemalan case shows the strength of an engaged and interested civil society, through which success can be found without particular interest or engagement from the government. The engagement and interest of civil society may be fostered in different ways, for example by establishing dialogue with civil society as a matter of urgency, in particular victims' organisations (González & Varney 2013).

In Peru's case, a TRC was established in 2001, following twenty years of internal armed conflict between guerrilla groups, the *rondas campesinas* (armed

peasant patrols) and the Peruvian armed forces (Laplante & Theidon 2007). The conflict saw the government utilise draconian legal measures, paramilitary tactics, constitution rewrites, as well as political parties and other institutional intermediaries dismantled. There were no peace negotiations between the government and the guerrillas because Sendero had been largely defeated (Laplante & Theidon 2007). The circumstances did not seem ideal, yet the TRC produced results. There were several notable elements of the success of Peru's TRC: the size of the work (approximately 17,000 statements collected), the depth of the studies undertaken, as well as the fact that hearings were held in public (Hayner 2011: 36–39). It is also notable that Peru's TRC set out to produce a broad social historical contextualisation of political violence and violations, with commission chair Salomón Lerner stating that 'in a country like ours, the struggle against forgetting is a powerful form of doing justice' (Bakiner 2016: 195).

Indonesia first invaded Timor-Leste on 7 December 1975, with military clashes continuing on a large scale until 1979 and rebellion against Indonesian rule continuing until 1999 (Stahn 2001). From January 1999, pro-Indonesian militia, supported by Indonesian security forces, used violence, threats and intimidation to try to influence the independence referendum. When the referendum did not produce the desired outcome, an estimated one thousand supporters of independence were killed, with hundreds of thousands fleeing their homes or being forcibly expelled to Indonesia (Stahn 2001). It is important to note that the violence included murders, assaults, rapes and torture, combined with widespread arson, looting and plunder. It is also important to note that it was the United Nations Transitional Administration in East Timor (UNTAET) which established the Commission for Reception, Truth and Reconciliation (CRTR) (Stahn 2001). Again, the situation looked incredibly challenging for the commission, yet it produced positive results. As in other cases, Timor-Leste saw public hearings and a huge body of work, 7,669 statements were collected, meaning the commission had contact with 1% of the population. This case is unusual in that it was driven by the UN, but this shows the potential importance of the international community. It is an important lesson that international involvement can be a positive, especially when a country has a dependence on foreign aid (Wiebelhaus-Brahm 2010: 151).

In Morocco, King Mohammed VI established the Moroccan Equity and Reconciliation Commission with the purpose of investigating the abuses during the reign of his father, Hassan II (Bakiner 2016: 38). Civil society was suspicious of the son's attempts at reform along with peace and reconciliation; instead, former political prisoners responded with their own Forum for truth and Equity (Slyomovics 2001). In 2003, the Advisory Council on Human Rights (CCDH) finally recommended the creation of a truth commission, with the Equity and Reconciliation Commission (*Instance Équité et Réconciliation, IER*) officially cre-



ated in January 2004. A seemingly unwilling government does not seem likely to produce success, but the efforts of civil society did much to produce results. The success of the Moroccan commission saw several factors which were also present in other successful cases. These include public hearings with victim hearings televised by Al Jazeera, a large staff of over three hundred and a large number of submissions received (13,000 written submissions) (Hayner 2011: 42–44).

Some clear patterns emerge within these five most successful cases of TRC. Primarily, the interest, and ideally trust, of the public must be won. This can be achieved by establishing transparent procedures for research and establishing dialogue with civil society, in particular victims' organisations (González & Varney 2013). Relatedly, a willingness to hold public hearings was noted in almost all cases, as was a large (ideally talented) team. Also, a huge amount of work must be undertaken in terms of scope and depth of research. Other relatively successful examples also illustrate this – for example, the final report of Sierra Leone's TRC which was 5,000 pages long, 3,500 pages of which were devoted to testimonies (Bakiner 2016: 179). In general, this huge undertaking requires a considerable staff, which must then undertake a huge amount of work both in scope and depth of research, but also in facilitating a massive amount of testimony, which should be made public. Furthermore, while this task is considerable, it cannot be an isolated undertaking, as truth commissions are most effective when integrated in a comprehensive transitional justice strategy that includes reparation policies, criminal prosecutions and institutional reforms (González & Varney 2013).

The staffing of TRCs is of considerable importance. Hayner (2011: 211) argues that 'perhaps more than any other single factor, the person or persons selected to manage a truth commission will determine its ultimate success or failure'. Furthermore, any commission will have to design a system to gather, organise and evaluate a very large amount of information; they will have to create their own operating rules and procedures, including what cases to cover, how to collect data, due-process rules and procedures, and the relationship with the public (Hayner 2011: 218). The TRC will need to create an organisational structure and set about filling these roles with members who possess excellent moral and professional reputations, and establishing transparent procedures for research (González & Varney 2013).

The commonalities of the successful cases have been revealing, but there are also those issues which appeared to lack any particular pattern. The power to grant reparations, for example, may appear in some cases and not in others. Such decisions are likely to be part of the larger scope of transitional justice and may not fall squarely on the TRC. However, truth commissions must have several powers to operate well: investigatory powers, while respecting procedural rights; power of compulsion; power to undertake forensic procedures; power to oblige cooperation; power to conduct public hearings; protection of witnesses; protection of commissioners; and the publicity of report (González & Varney 2013: 26y–27).

## **Failure**

Having explored the successful cases of TRCs, it is time to turn to those which were less successful and identify the weaknesses and barriers which they reveal. Failures of truth commissions tend to fall into two categories: those which fail to publish a final report, so called incomplete commissions; and those that result in failure despite social and political actors' attempts to establish a truth commission, essentially social interest meets a negative government response (Bakiner 2016: 32–33). There is a further danger in that many truth commissions see their recommendations go unenacted (Wiebelhaus-Brahm 2010: 15). Furthermore, while some have argued that truth commissions can narrow the range of permissible lies, others have contended that this range of permissible lies is not exactly the truth but more the permissible truth as identified by those in power (Hughes & Kostovicova 2020).

The issue of the truth is one central to the lack of success that some TRCs experience. If it is important that the TRCs seek the truth and offer an outlet to all grievances, then it is no surprise that many view TRCs suspiciously if they seem to be doing the opposite. As a result, some have linked the growth, as well as the success, of TRCs to the government's attempt to hide what they were doing, allowing a revelation of the truth to be therapeutic, but doubting whether this is a recipe which could be so successful in other contexts (Shaw 2005). This can lead to a TRC being selective with the truth, but it can equally lead to the TRC never coming into existence, essentially a case of social interest meeting a negative government response. The latter was the case in Namibia where 'the detainee issue' saw the government decline to launch a TRC, as the issue was still fraught with dangerous potential to embarrass or damage high-ranking officials (Conway 2003). This struggle to exist is perhaps the most significant barrier to a TRC, even some of the successful cases, e.g. Morocco, had to struggle to be approved by the government. If that does not happen then the TRC has fallen at the first hurdle; however, even succeeding in coming into existence is no guarantee as is illustrated by incomplete commissions (Bakiner 2016: 32–33).

There are many ways for incomplete commissions to come to pass. Yugoslavia is one example. The breakup of Yugoslavia was an infamously bloody affair, communities which had lived side by side for decades turned on each other. The intervention of the international community played a role in ending the conflict(s), but once they had formally ended there was still a need to build a lasting peace, reconciliation was badly required in the post-Yugoslav republics. In March 2001, newly-elected President Vojislav Kostunica announced the creation of the Commission for Truth and Reconciliation, but when the Federal Republic of Yugoslavia was transformed into Serbia and Montenegro in early 2003, the commission was effectively annulled (Hayner 2011: 252). This exam-

ple illustrates how TRCs can simply be nullified by governments if they are not independent and protected, perhaps by international means.

Attempts to promote the protection of TRCs by international means can also lead to problems, as seen in the neighbouring case of Bosnia. The main lessons of the failure of Bosnia's TRC are as follows: an extremely high degree of external intervention can be problematic, such commissions are inherently political projects, the politics of civil society play a very important role in transitional justice projects and, finally, the importance of the politics of transitional justice institutions themselves (Dragovic-Soso 2016). Further examples, such as El Salvador, illustrate that internationally driven efforts tend to produce, at best, more modest results (Wiebelhaus-Brahm 2010: 151). This may be due to the fact that many local communities associate the efforts of external peacebuilders with exacting a high moral price (Kostovicova 2023: 128).

These issues require more attention as the very existence of a TRC is in itself political and they are often funded by international means, making this issue very complex. Nevertheless, it is immaterial whether a commission is established by a mandate from the president (as in Argentina and Chile), parliament (as in the Ecuadorian case), or even international bodies, like the United Nations (as in Timor-Leste) (Bakiner 2016: 25). What really matters is that both the operation and final report are independent of the authority that establishes the commission. Crucially, the most significant test is whether the political decision makers in any way influence or alter the content of the final report, either during or after the commission process (Bakiner 2016: 26).

In the Sierra Leonean case, the conflict began in 1991 when a small group of combatants crossed the Liberian border into eastern Sierra Leone. It continued until 2002 and the brutal conflict saw two thirds of Sierra Leone's population displaced and up to 50,000 killed (Mitton 2009). Despite this level of bloodshed and upheaval, it was difficult to find a way to end the conflict. The TRC itself had its origins in the Lomé peace agreement of July 1999, but that peace process quickly collapsed and the resumption of the war delayed establishment of the TRC. Despite legislation that formally provided for its creation in 2000, the TRC proper was not inaugurated until July 2002 (ICG 2002). A large issue was that RUF commanders continued to pursue personal gain through continued conflict or at least by stalling disarmament and demobilisation (Mitton 2009). Management issues, a lack of funding and tensions between the national and international members and between the TRC and the Geneva-based Office of the United Nations High Commissioner for Human Rights (OHCHR) all indicated the likelihood of failure of the TRC. As such, the main factors acting as a barrier to the commission's success were the continuation of conflict, funding and management issues.

In many ways, less successful examples can be more informative than successful ones. The core lessons of the less successful TRCs are that if either of

the parties, or the international community depending on the context, limits or never launches a TRC then the commission fails before it has even begun. Furthermore, as the political independence of a TRC is of the utmost importance, any failure to adhere to this principle can lead to a disengaged and distrustful society; without the support and engagement of society it cannot be a success. Another major issue is the continuation of conflict, which can delay the inauguration of a TRC, but can also indicate that conditions are extremely adverse for the creation of a TRC. Other practical issues, such as funding and management, can result the best practices of the successful TRCs not being replicated. Relatedly, the day-to-day practices may also not confirm to best practices, with evidence given in secret, teams understaffed and limited quantities of evidence collected.

### Effectiveness

Having outlined some of the most successful cases of TRCs and considered their commonalities, some patterns emerged. It was found that the TRC must be part of a broader comprehensive transitional justice strategy, part of which must seek the truth and offer an outlet to all grievances. Furthermore, a willingness to hold public hearings was noted in almost all cases. Second, a large and ideally talented team must be organised. Third, a huge amount of work must be undertaken in terms of scope and depth of research. Finally, the interest, and ideally trust, of the public must be won.

**Table 1: Sources and Effects on TRC Success**

Source	The Parties	The conflict/society	The int'l community	The commission
Positive Effects	Transitional justice strategy	Resolved conflict	Transitional justice strategy	Public hearings
	Empowering of TRC	Interest of society	Empowering of TRC	Large, talented team
	Funding of TRC	Trust of society	Funding of TRC	Large undertaking
Negative Effects	No transitional justice strategy	Continuation of conflict	No transitional justice strategy	Secret evidence
	Limits or never launches TRC	Disengaged society	Limits or never launches TRC	Understaffed team
	Seems political	Distrustful society	Seems political	Limited evidence

Source: Author

Table 1 summarises the factors that influence the effectiveness of a commission positively and negatively. The source of this influence is separated into the parties involved, the conflict, the international community and the commission itself. Some of the points are repeated, as shown by several cases, due to the fact that a comprehensive transitional justice strategy can come from the parties themselves and/or the international community – the same is true of empowering and funding the TRC. The empowerment and funding questions are key to the commission itself being able to provide a large, talented team and undertake large amounts of work.

## **Previous attempts in Ukraine**

The issue of truth and reconciliation has already been present in the case of Ukraine, although these have been insufficient undertakings, which have been neither explicit attempts at a TRC nor particularly successful. However, the state of play for addressing truth and reconciliation is an important consideration; one which must be made before beginning to address the effectiveness of a potential future TRC in Ukraine.

Firstly, it is notable that the issue of truth is not something which has remained unexplored in Ukraine and Ukrainian state building. An important example is that of the Ukrainian Institute of National Remembrance or the Ukrainian Institute of National Memory, depending on translation preference. The organisation was founded in 2006 as an agency for historical research and education, becoming an ‘active memory agent after the Euromaidan protests’ (Nekoliak 2020). The organisation’s push for de-communisation was broadly successful, but it also often received negative media attention for its memory politics. A perceived condescension, both at home and abroad, regarding the actions of Ukrainian nationalists during the German occupation of Soviet Ukraine’s western territories during the Second World War, was of particular concern (Nekoliak 2020). The de-communisation of Ukraine was also criticised for using ‘communist methods’ (Coynash 2016).

Efforts to understand history and further truth have already been employed in Ukraine, which suggests that, unlike Sierra Leone for example, there is local popular support for attempts to provide truth and understanding. However, Nuzov (2017) found that rather than advance larger transitional justice goals, the memory laws passed in Ukraine could actually fuel the ideological divide between Ukrainians and between Ukraine and Russia. On the other hand, the findings suggest that truth commissions could help re-establish social trust by having Ukrainians of different ethnicities and professional backgrounds publicly and officially confront, study and acknowledge its traumatic past, including atrocities committed by nationalists and by communists (Nuzov 2017). The fact that an appetite for truth does exist in Ukraine is encouraging;

however, if other techniques have shown tendencies to further polarise, then a Truth and Reconciliation Commission may be able to harness this appetite in a more productive way.

It is important to bear in mind that an imperfect peace is better than a good war (Matveeva 2018: 293). In this vein, in the years following the outbreak of the conflict in the East of Ukraine, in the parts of the Donbass controlled by Ukraine, almost a third supported any compromise if it brought peace, but the prevailing opinion was that efforts should be made to try to reach a compromise but that not all possible compromises would be acceptable (Haran & Yakovlyev 2017: 168). Therefore, in theory and in reality, there was a desire and an acceptance that a perfect peace may not be possible, but all reasonable efforts ought to be made to deliver peace. Whether or not this remains the case by the time the fighting subsides after a significant period of full-scale conflict remains to be seen.

Some steps have already been taken in Ukraine and some steps have been argued for, but there is some movement which may form the basis for some kind of peace and reconciliation organisation in Ukraine. The UN has urged for peacebuilding and reconciliation to begin before the end of the conflict and for it to consider the underlying causes of the conflict (UNHCR & Protection Cluster 2016). Local needs and sources of conflict were stressed to be important in formulating the national response (UNHCR & Protection Cluster 2016). While the full-scale invasion no doubt has had a drastic impact, that need to address underlying causes of contestation and conflict was never dealt with. The efforts which were made bore little fruit, likely due to a lack of funding, commitment and serious political will.

Another relatively fruitless undertaking saw The Truth, Justice and Reconciliation Commission between Russia and Ukraine with the Mediation of the European Union (TJR) hold four sessions in 2018–2019, they drew attention to a list of proposals concluded through open dialogue between civil society in Ukraine, Russia and the EU (Euromaidan Press 2020). Of particular interest were areas of the implementation of the Minsk Agreement including a return of refugees, independent media and political parties in Donbas. Additionally, other efforts include working with the media to create a website capable of providing information on the work of the TJR Commission in several languages and enabling the populations concerned to contribute to the various peace initiatives; the creation of a Russian-Ukrainian news channel (modelled on Arte) with an independent editorial staff, supported by EU journalists and EU funding; and increased budgets to European agencies in charge of combating fake news and disinformation – in particular – a multilingual version of the EU vs. Disinfo site (Euromaidan Press 2020).<sup>1</sup> This is not to neglect religious reconciliation work, which was no doubt of great importance (Euromaidan Press 2020).

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1 <https://euvsdisinfo.eu/>

The existence of the Truth, Justice and Reconciliation Commission between Russia and Ukraine with the Mediation of the European Union (TJR) and the points which are outlined above, although more were suggested, is a sign that thought had been put into truth and reconciliation. However, it seems that the attempts were rather limited. The establishment of high-quality media and the decentralisation of law could have helped with regional concerns in the long term. On the other hand, doing so without establishing a TRC may have been placing the cart before the horse. In general, it is possible to state that Ukraine has seen some attempts at pursuing truth and reconciliation, but that these attempts were rather limited and were neither particularly rigorous nor aligned with best practices.

## **The potential effectiveness of TRC in Ukraine**

Having outlined the conflict in Eastern Ukraine, a framework of effectiveness for TRCs and previous attempts in Ukraine, the potential effectiveness of a future TRC in Ukraine is considered. Firstly, how Ukraine can seek to reproduce factors which influence the effectiveness of a commission positively is examined before moving on to some potential barriers to success and what less successful examples of TRCs can reveal about factors that influence the effectiveness of a commission negatively.

In successful cases the parties and the international community empowered and funded the TRC. Such funding and empowerment may come from the government in Kyiv or the international community, it could even be founded as part of a peace agreement. While many of the early truth commissions were established by presidential decree, there are several examples of truth commissions created through a negotiated peace accord (Hayner 2011: 211). Therefore, the initiative and/or funding may come from Kyiv itself or international partners. The EU has long been debating the cost and the best way to fund the reconstruction of Ukraine (The Economist 2022). Despite the mounting risks and costs, Europe seems to remain committed to the reconstruction of Ukraine (Lynch 2023), this points to support and funding potentially being available for a TRC. This is positive as it was a common factor which influenced the effectiveness of a commission positively.

It was noted that in order to be successful the parties and/or the international community must employ a TRC as part of a broader transitional justice strategy. There is already something of a broader transitional justice strategy, as evidenced by the ICJ case of Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening) (ICJ 2023). This case may help to establish facts of the Russian invasion of 2022, but prior to that there may be some sources of contestation. Furthermore, whatever the result of the ICJ case, the

examples of successful truth and reconciliation commissions also indicate that both sides must admit fault – South Africa is a striking example of this. Some issues may include Ukraine’s use of unguided rockets that killed civilians (HRW 2014a), and their widespread use of cluster munitions also raised concerns (HRW 2014b). Such issues will certainly need to be addressed in a TRC, or as part of the broader transitional justice strategy.

The context of the broader transitional justice strategy is also important; as previously noted, there is a great variety in transitional justice contexts: ongoing conflict, fragile state, occupied territory, pacted transition, successor government, consolidated democracy (Destrooper, Gissel & Carlson 2023). While a resolved conflict would be most beneficial to the work of a TRC, as contested political authority and conflict are not conducive to the success of a TRC, some other variations, such as frozen conflict or partial occupation, are possible. Indeed, many factors remain outside the scope of Ukrainian society and government. As such, much will depend on the international community, war fortunes and even Russia, directly or indirectly. What remains is to follow best practices and ensure a funded and empowered TRC, one which is truly independent and can do its work unimpeded.

The successful TRCs had large talented teams, which must be funded and supported. However, the executive director or executive secretary, as well as departmental or regional directors, depending on staff size and structure, has been seen to be of central importance (Hayner 2011: 211). Finding someone who is acceptable to all sides of the conflict and the majority of the Ukrainian population will be no easy task, but is vitally important for the success of the commission. Exactly how to go about finding such a person is not straightforward, but finding a respected candidate with a relatively low profile and respect from all sides would be a promising first step. Allowing for a veto to be utilised against problematic characters may well be a way to ensure that a candidate who is least objectional is picked. Broader than a veto would be a clear set of specifications which would allow for a rule-based selection, or barring, of the executive director or executive secretary and other commissioners. Nevertheless, some kind of veto may still be desirable in conjunction with this clear set of specifications

The commission then needs to set about filling the positions in its organisational chart. In this regard, the TRC itself, in order to be credible, will need to select members with excellent moral and professional reputations, guarantee full independence from political interference, establish transparent procedures for research, and establish dialogue with civil society, in particular with victims’ organisations (González & Varney 2013). Some credibility building can be done by the commission itself, by selecting moral and professional members, engaging in public outreach and observing a code of conduct.



Once given a mandate and officially established, commissioners must ensure they understand their mandate and objectives before conducting initial outreach with important partners and hiring essential personnel, including senior officers who establish and manage administrative, research and outreach systems (González & Varney 2013: 31). Prior to deployment the commission must also ensure that standards, policies and procedures have been put in place to ensure proper governance and operations, this may include a manual of functions and a work plan (González & Varney 2013: 31). All of these stages, and then the subsequent deployment stage, must be fully independent from political interference, but efforts to disclose and ultimately avoid conflicts of interest are also important.

Once the TRC has been established, staffed and equipped with policies that ensure standards, policies and procedures, then begins a large undertaking of communicating, verbally or through written mediums, with as many people as possible. Several of the most successful cases also underwent in-depth research. Finally, another common feature of successful TRCs was public hearings, which could perhaps be broadcast on television or available online. Ukraine has shown a willingness to engage with these media, as Ukraine has already been noted to crowdsource digital evidence of war crimes (Bergengruen 2022), and has allowed media access to captured Russian soldiers (El Sirgany, Wedeman & Gak 2023).

These best practices are intended to gain the interest and trust of society, essential elements for the TRC to stand a chance of success. However, this will be no mean feat and in order for the commission to fulfil its role, some feelings of betrayal and also regional concerns which led to many feeling abandoned by the government in Kyiv will need to be processed. Concerns over potential Ukrainian ultranationalism, the critical role played by Right Sector at Maidan, dismay over the failure to criticise xenophobic discourse which scapegoated ethnic Russians for Ukraine's problems and the appointment of a former neo-fascist party leader, Andriy Parubiy, to lead the national security and defence council all raised concerns (Giuliano 2018). A truth and reconciliation commission cannot be the only answer to such broad concerns and issues of belonging. However, it absolutely can be a useful element of a broader policy of providing systematic solutions to regional concerns. Other elements may include devolution, celebration of regional differences, embracing bilingualism, providing routes for legitimate complaints (such as ombudsmen and complaint organisations) and shifts in societal attitudes. They may well be able to bridge the divide between feelings of betrayal and abandonment, or at the very least, as TRCs are designed to, begin to voice the previously unspoken. In order to foster the interest and trust of society it may be advantageous to partner with civil society actors, so as to benefit from their engagement, audience and credibility.

## ***Potential barriers to success***

Having discussed how the lessons of successful TRCs could be applicable to Ukraine, this section considers some of the potential barriers to successful peace and reconciliation in Ukraine. As noted by Hayner (2011: 210) truth commissions are almost never ‘smooth, pleasant, well-managed, well-founded, politically uncomplicated bodies’. The number of problems they face from the methodological to operational, from political to time constraints, mean that even in the best of circumstances, with top-notch managers and sufficient resources, the problems are many and the stress intense (*ibid.*). It is not possible to predict all the problems which an attempt to build peace, ascertain truth or facilitate reconciliation will face, but by reflecting on the common factors which have been seen to influence the effectiveness of a commission negatively some potential pitfalls can be outlined.

Firstly, in the case of a Russian victory, it is difficult to envisage a truth commission taking place at all. However, transitional justice can occur in the contexts of ongoing conflict and occupied territory (Destrooper, Gissel & Carlson 2023). Therefore, a Russian victory does not preclude such an event, at least in theory. The nature of Russian victory would be decisive though, were Russia to obtain complete victory, i.e. full occupation and subjugation, then a TRC would be unlikely or unlikely to be connected with the truth. There are, however, a spectrum of results which may fall under the umbrella of Russian victory. Some of these results may see elements of Ukrainian territory under Russian control or a frozen conflict develop. In such cases this can still fall under the categories of ongoing conflict, fragile state or occupied territory. While these scenarios fall under paradigmatic types of transitional justice contexts, they do exist and historical examples from Uganda to East Timor illustrate this fact (*ibid.*). Such contexts undeniably represent a barrier to success, but do not necessarily preclude the establishment of a TRC out of hand.

Secondly, war fatigue and loss of interest may prove to be a significant barrier. While the level of support for Ukraine from the international community has been impressive, there has been a lingering danger of war fatigue or weariness. Officials, such as Deputy Foreign Minister Andriy Melnyk, have warned that Ukraine is fighting Western war fatigue (Karnitschnig 2023). Furthermore, the struggle of governments keeping their citizens committed to the Ukrainian defence is well documented (Jankowicz & Southern 2023). Such concerns may well escalate after the war is won, with foreign countries feeling that they have paid for the defence of Ukraine, and with the situation out of sight it may become out of mind. The rebuilding phase is undoubtedly important, but projects of the ilk of TRCs may appear to be luxuries and either operate in a limited way or never get launched at all. There is double risk in that many local communities associate the efforts of external peacebuilders with exacting a high moral price

(Kostovicova 2023: 128). Whether funding could be obtained from the government in Kyiv or even privately remains to be seen, but international funding seems the best chance for a TRC.

The barriers to success will not cease even if a TRC is eventually launched. A significant factor is likely to be potential issues of a disengaged and/or distrustful society. The issue of polarisation in Ukraine prior to Russia's 2022 invasion was discussed at length (Kuzyk 2019; Mezentsev, Pidgrushnyi & Mezentseva 2015; Torikai 2019). Certainly, it could present one of the largest issues which must be overcome. Broad accusations of extremism in Ukrainian politics, society, media, defence and law enforcement (Byshok 2015), or betrayal (Interfax-Ukraine 2014), may prove a barrier to peace and reconciliation, even the mere perception of extremism could create a sizeable barrier. Actions such as the banning of the Orthodox church (Vorobiov 2024), which some had argued to be a powerful peace actor (Karelska 2019), may also create a perception which is not conducive to the work of a TRC. Academic lenses tend to highlight the formal transitional justice mechanisms expected to deliver reconciliation, but another important element is reconciliation by stealth, i.e. communication between groups, but particularly public discourse in interethnic interactions aligning normatively with reconciliation grounded in mutuality (Kostovicova 2023: 130). Perceived extremism, real or otherwise, is a potential barrier to both formal and informal truth and reconciliation efforts.

Relatedly, any kind of Russian victory clearly poses a threat to the existence of a TRC; however, there is also danger in a Ukrainian victory. For instance, while there may be some appeal in the idea of mirroring Stalin's behaviour in Wroclaw following WWII (Polihonavt 2022), it certainly wouldn't be without problems and it would ultimately undermine Ukraine's efforts to reject communism, Stalinism and all for which they stand. The message of Oleksiy Danilov, secretary of the National Security and Defense Council, that 'it is up to them to get along with us, not us with them' (Real'na gazeta 2022), also reveals attitudes which may make the work of any TRC particularly difficult. Such issues may well see a TRC fall into the same trap as other previous cases. If the position of the authorities is not conducive to the work of a TRC then the commission's results will suffer, but such heavy-handed approaches may also leak into the work of the TRC, threatening a key element: independence.

It already clear that the parties and the international community do have something of a transitional justice strategy, but there are large questions over whether or not to punish wrongdoers, what punishment would be fair or just, and related issues. Prior to the full-scale invasion, Lyubashenko (2020) suggested simply removing criminal liability. While this is in line with what has been discussed in terms of successful peace and reconciliation commissions, it clashed with the previous legalist approach of the Ukrainian authorities and is likely unthinkable after the outbreak of the full-scale war. However, as

previously noted, you simply cannot punish everyone (Brennan & Kuklychev 2023). Furthermore, when considering other transitional justice processes, it often becomes more complicated. Reparations, for example, proved to be the aspect of the South African TRC's reparations plan that was most problematic, as much hinged on the definition of 'victim of gross human rights abuses' set out in the terms of the Truth and Reconciliation Commission Act (Daly 2002). Other issues, such as memorials and statues, may well prove to be controversial; for example, when Odesa removed a prominent statue of founder Catherine the Great 50.2% of residents wanted it destroyed completely, 36.12% preferred that it stay with a historical explanation, 8.3% voted for it to stay unchanged, while 4.2% wanted it removed to a museum (EuroNews 2022).

The TRC should be part of a broader transitional justice strategy, but attempting to remedy all things puts extreme pressure on the TRC, risks spreading resources too thinly and makes attempting to create the wording of the founding act exceedingly demanding. Clearly, a potential barrier to a TRC in the Ukrainian case is being part of a poor or flawed transitional justice strategy, but equally expecting the TRC to be the transitional justice strategy in its entirety would also be deeply problematic.

### ***Future effectiveness in the Ukrainian case***

Having provided a framework of effectiveness, outlined previous attempts at truth and reconciliation in Ukraine, and considered the potential effectiveness of a TRC in Ukraine, as well as the barriers, the question of the future effectiveness in the Ukrainian case needs to be addressed more directly. The issue is that, as noted previously, Ukraine is currently far from being a post-conflict state, meaning that there are many developments still to come. Some issues have resolved themselves; for example the Medvedchuk charges of May 2021 may have caused further divisions (Dickinson 2021). That headache has been resolved with the prisoner swap which removed him from Ukraine altogether (Preussen 2022). Some issues will be resolved, some will appear and others will develop, this should be expected to continue.

The situation is still developing and undoubtedly that is not an ideal time to begin considering a TRC. However, waiting for the ideal moment would mean that the work of a TRC never begins. At this juncture it is possible to consider some lessons from the previous cases and framework outlined here, and take some steps towards considering the future effectiveness of a TRC in the Ukrainian case. The summary of the framework of effectiveness can be seen in the Table 2.

There can be no doubt that much remains unknown, above all the future of the conflict, with potential outcomes including potential frozen conflicts (Toosi 2023), a further cycle of securitisation (Smajljaj 2024) and potential land swaps

**Table 2: Sources and Effects on TRC Success**

Source	The Parties	The conflict/society	The int'l community	The commission
Positive Effects	Transitional justice strategy	Resolved conflict	Transitional justice strategy	Public hearings
	Empowering of TRC	Interest of society	Empowering of TRC	Large, talented team
	Funding of TRC	Trust of society	Funding of TRC	Large undertaking
Negative Effects	No transitional justice strategy	Continuation of conflict	No transitional justice strategy	Secret evidence
	Limits or never launches TRC	Disengaged society	Limits or never launches TRC	Understaffed team
	Seems political	Distrustful society	Seems political	Limited evidence

Source: Author

(Cameron 2024), which may prove difficult (Walt 2024). However, much is still possible and controllable. The launching, funding and empowering of a TRC, the makeup of the staff, the organisational structure, the best practices outlined and the outreach to society are all very much controllable. The preparations should begin as soon as possible, at least at the conceptual level, waiting for the end of the conflict is not a luxury which is available.

## Conclusion

This article has dealt with the effectiveness of a potential future Truth and Reconciliation Commission in the case of Ukraine. By analysing the cases of TRCs which were successful and considering the factors which contributed to their success, as well as the less successful cases and the factors which contributed to their lack of success, a framework of common factors which can either influence the effectiveness of a commission positively or negatively was provided. Subsequently, the previous ways truth and reconciliation has been addressed in the case of Ukraine were considered, although (importantly) these have been insufficient undertakings. Finally, the potential effectiveness of a TRC in Ukraine was considered. Although Ukraine is currently some time away from being a post-conflict state, it was important to consider such issues ahead of time, only beginning to consider a TRC in the post-conflict environment may well be too late to produce optimal results.

The future of the conflict remains in the balance, as does the future of the post-conflict environment. There was positive evidence in that there are signs of being part of a broader transitional justice strategy and international support for post conflict reconstruction pointing to support and funding potentially being available for a TRC. However, more negative evidence was also present which pointed towards risks of Western war fatigue or weariness, and significant risks related to a disengaged and/or distrustful society, especially if the TRC fails to be politically independent. Much will depend on the exact members of staff who could work on the commission, the guidelines and procedures followed and how successfully their work is undertaken.

The future of a TRC in Ukraine is highly possible, but the future effectiveness remains in the balance. The results of the conflict will be decisive and the end does not yet appear to be in sight. However, indications of a broader transitional justice strategy, as well as international support and funding, suggest that any TRC would have a real chance. In such a case, reflecting on the common factors, both positive and negative, as well as best practices, is clearly valuable.

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