REGIONAL AND THEMATIC REPORTS

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The theory and practice of post-conflict justice has long been plagued by a dearth of empirical evidence. Rather, normative conviction has typically guided choices of institutional design and shaped the expectations of victims, perpetrators, witnesses, and observers alike. This volume contributes to the goal of placing the promotion of post-conflict justice on more solid empirical footing through an ambitious examination of how, since World War II, societies around the world have sought to address a legacy of human rights abuses. The reports in this volume pursue this end in three ways. The first set of reports offer a thematic approach by examining a particular mode of post-conflict justice. Essays cover international tribunals and domestic prosecution, mixed model tribunals, truth commissions and other investigative commissions, reparations programs, lustration, and amnesties. A second set of reports offer perspectives on regional and national experiences with the various forms of post-conflict justice. Finally, a third set of special reports consider a number of cross-cutting themes: the challenges of bringing contemporary civil wars to an end; a cosmopolitan defense of the practice of post-conflict justice; how post-conflict justice can manage the desire for revenge in post-conflict societies; issues of victim redress; the importance of restorative justice; and patterns of victimization around the world.

Collectively, the reports in this volume use *The Chicago Principles on Post-Conflict Justice* as a lens through which to develop guidance on how best to construct the various modes of post-conflict justice and on providing realistic expectations as to what effects the world can expect from examining histories of human rights violations. This summary begins with a discussion of this volume's insights with respect to contemporary conflict and the nature of human rights abuses that give rise to post-conflict justice demands, which is the subject of part two. The third section reviews key findings with respect to each of the seven mechanisms outlined in the Chicago Principles. Next, this summary highlights issues with respect to the use of various mechanisms together. This overview concludes by summarizing the volume's guidance to help the international community better support post-conflict justice around the world.

THE NATURE OF CONTEMPORARY CONFLICT

Contemporary conflict is of a nature that makes post-conflict justice more challenging and more vital. Post-World War II conflicts have tended to drag on with only temporary lulls. In Sub-Saharan Africa, for example, Dr. Jose Doria, Professor Dawn L. Rothe, Professor Christopher W. Mullins, and Ms. Catherine Jenkins find that conflicts are typified by their complex, long-lasting nature. Among the reasons for this are the weak nature of most States, colonial legacies, global marginalization, and the policies of international financial institutions. These factors exist in many other parts of the world as well. In particular, Associate Professor Anne Hironaka's report on global trends in civil wars echoes the significance of weak state structures as an instigator and prolonger of conflict. Unlike nineteenth century Europe, States experiencing more recent civil war have not had political and military power concentrated at the center. States in the developing world frequently lack resources, organizational infrastructure, and a cohesive national identity and culture necessary to maintain a monopoly on the use of force within their borders. In fact, many have never accomplished full territorial integration in their relatively short lifespan.

Post-World War II conflicts also differ from earlier patterns in that it has primarily been violence *within* States rather than *between* States. The majority of conflicts, over 55%, have been internal conflicts, namely regime change, internal unrest, and, civil wars. Following internal conflicts, 40% of all conflicts are the result of repressive regimes (20%) and international conflicts (20%). The remaining 5% of all conflicts is attributable to territorial conflicts. Barring secession, which the international community is usually loathe to support for fear of setting a precedent, opponents will continue to live side-by-side after the conflict.

While contemporary conflict has been primarily internal in nature, Hironaka finds that other States have frequently intervened. However, they have done so in ways that have prolonged conflict rather than bring it to a decisive end. While contemporary civil wars are often driven by domestic power struggles, some have been initiated by external powers seeking their own ends. Contemporary rebel groups have relied on external actors for material support in order to stay on the battlefield. Mr. Teimuraz Antelava's report on Georgia illustrates this dynamic nicely in discussing Russia's role in the country's separatist conflicts. External intervention has been done for both self-interested and humanitarian reasons. Regardless of motivation, external intervention has often been half-hearted and at cross-purposes since intervention may be on

opposing sides. As a result, intervention can extend a conflict indefinitely by giving rebels and governments enough resources to keep fighting, but not enough to win.

Post-World War II conflicts have blurred the lines between soldier and civilian with disastrous results. In the Victimization report, Professor Mullins, continuing the work of an earlier study, estimates the tremendous toll of human suffering. The estimated total number of casualties from 313 post-World War II conflicts ranges between 92 to 101 million, limited data for some conflicts mask a total that could be as high as 170 million. The data also illustrates the changed nature of conflict. Of the 66 cases of state repression since the end of World War II, a staggering 63.5 million deaths resulted. The 173 civil wars since 1945 have killed between 8.5-17 million people. By contrast, the 57 external wars, 5 of which are ongoing, resulted in 18 million casualties at the low end and 22.3 million at the high end of estimates. Finally, between 123,000 and 125,000 deaths have resulted from 17 border-related conflicts. The country and regional reports provide greater detail on particular episodes of brutality.

THE PROBLEM OF IMPUNITY

The scale of human suffering has inevitably given rise to demands for justice and redress. The *Chicago Principles on Post-Conflict Justice* provide a set of best practices for the conduct of the seven modes of post-conflict justice that have emerged. Overall, the analysis in the Victimization report finds a positive correlation between the level of victimization and the provision of post-conflict justice. Unfortunately, although post-conflict justice mechanisms are employed with increasing frequency, impunity remains all too common around the world. Of the 313 conflicts surveyed, over half, 169 in total, resulted in the creation of at least one form of post-conflict justice. One quarter of the conflicts, 79 in total, have seen more than one method of post-conflict justice applied. Broken down by type of conflict, 27% of external wars resulted in a form of post-conflict justice; 53% of territorial or border conflicts; 57% of civil wars; and 73% of instances of state terror/state repression (slightly more than half of these cases employed multiple mechanisms).

Of the 99 African conflicts examined by Dr. Doria et al., by contrast, only 42% had some sort of post-conflict justice mechanism either before or after a conflict terminated. The most common mechanisms employed in Africa have been administrative measures, many of which were symbolic including constitutional changes, lustration programs, commissions of inquiry, reconciliation commissions, and amnesties. The second most likely post-conflict justice approach

is a truth commission followed by some form of prosecution. In four cases, traditional and indigenous measures were employed. Only fours cases resulted in some form of formal memorialization.

The reasons for the lack of action on post-conflict justice are many. Where perpetrators, or their successors, remain in power, as Professor Suzannah Linton describes in China, Dr. Mario Gomez in Sri Lanka, and Dr. David Donat Cattin and Ms. Natalia Rykova in much of the former Soviet Union, there is little incentive to confront the past. Where both sides of the conflict were involved in abuses, there is also no benefit to either party in dredging up the past. For example, Ms. Elizabeth Drexler describes how a failure to examine abuses in Aceh has obscured the truth of how the conflict was waged by the Indonesian government and the rebels. Other factors also contribute. According to the authors, post-conflict justice in Africa often has been forgone because truth and reconciliation and reparations are relatively new concepts in the region. In addition, the lack of post-conflict justice in Africa frequently has resulted from the inability of governments to impose their will. Similarly, the state's inability to control its own territory and, therefore, apprehend suspects has hampered prosecutorial efforts in Georgia, according to Antelava. In the former Soviet Union and in the Arab world, Rykova and Mr. Ayman Salama respectively argue that the undemocratic nature of most States, economic and social problems, a weak judiciary, weak civil society and an absence of media accountability are the predominant reasons behind the relative dearth of post-conflict justice in these regions. Still other cases point to a lack of will by external supporters of post-conflict justice. In Japan, for example, Linton faults the flawed and incomplete nature of Post-World War II US-led justice efforts for the continued strain in Japan's relationships with its neighbors.

Victims' demands for justice are unlikely to go away, however. For example, Professor José Luis de la Cuesta's report highlights how the forgive-and-forget strategy of addressing Spain's past through pardons and amnesties is unraveling after three decades. Dr. Mohammed Ayat argues for the continued need for post-conflict justice fifty years after Algeria's war for independence and specifically urges the creation of a victim compensation program and a joint French-Algerian Truth and Reconciliation Commission. Mr. Hicham Cherkaoui highlights the fact that a failure to address human rights violations in 1990s Algeria has left conditions in place to permit abuses to quickly re-escalate. The authors of the Africa Report put forward Rwanda, Sudan, Burundi, Congo and Sierra Leone as cases that clearly show the need to cut the vicious

circle of impunity. Victims' desires also appear to be fairly uniform across the world. In Asia, for example, Linton finds no evidence that the population desires anything different from addressing past abuses than individuals elsewhere.

In fact, it is natural for victims to demand revenge for their suffering. Dr. Anja Matwijkiw's report nicely captures this tension between acknowledging the desire for revenge while not unleashing a retaliatory spiral of violence. To be truly victim-centered, Matwijkiw argues, some form of victim satisfaction must be secured. As such, the challenge is to structure post-conflict justice in such a way so as to minimize the desire for violent revenge on the part of victims. This is the potential beauty of the *Chicago Principles on Post-Conflict Justice*. The mechanisms have the potential to accommodate the fact of revenge without recommending it as a norm. Dr. Antonio Buti eloquently highlights how an emphasis on restorative justice that acknowledges victims' suffering and an acceptance of responsibility for wrongdoing can improve interpersonal and intergroup relationships by promoting dialogue.

MODES OF POST-CONFLICT JUSTICE

There is a growing sense in the world that justice for human rights violations must be achieved in order to realize lasting peace and reconciliation. However, not just any post-conflict justice strategy will do. If implemented poorly, there is the possibility that post-conflict justice could reignite conflict. The Chicago Principles identify a number of ways in which the potential for this can be minimized. Before proceeding to mechanism-specific best practices that emerge from the reports in this collection, some general conclusions should be highlighted.

There is no one-size-fits-all strategy in the pursuit of post-conflict justice. The authors of the Africa report find that employing multiple strategies has been the most successful in Africa, all of the authors argue that context matters. Some conflicts are not yet ripe for post-conflict justice. In Asia, for example, Linton describes how stopping continued violence in Afghanistan, Nepal and the Philippines is a more immediate need for the population then addressing the past. Once peace is achieved, it may be possible to look back. This may take awhile, however. Even in Spain, Professor Jose de la Cuesta describes the continued fear that reopening the past may revive old animosities. Of the African conflicts analyzed, it is determined that the majority required multiple attempts to achieve peace and justice.

Post-conflict justice should be designed in certain ways in order to channel the desire for revenge in more constructive directions. For instance, Matwijkiw argues that post-conflict justice

should be conducted by a disinterested third party and should not be politically motivated. Implementers of post-conflict justice must measure victims' wishes and be sensitive to the fact that their demands will vary. Where significant victim dissatisfaction with a post-conflict justice strategy exists, implementers should make adjustments or demonstrate that those demands are at odds with fundamental moral principles. In their work, implementers should recognize that they have the ability to shape victims' expectations and guide them in ways that are socially constructive.

Once a post-conflict strategy is being developed, there are a number of factors to be considered. First, it must be financially possible. For example, the Africa report notes that post-conflict justice measures need to be sensitive to the limited resources that are available to most African States. This does not necessarily mean vastly expanding budgets, which is usually not politically possible anyway. Dr. Eric Wiebelhaus-Brahm's report on investigative commissions points out that, to a significant degree, the absolute budget is less important than having the money secured in advance to allow for adequate planning.

Second, post-conflict justice needs to be viewed as legitimate by different segments of society. To better ensure this, post-conflict justice measures should be established through broadly consultative means. A number of the reports in this volume point to instances where this has not occurred. Professor M. Cherif Bassiouni and Mr. Michael Wahid Hanna, for example, find that the Iraqi Higher Criminal Court's (IHCC) legitimacy was threatened by the Sunni election boycott. Further, Linton attributes the lack of post-conflict justice in Pakistan (and by extension, Bangladesh) to the lack of democracy in Pakistan. In their respective reports on Iraq and Spain, Hanna, Judge Khaled M. Ahmed and de la Cuesta criticize the lack of consultation with victims on the construction of post-conflict justice strategies. Part of this legitimacy also comes from the public support for post-conflict justice that is displayed by political leaders, something Ahmed also finds lacking in Iraq.

Third, post-conflict justice strategies should be sensitive to the nature of the conflict they seek to address. Doria et al. argue that a comprehensive approach is necessary in the aftermath of recurring inter-ethnic conflicts. For resource conflicts, by contrast, prosecutions, institutional reform and official apologies are most important. Finally, they point to still other factors to consider including the means in which the conflict ended, the culture and tradition of the country, as well as the number of victims and perpetrators.

PROSECUTIONS

Although impunity remains all too common, since World War II, the prospects of trying perpetrators of human rights abuses have improved dramatically. The choice of one type of prosecution over another is driven by a number of factors. Domestic prosecution is ideal in that it is close to the effected population, but the domestic judicial system may have a greater likelihood of being perceived as biased. In addition, domestic courts have frequently not been viable venues for trials for reasons of security, capacity, or lack of political will. Over time, a number of innovations have improved the ability of the international community to try perpetrators and support domestic judicial action. Instrumental in this development, Professor M. Cherif Bassiouni argues, has been the fact that the international community has reached a point at which commonly shared values with respect to international criminal justice have permitted UN involvement in prosecuting perpetrators of gross human rights violations. International tribunals and internationalized (mixed model) tribunals have been established in some instances, though these, too, are not without their faults. While international tribunals may be less biased, they are more removed from local communities. Mixed tribunals are a compromise in which international participation lends credibility, but it is closer to the local population and better able to contribute to the rebuilding of the domestic judicial system. Furthermore, suits have been brought in the courts of third party States under universal jurisdiction principles. Finally, the International Criminal Court (ICC) has been created to step in where domestic legal systems fail. At the same time, the complementary principle of the ICC was created with the goal of supporting the development of domestic legal systems. However, international willingness to take these steps remains relatively weak and inconsistent.

In general, domestic prosecutions are preferable because the educational impact of trials is magnified if close to the effected population and the experience is better able to contribute to strengthening the judiciary. However, in many cases, the judicial system was decimated or tainted by the conflict or may lack the capacity to handle the volume of potential cases. In Asia, for example, prosecutions have been rare and, where conducted, deeply flawed due to an absence of the rule of law. In Iraq, the poor state of the judiciary led to the establishment of the Iraqi Special Tribunal for Crimes Against Humanity. However, Ahmed describes how the tribunal itself was criticized as illegitimate because it failed to guarantee fair trials and was politicized in the ways in which cases were selected and pursued. With nationalism in the region running

rampant, Baudet et al. find that special courts charged with trying war crimes cases in Serbia and Croatia have been susceptible to political influence. In Latin America, amnesty laws and other legal artifices have been obstacles to conducting trials for human rights violations. What is more, prosecutions have been hampered by the use of *principio de oportunidad,* which prevents the prosecutor from charging a perpetrator if s/he gives relevant information to charge someone else with a higher level of responsibility for the case. Finally, Cattin argues that the lack of prosecution in much of the former USSR reflects the insufficient affirmation of the principle of individual criminal responsibility that persists in domestic legal orders. Unfortunately, in some cases, this has resulted in the attribution of collective responsibility.

The reports highlight positive and negative instances of international support for domestic judicial processes. Baudet et al., for example, point to the War Crimes Chamber in the State Court of Bosnia-Herzegovina as a positive example of how the international community can help develop domestic judicial capacity. By contrast, in their report, Bassiouni and Hanna fault American officials for creating an IHCC that was designed without sensitivity to Iraqi culture and society and was established on shaky legal ground by an occupying power. Bassiouni and Hanna express concern that these flaws will limit the potential social and political benefits of holding Saddam Hussein and other former Iraqi leaders accountable. These two examples point to the significance of international intervention being widely seen as legitimate in order to make a positive contribution.

In some instances where domestic legal systems lack the capacity or will to try human rights violators, the international community has filled the void. In their report, Dr. Floribert H. Baudet, Mrs. S.A.M. Huiberts-Van Dijk, Professor Göran K. Sluiter and Mr. S.V. Vasiliev argue that the perception of impartiality is one of the strongest benefits of international involvement in prosecutions of any sort. Until recently, however, the international community has lacked a permanent court to turn to for such matters. Rather, international action has been highly selective and driven by the interests of powerful States. For instance, in their report, Baudet et al. demonstrate how it was the Balkan conflicts' proximity to Europe that led to unprecedented debate and experimentation with peacekeeping operations and post-conflict justice. *Ad hoc* international tribunals have the benefit of flexibility: they are a response to gross human rights violations that do not represent a general threat to the sovereignty of States.

Perhaps the most significant obstacle to international prosecution is the lack of cooperation by States. States have often been unwilling to risk their troops to arrest alleged perpetrators. What is more, financing international courts has been problematic. There have been many complaints about the strain of *ad hoc* tribunals on the UN budget, for example. However, while hybrid courts are less costly, their reliance on voluntary contributions can leave them vulnerable. The issue of selectivity in establishing *ad hoc* tribunals raises questions of fairness, but this is perhaps unavoidable in the current international system. According to Baudet et al., selectivity may not be all bad. While the International Criminal Tribunal for the Former Yugoslavia (ICTY) surely was created in the self-interest of the US and European powers, it also demonstrated that justice is not incompatible with the interests of *realpolitik*.

Dr. Nadia Bernaz and Dr. Rémy Prouvèze offer several recommendations regarding the conduct of international prosecutions. For instance, tribunals should have stable, continuous funding to allow them to operate smoothly and be relatively free of outside influence. In addition, to make the best use of scarce resources, international prosecutions should be confined to those most responsible for serious violations of the core crimes of international law, namely genocide, crimes against humanity and war crimes. Finally, they caution readers that international tribunals (and the ICC) should be recognized as symbolic. They cannot hope to prosecute all perpetrators, but can have a demonstration effect on the local population and on would-be perpetrators elsewhere in the world. However, the examples thus far have been imperfect in this regard. Baudet et al. attribute the negative reputation of the ICTY in the former Yugoslavia in part to it having failed to set up an effective outreach program. The authors of the Africa Report are also critical of the International Criminal Tribunal for Rwanda (ICTR) and the ICC taking too direct of a role in African conflicts given the remoteness of these institutions from the region. Rather, they see the African Court of Human Rights as the best institution to fill the vacuum of capacity and will in the region and urge more States to accept its jurisdiction.

So-called hybrid courts or mixed model international tribunals are bodies that are essentially national courts with an international component. Employed in Kosovo, Sierra Leone, Cambodia and Lebanon, they developed as a reaction to the faults of the ICTY and the ICTR. Specifically, States were unhappy with how expensive the tribunals were for the number of cases tried. What is more, they are located far from the societies they were designed to influence, thereby minimizing their potential ability to provide future deterrence, establish the facts,

provide satisfaction to victims and educate future generations. The advent of mixed model approaches is an important step in post-conflict justice because the most glaring weakness of most international tribunals is their failure to contribute to the enhancement of national judicial systems.

Mixed model tribunals also have their potential faults. The case of the Special Tribunal for Lebanon has been particularly controversial, as Salama discusses. The political motivations surrounding the Tribunal's establishment as well as its constitutionality have been topics of heated debate in Lebanon. Internationally, the Tribunal has pushed legal boundaries by being the first international court to address political offenses rather than the international crimes of war crimes, genocide and crimes against humanity. The case of Cambodia highlights how the collaborative nature of mixed model tribunals allowed the Cambodian government to delay setting up the body for years.

In many respects, the creation of the ICC is a triumph for human rights. Professor Christopher Mullins' report provides an overview of the ICC and its actions thus far. Never before has a permanent court existed at the international level to try individuals accused of gross human rights violations. The permanence of the ICC may provide more of a deterrent than the uncertain prospects of establishing an *ad hoc* tribunal has. In addition, its complementarity principle addresses the criticism of *ad hoc* tribunals that they trump domestic courts, although Baudet et al. find that the ICTY evolved to play a more complementary role to national courts over time. While acknowledging it has made some missteps in the charges it has pursued and the manner in which it announced some of its actions, Mullins argues that charges that the ICC is politicized are belied by its procedural record to date.

Still, the ICC shares with previous international courts a dependence upon States to function. Several major States have not accepted the ICC, for example. It is not even clear how far member States will be willing to go to apprehend suspects and provide funding for the ICC. Finally, the authors of the Africa Report argue that the ICC should not be a substitute for regional human rights courts. The ICC's limited capacity has led it to focus on the world's greatest human rights catastrophes such as Darfur and the Democratic Republic of the Congo. Regional courts can help ensure that comparatively smaller scale conflicts in places like Colombia, Sri Lanka, and Spain's Basque region are not overlooked. Regionalization can also minimize the sentiment that the ICC targets only Africans.

Regardless of the venue, there are a number of important lessons for properly conducting prosecutions to be found in this volume. For instance, Bernaz and Prouvèze and Cattin urge prosecutions to employ procedures that are internationally recognized as credible and fair. In addition, victims should be given adequate protection and support and the opportunity to participate in the proceedings. Further, Cattin recommends that the rights of victims should conform with the minimum standards of the Rome Statute of the ICC. Bernaz and Prouvèze also argue that an effective communication strategy is needed to manage the expectations of the local population. Finally, they argue that the issue of the timing of prosecutions is not as sensitive as many suppose. In their view, concerns that conducting trials quickly after reaching a fragile peace will destabilize the situation are often overstated.

Bernaz and Prouvèze argue that prosecutions are more than just a mechanism of retributive justice aimed at punishing persons responsible for criminal offenses. Rather, they also can contribute to other ends such as producing a historical record of past violence, allowing victims to obtain closure and aiding the nation-building project. Looking at Africa, the authors of the Africa Report find that prosecution in and of itself is not enough to establish or maintain peace. However, in the view of Bernaz and Prouvèze, prosecutions do not appear to inhibit the process of reconciliation.

TRUTH COMMISSIONS AND OTHER INVESTIGATIVE BODIES

The purported effects of investigative commissions range from promoting peace, achieving justice, uncovering truth, promoting human rights, advancing democracy, healing victims and facilitating reconciliation. In Ayat's view, for instance, the Moroccan truth commission has already contributed to progress towards an era of democracy and more respect for the rule of law by demonstrating greater government openness, demystifying public authorities and breaking the taboo of their immunity. However, Wiebelhaus-Brahm points to the dearth of concrete evidence about what effects truth commissions, in general, are likely to have on post-conflict societies. A major challenge is that most of these outcomes are difficult to measure. Looking at the collective experience around the world, the available evidence is inconclusive and contradictory as to whether a truth commission is likely to help or hinder achieving these desirable ends.

The various reports in this volume document the more than two dozen truth commission cases as well as a number of other investigative bodies throughout the world. Regionally, the following patterns emerge. For instance, in Latin America, investigations of human rights abuses committed under military rule are common and countries have often learned from their neighbor's example. In general, commissions in the region have had a more significant impact than elsewhere, including leading to subsequent post-conflict justice measures, because victims and civil society are better organized and regional human rights bodies are more robust. However, Mr. Victor Rodriguez Rescia argues that a lack of government commitment to enacting commission recommendations in Latin America has been the greatest weakness of these processes.

In the Asia-Pacific region, investigative commissions have been less common because democratization processes have been more tightly controlled by outgoing authoritarian governments. Linton finds that truth commissions in Asia have frequently engaged in constructing a politically expedient 'truth' rather than sincerely investigating past abuses. Gomez chronicles how a dozen investigative commissions created during Sri Lanka's long civil war have produced few tangible results. Across the region, attention to victims' rights and needs is virtually nonexistent and is a reflection of how the relationship between citizen and State has historically been conceived. Investigations have generally failed to produce national memories because the history produced has not been broadly seen as objective. Rather than memorializing victims, commissions have often focused on the prurient details.

Because of their recent advent, truth commissions have been comparatively rare in Europe. However, de la Cuesta describes the continued desire of many families in Spain to gain knowledge of the ultimate fate of their loved ones and to locate their remains, typical goals of truth commissions. One area in Europe where a number of truth-telling commissions have been utilized is Northern Ireland. Lord John Alderdice's report describes how the first major attempt was a civil society project, "Healing through Remembering," which produced a report that generated government funding for a project to bring together a diverse group of people to consult the public on how the past should be remembered. This resulted in the 2005 Historical Enquiries Team, which investigated approximately 3,000 unresolved deaths that had occurred between 1968 to 1998. Alderdice also discusses the Independent Monitoring Commission (IMC), an unusual form of truth-telling commission established by the British and Irish governments in

2004 as a trust-building exercise. It is designed to tell the truth about what is happening in the present.

In the Middle East, truth commission is a relatively untested phenomenon. Ayat describes Morocco's truth commission experience, one unique in that it followed a hereditary succession. He recommends that Algeria establish a truth and reconciliation commission, perhaps modeled after Morocco's Equality and Reconciliation Commission, the region's only example, to lend a voice to victims and perpetrators.

Finally, sub-Saharan Africa has had the highest total number of truth commissions. While the South African Truth and Reconciliation Commission (TRC) attracts the most attention, other examples have lacked the TRC's high profile and many have been starved of resources. African governments have also frequently been successful at avoiding acting upon the recommendations of commissions.

Baudet et al. argue that producing a single, relatively balanced account of the recent past via a truth commission in the Balkans would be difficult in such a hostile environment. However, if the goal is to create an environment in which victims feel encouraged to relate their suffering and perpetrators to acknowledge their deeds, that is, if the *process* of truth telling is more important than the production of a single homogenized historical account, then a commission may be useful. In that spirit, Wiebelhaus-Brahm's report suggestions a number of important considerations in the construct of an investigative commission that might make this more likely. While it may slow the process, commissions should be established in as democratic of means as possible to ensure greater legitimacy. Although most commissioners have been chosen from the ranks of society's eminent citizens, because they are often decried as partisan anyway, commissions may want to consider having commissioners explicitly represent the various sides of the conflict. In terms of the commission's mandate, it is desirable to make it as broad as possible. While practical and political considerations often limit what is possible in a post-conflict situation, some cases suggest that the opportunity to examine the past may not be forever lost should a commission be given a restricted mandate. Commissions should have clear rules as to their powers, rules of procedure, guidelines for handling evidence and managing relationships with other post-conflict justice mechanisms. Governments should deliberate carefully on whether a commission should have the power to grant amnesty to perpetrators or publicly name the accused. While the importance of resources for a commission should not be ignored, much can

be done with a few US$ million. It is crucial that funding be secured prior to the commission getting underway to allow for adequate planning and avoid later disruptions. Public proceedings can be an effective way to engage the population (Ayat discusses how Morocco's commission did this), but victims need to be provided with adequate comfort and security. The process in Morocco has allowed victims to share their experiences with the public, which helped them to release some of their pain, according to Ayat. However, Wiebelhaus-Brahm argues that virtually no investigative commission to date has adequately supported victims both before and after they have given testimony. In the end, public hearings cannot wholly substitute for a final report that serves as a lasting reminder of past crimes and as an outline of further measures for redress and prevention. The report is the only lasting element of the temporary commission that can continue to exert pressure on governments to take further steps to address the past and prevent a repetition of such abuses.

REPARATIONS

Individual and community reparations are relatively new forms of post conflict justice. Overall, reparations have been more common when the States involved are relatively wealthy or where the number of victims is comparatively small. Ambassador J.D. Bindenagel, for example, describes several German programs to provide compensation for Nazi-era atrocities. Only in the last five years have poorer States with large numbers of victims begun to initiate government reparations programs. The authors of the Africa Report suggest community-based reparations as an antidote for the limited resources of most African States. Increasingly, reparations are a recommendation of truth commissions and components of peace agreements, although implementation has been spotty. In addition, regional human rights courts have begun to routinely order reparations in individual cases and, more rarely, in cases of large-scale massacres or other collective harm.

Material reparations for an individual may include monetary compensation, medical, psychiatric or occupational therapy, as well as the restitution of victims' property, job, freedom, civil rights, pension and/or reputation. For collectivities, restitution of cultural or religious property, communal lands, destroyed public buildings, education or health facilities and compensation in the form of money, infrastructure or services to the community are frequently used options.

Roht-Arriaza's report considers a number of factors influencing the success of a reparations program. Reparations programs should strive to be as complete as possible in the types and number of victims they cover, to use a multiplicity of mechanisms and forms of reparation rather than just one and to be integrated with other post-conflict justice initiatives. In Iraq, for example, multiple bodies have been established (the Commission for Resolution of Real Property Disputes, the Martyrs' Institution and the Political Prisoners' Institution) to care and compensate the victims of the former ruling regime. However, Ahmed argues that they have been limited by the fact that they do not cover victims of post-Saddam violence. In the view of Roht-Arriaza and Cherkaoui, reparations programs should always include a number of different measures, rather than a single one and should combine individual and collective, material and symbolic reparations. These characteristics are greater determinants of success than the actual amount of monetary reparations, which will in most cases not approach the tort-damages ideal. Rather than striving to put victims back where they would have been absent the violation, reparations programs should focus on providing official recognition of the harm done and facilitating victims' reintegration as full citizens in society.

Roht-Arriaza stresses that the most important contribution the international community can make is to insist that the issue of reparations be raised earlier in peace processes or post-conflict settings. Domestically, reparations programs approved by a legislature will more easily survive changes in administration, as will establishing multi-year budgets for reparations programs. Many issues revolve around questions of fairness. Should victims have access to the courts for alternative redress and, if so, is it unfair if they receive more than other victims? In addition, tailoring reparations to the harm done seems fair, but difficulty in administration, a lengthening of the process and the necessity of calculating the relative value of suffering has led most programs to provide a generally uniform lump sum for each type of violation. Also key to an effective program is creating clear policies to identify beneficiaries, establishing a victims' registry and appropriately tailoring a public education program to explain the nature and purpose of the reparations and encourage participation. Collective reparations should complement existing public services, target the worst-hit areas, and support the sustainability of infrastructure or productive projects beyond the time frame of the reparations program.

Roht-Arriaza concludes that, in any reparations process, it is paramount to determine what victims want through a process of consultation. Victims' participation, particularly of

women, youth and indigenous communities, in the design and monitoring of a reparations program is crucial.

Reparations discussions often focus on the material dimension, but the importance of symbolic action for victims should not be overlooked. The reports by Bindenagel, Buti, and Professor Mark Gibney all emphasize the restorative benefits of apology and other forms of reparation on longer-term processes of reconciliation. In his report, Gibney places the growth of state apologies within broader global norms in which a range of international actors, including multinational corporations, international organizations, and religious organizations, increasingly apologize for wrongdoing. While apologies are often dismissed as 'cheap talk', Gibney sees apologizes as a unique way for states to deal with wrongs to which other forms of post-conflict justice are poorly suited such as colonial crimes. He highlights how the language and the method in which the apology is delivered are significant in shaping how it is received.

LUSTRATION

Lustration, also known as screening, vetting, disqualification, or purging, is a truth revelation procedure in which public officials who collaborated with the former abusive regime are disqualified from holding high level positions in the public sector. While these measures are closely associated with decommunization in Eastern Europe, denazification in Europe after World War II and deba'athification in Iraq are other prominent examples. As such, a number of reports in this volume touch on the global experience with lustration since the end of World War II. These measures are particularly appealing in situations where the large numbers of perpetrators make prosecuting everyone infeasible. For example, Ayat suggests establishing a lustration program to purge human rights violators from public service in Algeria.

The recent case of Iraq, where thousands of former Ba'athists lost their jobs in May 2003, demonstrates the inherent risks in lustration. All in all, instead of leading to reconciliation, de-ba'athification isolated groups that had maintained close relationships with the former Ba'athist party. In particular, the US occupation's program was viewed by Sunnis as unfairly targeting them. Ahmed argues that the Iraqi lustration programs lack transparency. In addition, the overly encompassing program robbed the government of valuable technical expertise needed during the crucial rebuilding period. Emblematic of other lustration cases, strategic Iraqi politicians have attempted to exploit these institutions to their advantage and pursue the type of lustration that best serves their interest.

The Iraq case is illustrative of the fact that the form lustration takes is rarely best from a normative perspective and is more often the outcome of the interaction of strategic politicians constrained by democratic institutions. Lustration processes face the dilemma of unreliable evidence as a foundation for applying lustration procedures. In particular, evidence may be unreliable because the *ancien* régime's records were destroyed or because some of the evidence was fabricated. This is problematic because, frequently, these records are the primary basis for determining complicity. Using incomplete evidence in a lustration process is unfair because it reaches only those perpetrators whose collaboration is documented and can result in false acquittals. On the other hand, members of the authoritarian enforcement apparatus frequently had incentives to fabricate false evidence to meet quotas or to pressure dissidents to supply information. When falsified evidence is used as a basis for lustration, innocent individuals may be falsely convicted.

To address these problems, Professor Monika Nalepa outlines several lustration program design considerations. At the extremes, one could treat everyone or no one as a collaborator. In the middle can be found what she calls confession-based truth revelation procedures (CTRs), in which collaborators choose whether or not to come forward to clear their names and accusation-based truth revelation procedures (ATRs), in which an independent agency searches for evidence of collaboration and levels charges against individuals for whom it has found sufficient evidence. Nalepa argues that, when little evidence of collaboration was fabricated or destroyed, CTR institutions will perform better than ATRs with respect to avoiding false acquittal and will not perform worse with respect to false conviction. When little evidence of collaboration was fabricated, but a considerable amount of it was destroyed, CTR institutions will perform better than ATRs in avoiding false conviction, but ATRs will perform better with respect to avoiding false acquittal. When little evidence of collaboration was destroyed, but a considerable amount of it was fabricated, CTR institutions will perform better with respect to avoiding false acquittals than ATR, but ATRs will perform better with respect to false convictions. Finally, a policy of "universal purge" performs worse than CTRs, ATRs and "total forgiveness" with respect to avoiding false conviction, while "total forgiveness" performs worse than CTRs, ATRs and "universal purge" with respect to avoiding false acquittal.

A number of regional reports provide additional insights on design considerations. Drawing on the African experiences with lustration, the authors of the African regional report

argue that vetting policies should be established in such a way to ensure continued representation of all ethnic groups in the public sector in order to minimize further resentment. Drawing upon the lustration experiences of the Warsaw Pact and the Baltic Republics of the former U.S.S.R., Cattin argues they should require proof of individual guilt and permit the right of defense, the presumption of innocence until proven guilty and the possibility of a proper judicial review. Vetting measures also must be confined and limited to precise and reasonable time-limits.

MEMORIALIZATION

Preserving the memory of past abuses serves an important symbolic role in post-conflict societies. Measures such as erecting monuments, establishing museums and creating national days of remembrance provide a public recognition of the suffering of victims of human rights abuses. These steps also educate the public about the nature and consequences of past violence. Ideally, these measures endure so that these memories span generations. While this collection does not contain a report devoted to memorialization, a number of the reports provide insights as to how memory can be a cause of and solution to violence.

In a number of countries discussed in this volume, political leaders have engaged in mythmaking to justify violence against other groups. For example, de la Cuesta describes the continuing controversy surrounding Francoist symbols and memorials that remain in parts of Spain and provide a valorized reminder of past brutality. Similarly, Linton finds that many education systems across Asia have engaged in national mythmaking rather than teaching future generations an honest account of the past. Inaccurate, valorized portrayals of past violence have the potential to be exploited by leaders in the future to reignite conflict. In the Former Yugoslavia, Baudet et al. stress the long term importance of education reform, even over prosecution, as crucial for peace and reconciliation. Cattin calls for history books and other educational tools to be reviewed by an independent commission of experts to ensure the proper representation of past atrocities. Finally, Wiebelhaus-Brahm's report describes a few truth commissions, Sierra Leone in particular, where different versions of the final report were produced so that the investigation's findings were accessible to a wider audience.

Memorials to victims of human rights abuses are becoming a more common feature of post-conflict societies. For instance, in his report, Rodriguez describes how memorialization has been a powerful, widely-used post-conflict justice tool in Latin America. Memorialization has also been comparatively common in the Arab World, according to Salama. Bindenagel's report

emphasizes the importance of global remembrance and memorialization of past genocides in order to build the international community's willingness to speak out and to act against future atrocities.

INSTITUTIONAL REFORM

Institutional reform is an important component of post-conflict justice that is vital in helping prevent the recurrence of human rights violations. While this volume does not contain a report devoted to this modality, many reports highlight its significance. In the view of Baudet et al., for example, the establishment of normally functioning political institutions and the rule of law are a prerequisite for stability and, consequently, post-conflict justice. Reforms, therefore, need to be future-oriented and ensure that state organs, particularly the security sector, are not dominated by a particular group. In the words of Linton, in order to contribute to post-conflict development and protect human rights in Asia, judicial systems need reform and strengthening. Finally, Salama points to the landmark 1999 ruling in Israel banning the use of torture and hostage taking against Palestinians in security cases as a key human rights breakthrough there.

Institutional reform may be a consequence of other forms of post-conflict justice. For instance, Wiebelhaus-Brahm's report discusses how some truth commission recommendations have led to significant change. Truth commissions are particularly well suited to recommend institutional reforms because they typically examine patterns of behavior and identify institutional failings that led to human rights abuses. However, Wiebelhaus-Brahm and Rodriguez both note that recommendations are frequently ignored by governments.

Other cases figure prominently in the reports in this volume because institutional reform is sorely needed. For example, Linton warns that the importance of institutional and constitutional reform has frequently been overlooked in Asia. In Iraq, Ahmed urges the establishment of a national commission for criminal justice in order to develop a comprehensive strategy for justice sector reform. The current system lacks credibility. More generally, in Ahmed's view, if the process is inclusive and participatory, the Iraqi Constitutional Review Committee has the potential to contribute to national reconciliation by producing institutional reform that has broad-based support.

TRADITIONAL APPROACHES TO POST-CONFLICT JUSTICE

This volume does not have a report devoted to traditional post-conflict justice measures. To compose a comprehensive overview of the countless ways societies have sought to address

conflict would be a monumental task. However, there is growing recognition that traditional methods have the potential to make post-conflict justice more relevant to local populations. Symbolic ritual cleansing ceremonies, for example, can be extremely valuable, particularly for child soldiers. Incorporating traditional practices into a post-conflict justice strategy can be an attractive, low-cost way to deliver justice. Linton, for example, sees some potential for traditional conflict resolution practices in Indonesia and Cambodia where more formal practices have failed to deliver. While viewing them as complements to conventional forms of justice, the authors of the Africa Report favor traditional courts as a way to promote national reconciliation by holding suspects accountable before members of their own community.

However, Linton cautions that traditional measures of post-conflict justice should not be accepted blindly. Some may be oppressive by empowering one group over another: men over women, older over younger people. As a result, implementers of post-conflict justice should recognize that traditional mechanisms have the potential to generate resentment if not considered thoughtfully.

AMNESTIES

Amnesty laws may offer blanket, unconditional impunity for perpetrators or more limited amnesty laws that cover a specific category of individual and/or a narrow range of crimes. An amnesty process may be conditional, requiring applicants to perform tasks such as surrendering weapons, providing information on former comrades, admitting the truth about their actions, or showing remorse, in order to benefit from the amnesty. Amnesties are often overlooked as a component of post-conflict justice because they are seen by many as contrary to justice. For example, across the Arab World, Salama finds that blanket amnesties have whitewashed the past rather than supported the uncovering of the truth about human rights violations or the advancement of reconciliation. Similarly, Ayat laments the general amnesty for crimes committed by both side during the Algerian civil war. In particular, the public admissions without expressions of remorse by General Aussaresses and others fuelled continued animosity between France and Algeria that continues to the present. Amnesties, however, may be necessary to entice perpetrators to lay down their arms. Failure to enact an amnesty may perpetuate or intensify a conflict. For example, de la Cuesta describes how excluding ETA prisoners in the post-Franco amnesty contributed to the dramatic escalation of terrorist activity.

Contrary to common belief, amnesties are a common feature of post-conflict landscapes and can potentially play a positive role in advancing the cause of justice. In particular, conditional amnesties may be used in tandem with other forms of post-conflict justice as a means of encouraging participation, something Dr. Louise Mallinder endorses in her report. This approach to amnesties appears in other reports as well. For example, Alderdice discusses the prison release program in Northern Ireland for members of illegal organizations that have accepted the Belfast Agreement and ceased violent attacks. Conditional amnesties have also been particularly popular in Latin America. In his report, Ayat advocates the carrot and stick approach of amnesty and prosecution be afforded to perpetrators of human rights violations in Algeria's recent Islamist violence.

Overall, the vast majority of amnesty laws surveyed in Mallinder's report were offered for political crimes. Immunity for crimes against civilians was granted in 27% of amnesties; however, almost an equal number of amnesties excluded some form of these crimes. This meant usually amnestying lower-level offenses against civilians, but denying immunity for serious crimes such as murder or sexual violence. Only 23% of the amnesties identified explicitly included protection for some or all of the crimes under international law.

Despite the long history of amnesty laws, arguments regarding the political and ethical consequences of them are frequently based not on empirical evidence, but on normative conviction. To adequately measure the impact of amnesties, Mallinder argues that one needs to consider the motivations behind the amnesty (which may be viewed differently by political elites and the general population), who grants the amnesty (democratically-enacted amnesty laws have greater credibility) and whether multiple amnesties are needed. Even when amnesty laws are introduced in good faith to contribute to a genuine and lasting political settlement, divergent conceptions of what the settlement should look like, together with the political and economic conditions within the transitional state, the types of crimes that have occurred and the existence of pressure from international actors can affect the design of amnesty laws in numerous ways.

In designing effective amnesty programs, Mallinder argues that they should be measures with broad support (ideally through public consultation, but at minimum having agreement by all factions) that are introduced in exceptional conditions to meet clearly defined goals. Second, she urges amnesty programs to be used in tandem with other forms of post-conflict justice. Third, amnesties should be enacted in accordance with domestic and international law. Fourth,

amnesties should be discrete, time-limited tools. Fifth, Mallinder cautions that amnesties that aim only to encourage combatants to disarm and reintegrate into society do not offer any incentive to government forces. Sixth, to ensure greater information recovery, amnesty laws that aim to promote truth-recovery should be conditional and apply to all parties to a conflict. Seventh, amnesties should be applied uniformly to be perceived as fair. Eighth, amnesty laws should have clearly defined temporal, territorial and subject matter scope. Ninth, amnesty laws should be individualized and conditional. Tenth, amnesties should be revoked in the case of recidivism. Eleventh, amnesty determinations should be made by an independent, impartial body that has adequate resources. Twelfth, programs should be publicized to encourage participation and to prevent rumors from spreading. Lastly, victims should have a role in amnesty decisions.

One final note on amnesties is that it should be recognized that they are not necessarily permanent. In Latin America, in particular, amnesties have been repealed by parliament and successfully skirted through creative legal maneuvers. Rodriguez documents how Inter-American Court judgments have consistently found that amnesty laws for human rights violations are contrary to the American Convention on Human Rights and should be repealed so that victims and their families can have access to justice and full reparation. While the amnesties served a useful function during democratic transitions, years later the risk of instability was reduced.

A HOLISTIC APPROACH TO POST-CONFLICT JUSTICE

While there is agreement on the importance of post-conflict justice being context-specific, there is also a recognition that different forms of victimization require different responses. One mechanism cannot meet all of the various needs victims are likely to have. For example, Ayat finds that the Moroccan truth commission's inability to determine individual responsibility has left many victims disappointed. In Spain, de la Cuesta describes how reparations have not quelled persistent feelings that there is a "pending debt" for the past. Asking one mechanism to do too much can stretch resources and create unrealistic expectations. In Iraq, Ahmed cautions that the main fault of the Ba'ath Elimination Review Committee is that it has been assigned other post-conflict justice roles, namely prosecutions and reparations, which have undermined its credibility as a vetting mechanism. Furthermore, each mechanism should be visible to the public. Bassiouni and Hanna, for example, argue the IHCC would have made a stronger contribution had it been part of a range of high profile post-conflict justice measures,

which would have minimized the impression that post-conflict justice was akin to retaliation against Sunnis.

As a result, while all seven post-conflict justice modalities discussed in the Chicago Principles may not be necessary for every conflict, virtually all of the reports in this volume view multiple responses as best. In the Arab World, for example, Salama finds that where one post-conflict justice modality has been applied, it has often been accompanied by others. That said, all of these mechanisms may not be established at the same time for practical and political reasons. Too often, countries have rushed to create various mechanisms and have not adequately designed them or considered how various mechanisms should relate to one another. For instance, Ahmed finds that, in Iraq, the various steps taken with respect to post-conflict justice have been undermined by the fact that the Iraqi government has considered them in isolation from one another. Similarly, South Korea has established a number of investigative commissions, but Linton criticizes the effort for lacking an overall strategy. Rather, she argues that post-conflict justice must be implemented with a coherent, comprehensive strategy in mind.

At the same time, several authors explicitly reject the assertions that there is a potential trade-off between peace and justice. Ms. Maria Paula Saffon and Dr. Rodrigo Uprimny examine how the rhetoric of post-conflict justice has been used in Colombia by the government and paramilitaries to argue for impunity for human rights abuses in the country's long civil war and by civil society to argue for accountability. They are hopeful that the rhetoric may eventually trap the government and paramilitaries into accepting some form of post-conflict justice when they might not have otherwise. Writing about the ICC, Mullins argues that pursuing prosecutions before the conflict is over does not necessarily prolong conflict and may bet better suited to preserve evidence.

Post-conflict justice is frequently sequenced. For example, Ayat holds out hope that the evidence collected by the Moroccan truth commission may prove useful in future prosecutions. Wiebelhaus-Brahm's report points to a few cases in which this has occurred. His report also highlights how truth commissions have sometimes prompted institutional reform, reparations programs and memorialization projects. Continued violence may dictate that steps be taken one at a time. In Iraq, Ahmed argues that ongoing violence is not a sufficient reason to forgo post-conflict justice. However, it may be the case that certain components of a comprehensive post-conflict justice strategy, such as truth telling, are impossible to conduct and best delayed in the

face of persistent violence. Ahmed contends that other measures, such as deba'athification, however, may contribute to ending the violence provided they are administered fairly. Moreover, Ahmed and Hanna both emphasize the need to address the violence that has occurred since the US invasion.

THE ROLE OF THE INTERNATIONAL COMMUNITY

On the question of what the international community should do in support of post-conflict justice efforts, the volume provides philosophical and practical guidance. For his part, Professor Simon Caney outlines a cosmopolitan defense of international principles of justice. In contending that States and international institutions are under negative duties not to violate the human rights of anyone and positive duties to uphold the human rights of all, he defends a system of multi-level governance comprising checks and balances as the best means of supporting these universal principles. This echoes earlier discussions of the importance of the legitimacy of post-conflict justice.

While international action is described by many as vital, it should be in a support role by providing funding, oversight and technical expertise. Rodriguez stresses the importance of the Inter-American system as a promoter of post-conflict justice in the region. He recommends that the Inter-American Commission on Human Rights go further and hold hearings regarding compliance with truth commission recommendations. In Eastern Europe, Cattin argues that victims of human rights abuses should be encouraged to submit cases to the European Court of Human Rights if they cannot find redress domestically. Furthermore, the European Union (EU) can offer the enticement of European integration to encourage institutional reforms that are supportive of human rights. Similarly, Antelava sees the European Court as the best hope for prosecuting perpetrators from Georgia's conflicts. Finally, Salama argues that efforts to achieve peace and reconciliation in the Arab World will require the involvement of outside actors.

The international community is new to the practice of post-conflict justice. Historically, any action has been hampered by Cold War politics and *realpolitik*. However, Bassiouni outlines how the UN has slowly been developing the capacity within its peacekeeping operations to support post-conflict justice efforts through experiences in a number of countries since the end of the Cold War. In general, however, he shows how recent UN involvement in post-conflict justice have not been the product of a planned strategy, but the result of hastily set-up operations that are reactions to the sense of guilt Western powers felt over not intervening in the conflict in the first

place. This often results in an international reaction that comes late, if ever. With respect to the Extraordinary Chambers in Cambodia, for example, Linton describes them as delivering too little too late. While ultimately member States are responsible for financing the UN's contribution to post-conflict justice, the UN has also generally not proven itself to be an effective administrator of post-conflict justice programs.

More direct roles on the part of the international community can backfire. Baudet et al., for example, argue that the conflict in BiH and Kosovo was prolonged by more determined international action. In addition, the reports by Ahmed and Bassiouni and Hanna both conclude that the US role in constructing post-conflict justice in Iraq tainted the institutions. They were established by American officials with little understanding of Iraqi politics and society and had a very shaky legal basis. Finally, Wiebelhaus-Brahm's discussion of the Salvadoran commission provides a similar warning that post-conflict justice in the hands of outside actors is easily dismissed as a foreign imposition.

Perhaps most controversial is the use of force to end human rights abuses and support post-conflict justice. In Caney's view, military intervention on humanitarian grounds can be justified if waged in a manner that is consistent with the principles of *jus ad bellum* and *jus in bello*. Bindenagel similarly argues for economic sanctions or military action to prevent genocide. Hironaka offers some policy recommendations in this regard. Low-level interventions and providing resources, military equipment and covert assistance do not usually strengthen a side in the conflict sufficiently for it to prevail. Rather, it merely serves to prolong the conflict. Hironaka argues that, in order for the international community to bring the violence to an end, it should intervene decisively to bring violence to an end. The international community should recognize, however, that this requires favoring one side in the conflict, a strategy which may shorten the civil war, but may also stamp out nascent democratic and humanitarian forces in the society.