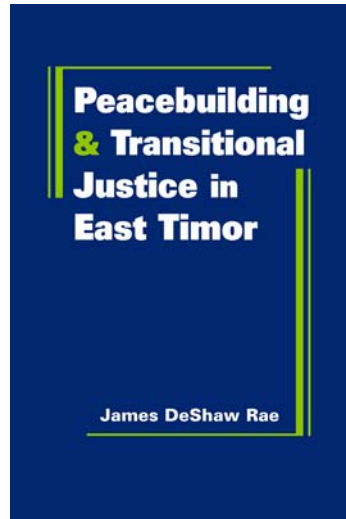


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# Peacebuilding and Transitional Justice in East Timor

James DeShaw Rae

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# 1

## Introduction: Peace, Justice, and Reconciliation in Postconflict Societies

Patients sweat in the stifling heat of a Dili summer day at the Guido Valadares Nacional Hospital, packed four to a small room waiting for medical care that is in short supply.<sup>1</sup> The hospital offers triage and a bed, but little in the way of recovery; its care facilities are neither sanitary nor in squalor. Four emergency room (ER) doctors on rotating shifts are overwhelmed, dutifully assisted by a handful of nurses and orderlies. Lacking in resources, technology, and supplies, the ER room has only one electrocardiogram (EKG) machine, little blood, a few syringes, and scarcely any other essential items. The young, female Indonesian doctor is on a one-year appointment and feels extremely dismayed by the conditions. Bloodied victims stagger inside, desperate parents regularly bring in babies suffering from malaria, and the nervous elderly arrive with unidentified tumors or diseases. These were not the victims of 1975 or 1999 nor were these the days of civil war when East Timor was cut off from the outside world and this was not the crisis of famine, forced refugee marches, murderous rampages by local militias such as the *Besih Merah Putih* (Red and White Iron), or torture by Indonesia's Special Forces Command (*Komando Pasukan Khusus*, or *Kopassus*).<sup>2</sup> This was simply an ordinary day during the follow-on United Nations Mission in East Timor (UNMISET) in the summer of 2003.

Without air-conditioning or even a fan, an elderly victim of tuberculosis (TB) looks near death, with the only available care-giver the daughter of another patient, who kindly tends to all those in the room as well as her dying father.<sup>3</sup> The wife of the TB patient spent the meager family savings for the patriarch to reach the closest thing in East Timor to modern medicine in the blind hopes of a successful treatment. For those willing to trust Western medicine over traditional healing practices, their faith will be sorely tested by the results. In many cases, a patient will go to the hospital for an otherwise routine surgery or a medical emergency, for instance to set a broken bone. Upon returning home, a spiritual healer or family member adept at traditional medicine will attempt to augment the healing process by applying roots or herbs.

Often, the plaster casts are cut away to allow such application, or simply neglected, fostering a new infection.

While the delivery of health care services during UN peacebuilding operations is often a low priority and social services are vastly underfunded in most poor countries, this reflection symbolizes the same challenges when attempting to ‘deliver’ peace, justice, or reconciliation in postconflict societies. Western practitioners arrive following a ‘complex humanitarian emergency’ to help heal the community and prepare the way for a healthy transition back to normal life, with a bit of luck, as painlessly as possible if their tried and true prescriptions are followed. A professional medical technician must have an intuitive feel for the patient, knowing one’s personal background and unique ailments, and be able to speak a common language in order to offer a diagnosis in plain and simple terms. And of course, doctors must abide by the Hippocratic oath: ‘do no harm.’ Yet this Western ‘medicine,’ these outside concepts of justice, may conflict with local practices, using unfamiliar institutions and arcane rules. To improve the chances of ‘recovery,’ practitioners must understand the local population’s traditional customs and their meanings and adopt them when appropriate. Likewise, practitioners must be able to explain their techniques and their purpose, the potential side effects and prognosis for improvement, in order to persuade the target population of the merits of such a risky endeavor. In reality, practitioners will not remain to follow-up on the progress of the patient; this is a transient approach mindful of costs. Since success cannot rely on short-term solutions to long-term problems, the local population must ultimately be self-reliant and may choose to abide by the moral or spiritual authority of its own cultural roots and remain skeptical of the temporary cure prescribed by Western doctors with their gowns and foreign medicines. In the final analysis, practicing medicine has its own rewards: its goals are to prevent the recurrence of illnesses and save lives; at the same time, such efforts are termed ‘practicing’ for a reason, recovery is far from guaranteed and improvements often result from a trial and error approach, in Timor, perhaps too few trials and too many errors.

### **Peace, Justice, and Reconciliation in Postconflict Societies**

This chapter begins by reflecting on the overall goals and purpose of this book and defines key concepts. Second, it describes the global expansion of peacebuilding and transitional justice within the context of historical trends in international relations since the end of the Cold War

favoring a larger role for multilateral organizations and a greater emphasis on humanitarian intervention, international law, and human rights. The intersection between the discourse of universal human rights, the practices of state sovereignty, and the vernacular of local culture is a problematic zone where the practices of peacebuilding and transitional justice are most often tested. For the purpose of this book, I have constructed a matrix to evaluate these trends and consider the possible postconflict responses to crimes against humanity and their philosophical dimensions. Among these choices of revenge, peace, justice, and reconciliation, the latter two form the primary elements of research in this book and the subject of my theoretical framework, which integrates other factors, such as national interests and capabilities, underlying economic motivations, and the cultural limitation of these concepts. This chapter also categorizes the various methods practiced and institutions employed to achieve peace in order to illustrate how the case of East Timor falls within this larger global trend toward accountability for human rights violations. Finally, this chapter elucidates the organization of the book and the structure of its chapters.

Overall, the book explores three fundamental values that postconflict societies seek: peace, justice, and reconciliation; and complications posed by other desires, such as revenge, freedom, security, and development. Although not incompatible philosophical concepts, peace, justice, and reconciliation are built on quite distinct intellectual foundations and their definitions are impacted by rather intangible theological and ethical concepts, cultural differences, and psychological emotions. This book considers the practical application of these ideas in East Timor since the initial intervention, the deployment of a peace operation, and the ongoing formulation of transitional justice mechanisms. This investigation operates at three general levels of analysis: international, state and society, and individual, often cataloguing advancement at one level while noting failures at the others. From an international perspective, it identifies global changes supporting transitional justice, UN peacebuilding, and the implementation of human rights norms that promote peace and justice in international affairs. It also examines conditions on the ground in the war-torn society of East Timor and considers the effects of various programs on the lives of individuals themselves, and asks the following three questions: (1) Did the United Nations help to create a peaceful state and society? (2) Did transitional justice satisfy demands for accountability, justice, and/or reconciliation? (3) Which specific aspects or model of peacebuilding and transitional justice can best achieve these goals?

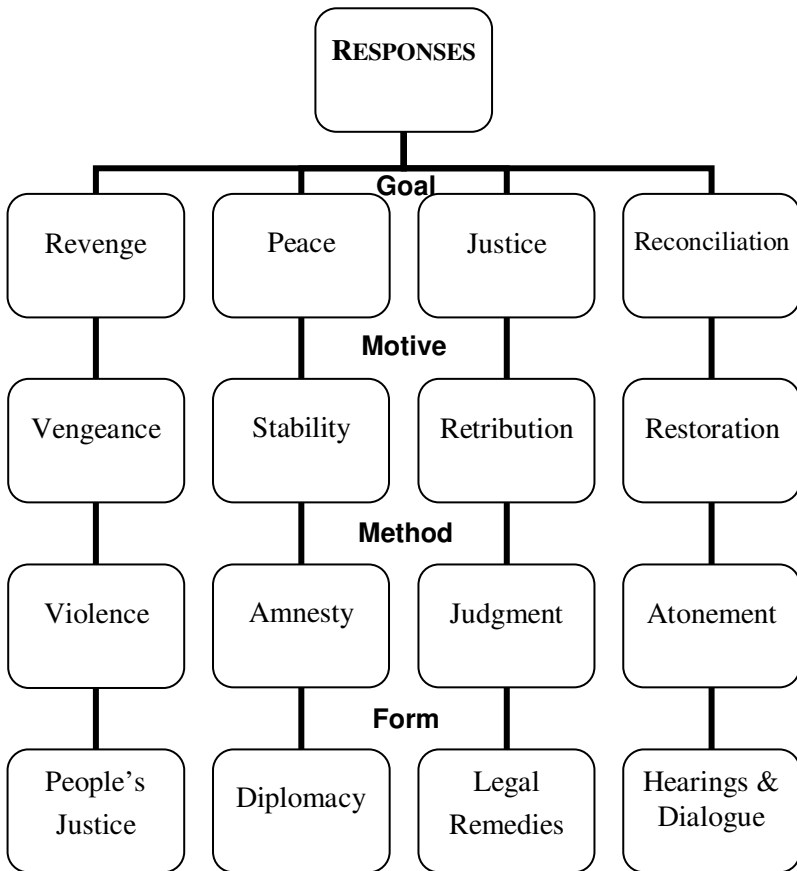
Although simple questions, the complexity of the answers makes success hard to define: Is a long-term sustainable peace the proper criterion or is a stable peace upon the departure of the peacebuilders sufficient? Is accountability achieved simply through the recognition afforded by transitional justice mechanisms or must justice and reconciliation have reached a higher threshold (prosecuting all indicted suspects or providing reparations to victims, for instance)? Is part of a successful transition formulating one's own institutions or must outside practitioners guide the process? Any contemporary research project cannot wholly evaluate the implementation of peacebuilding and transitional justice due to its long-term nature. Incomplete evidence and the absence of common definitions confine one's ability to fairly answer questions regarding whether long-term versus short-term or domestic versus international mechanisms work best. Uncertainty often prevails with unsettled refugee populations, un-rehabilitated detainees and ex-combatants, small arms proliferation, limited (yet repressive) state security apparatuses, poorly developed civil society, weak structures of governance, and fleeting international interest. These concerns will be addressed throughout this book, recognizing that solutions in one context may be inappropriate in another.

### **A Postconflict Transition Model: Four Responses to Crimes Against Humanity**

Development, equality, freedom, justice, order, peace, reconciliation, and security are principles often rhetorically touted as the aspirations of any nation-state. A central dilemma of state-building is balancing these ideals, and achieving progress in each area; however, these ideas frequently conflict with each other when put into practice and the lines between them are often blurred, for instance where freedom ends and security begins. Peace, justice, and reconciliation are older, intangible theological and philosophical concepts of ethics and morality that are strongly impacted by cultural differences, abstract feelings, and competing definitions.<sup>4</sup> Vengeance alone may satisfy short-term desires for revenge, but such a decision clearly contributes to hatred and fear, and resuscitates an ongoing cycle of violence. Peace may allow the community an opportunity to forget or suppress awful memories and society to reclaim stability and order, but at the price of impunity for perpetrators who may continue to intimidate others by their freedom. Justice can lead to individual accountability, lessen the need to resort to violence to settle disputes, and provide an integral step toward reconciliation. Reconciliation itself provides an opening to reconstruct

relationships and social harmony, underwrite a truly positive peace, and prevent the recurrence of violence. The pathway toward peace, the journey toward justice, and the road toward reconciliation remain difficult to navigate; whichever route is chosen requires a careful cartographer and a willingness to ask local residents for the best directions. Among these priorities in postconflict societies, Figure 1.1 illustrates four distinct approaches to crimes against humanity in order to clarify the overall theoretical and policy choices.

**Figure 1.1 Responses to Crimes Against Humanity**



Although the use of force may be employed to achieve peace, revenge, or justice, the model is designed to suggest that peace defined as order is not a form of accountability, and in fact can be equated with impunity. Justice and reconciliation, more so even than peace, require appropriate institutions, profound political will, and usually an impartial third-party to facilitate their actualization. While revenge is certainly a form of accountability, this book emphasizes justice and reconciliation as positive components of a potential transitional justice regime. Therefore, justice and reconciliation would be the preferred choice of those who seek accountability through non-violent means. Literature on the relationship between these choices is discussed in the context of this matrix.

### *Revenge*

Revenge has been a common means to achieve accountability for past abuses or atrocities, following the notion of *lex talionis* (the law of retaliation, or ‘an eye for an eye, a tooth for a tooth, an arm for an arm, a life for a life’). Sometimes in moments of mob rule, the raw fury of victimization can result in violent acts of retribution to equalize the sense of suffering and outrage. In the absence of an accepted transitional justice or peace process, revenge attacks may be seen as the only option for the actors involved. The potential for individual or collective acts of reprisal and the threat of renewed civil violence to achieve justice of a different sort always lurks below the surface in postconflict societies. Emotional score settling occurred when Benito Mussolini’s fascist regime fell in Italy, and his body became a receptacle for social outrage in just such a horrific display of human vengeance. Even former patrons became disturbed by rebel leader Jonas Savimbi’s notorious reign of brutality, before the Angolan government killed him in an ambush. In other instances, this form of ‘people’s justice’ can be more measured and deliberate, such as the videotaped executions of the Ceaușescu in Romania by firing squad after the fall of communism, the Sibat Ali insults and taunting of Saddam Hussein on the gallows, or the village trial and house arrest of Pol Pot in Cambodia and his eventual death (whether at the hands of his own disaffected guerrillas or of natural causes). Rarely is vengeance capable of being so directly targeted against a single individual; indiscriminate communal riots are usually the result of tit-for-tat killings that fuel the cycle of violence which characterizes so many intractable conflicts. Of course, sometimes such contests determine a clear victor that establishes a new order.



## *Peace*

Peace has been a steadfast goal during and after prolonged strife to avoid bloodshed altogether. Various cultures have developed rituals or agreements that avoid intragroup warfare by offering up another group member to ‘make things right.’ Customarily, diplomacy sought to preserve a stable international order and avoid disruptive interstate wars that could harm global trade and commerce or threaten the interests of powerful actors. Despite the precedents of Nuremberg and Tokyo, heads of state in general continued to enjoy sovereign immunity under international law. Thus, domestic policies were generally off limits, unless they threatened the very peace upon which the international system was based. Internally, political leaders often tried to co-opt opposition forces through amnesties or incentives to maintain their own power and authority.

In circumstances that threaten international stability or challenge powerful interests, the practice of statecraft may adopt bargaining techniques or even use limited force to remove despots that systematically violate human rights, only to provide safe haven later in many cases. Pressure by the United States on Ferdinand Marcos in the Philippines led him to resign his presidency in 1986, comfortably stealing away with sizeable assets to Hawai‘i. Coercive diplomacy by the United States in Haiti in 1994 gained the departure of General Raoul Cédras, who retired to a beachside villa in Panama.<sup>5</sup> Occasionally, outright force may be used to oust a tyrant. For example, in the 1970s, Colonel Idi Amin’s attempt to exterminate several indigenous groups and ethnically cleanse (mostly Indian) Asians from Uganda symbolized the impunity of notorious dictators around the world. President Julius Nyerere of Tanzania’s intervention ultimately restored peace and stability, though Amin was allowed to comfortably spend the next 25 years of exile in Saudi Arabia.<sup>6</sup> Aside from Tanzania’s military role, little international action was taken before, during, or after nearly two decades of carnage.<sup>7</sup> Thus, while Amin was world famous, his crimes unequivocal, and his whereabouts known, no substantive effort at indictment, let alone apprehension, was performed. Even in postconflict situations, an occupying power may uphold the status of a known war criminal to lessen the degree of affront and retain a modicum of cultural continuity as a tactical decision to gain public acquiescence, such as with U.S. General Douglas MacArthur’s decision to allow Emperor Hirohito a figurehead status in Japan after World War II.

Peace can be defined negatively as the absence of war, or one can take a broader and more comprehensive definition based on Johan

Galtung's all-encompassing notion of positive peace that includes areas such as socioeconomic development and social justice.<sup>8</sup> This perspective ranges far beyond the negative peace of ending overt political violence and establishing a modicum of basic security; however, such a formulation is generally unrealistic and unattainable in the immediate postconflict environment, if at all. In this book, I generally adopt a negative peace perspective, akin to order, as a baseline to evaluate success; as well as to differentiate the concept from other terms explored in further detail, such as justice and reconciliation.

### *Justice*

Ideas of ethics and justice animate liberal desires to construct a legal regime within an international system of anarchy and self-interest that encourages and facilitates cooperation between actors in international relations specifically related to mass atrocities.<sup>9</sup> Proponents of justice, defined as individual accountability for criminal offenses, suggest that the accused must face legal instruments that will deter future human rights violations, lessen the roots of vengeance, and demonstrate that those with powerful connections are not above the law. From the viewpoint of human rights lawyers and international law, justice represents a vital step in the transition from the nation-state based form of sovereign immunity toward promoting the individual as a primary actor in public international law. For many activists and victims, justice represents a normative framework that highlights fairness and accountability as key human values, thus helping to provide grounding to the notion 'never again.' Broadly speaking, liberals argue that trials facilitate international peace by purging hostile leaders, deterring war criminals, rehabilitating former enemy countries, blaming individuals and not whole ethnic groups, and establishing truth about war-time atrocities.<sup>10</sup>

From The Hague Conventions to regulate the conduct of war in 1899 to the Rome Statute for the International Criminal Court (ICC) in 1998, significant progress toward making the individual a subject of public international law and protecting such persons during conflict has occurred despite the convulsive nature of the bloody twentieth century. In fact, the last 60 years have witnessed an attempt to both make individuals responsible for their actions in war, and to protect individuals from the dangers that prevail during times of war. Aside from a brief interregnum punctuated by international trials following World War II, the world chose to ignore massive atrocities and even genocide, as the ambitious project of war crimes accountability and

transitional justice lay dormant, in need of a catalyst.<sup>11</sup> This endeavor resurfaced in the 1990s, evidenced by the *ad hoc* International Criminal Tribunals for Yugoslavia (ICTY) and Rwanda (ICTR), the creation of the ICC, the formulation of hybrid tribunals in Bosnia, Cambodia, East Timor, Kosovo, and Sierra Leone, and a greater reliance on domestic procedures and various legal judgments for trying human rights abusers.<sup>12</sup> The push to make former heads of state account for their atrocities, such as Chilean dictator General Augusto Pinochet, Yugoslavian President Slobodan Milošević, Liberian President Charles Taylor, and Rwandan Prime Minister Jean Kambanda is illustrative of this transformation.

Justice is a difficult concept to define. Ancient philosophers from Aristotle and Confucius to modern thinkers like John Rawls have struggled with the idea. Indeed, all societies wrestle with the nature of justice, formulating it as revenge, fairness, equity, harmony, legal accountability, customary obligations, or many other possibilities. International tribunals are built on a retributive formula that allows the state (or states) to satisfy victims' desires for revenge, but within an agreed-upon system of rules and procedures that ultimately produces a historical record of past abuse for a domestic constituency. As a pedagogical tool, tribunals highlight a notorious moment in world history and thus may expose important actors and war criminals to international scrutiny. Yet justice is rarely defined in its idiosyncratic context whereby members of a particular community offer meanings based on their specific socio-cultural environment. In the UN report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," UN Secretary-General Kofi Annan defined justice as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs."<sup>13</sup> In this book, justice is a formal process of accountability generally through court trials presided over by legitimate and competent authorities that identifies primarily personal responsibility in order to equitably redress grievances arising from legally proscribed individual crimes and administers officially regulated punishments.

### *Reconciliation*

Reconciliation seeks to rebuild inter-group relations and foster a mutually acceptable societal harmony that reintegrates former combatants, heals wounds, and achieves restorative justice. Various alternative dispute resolution techniques such as mediation, negotiation, and facilitation avoid the often rigidly formal, adversarial courtroom

trial that results in black and white decisions of guilt or innocence, winners and losers. Instead, truth and reconciliation commissions (TRCs) afford another process to address war crimes and grave human rights abuses without legal sanction, hoping to restore former relationships and rehabilitate society with an eye toward the future and frequently incorporating religious and cultural customs into the proceedings.<sup>14</sup> The 1995 South Africa Truth and Reconciliation Commission explained the trade-off as

Reconciliation involves a form of restorative justice which does not seek revenge, nor does it seek impunity. In restoring the perpetrator to society, a milieu needs to emerge within which he or she may contribute to the building of democracy, a culture of human rights and political stability. The full disclosure of truth and an understanding of why violations took place encourage forgiveness. Equally important is the readiness to accept responsibility for past human rights violations.<sup>15</sup>

Efforts to document collective responsibility and ease the transition to democracy have been furthered by numerous truth and reconciliation commissions designed to investigate atrocities and uncover the hidden facts that inhibit social harmony. The mandate of each commission incorporates the broad historical context to construct a more accurate account of the conflict than had previously existed if only relying on versions and narratives of the more powerful. In some ways, these procedures follow on the denazification programs in Germany, though not in conjunction with war crimes tribunals as they were at Nuremberg.<sup>16</sup> Occasionally, commissions of inquiry or truth commissions take a wholly national function to examine domestic abuses of a previous regime; however, like the hybrid tribunal, most truth and reconciliation commissions lie in the zone between domestic and international. Truth and reconciliation commissions either adapt lessons learned from previous cases elsewhere (usually South Africa's truth and reconciliation commission), incorporate advisers from other countries or NGOs, or explicitly consider events that have clear linkages across a single nation's borders. These reconciliation processes are increasingly globalized, informed by scholars and practitioners from a multitude of regions and borrowing best practices from numerous experiences around the world. Other commissions in Chile, El Salvador, Ghana, Guatemala, Peru, and elsewhere provide examples of alternative methods to achieve national reconciliation that avoid the retribution so endemic to strife-torn countries.

Claims of reconciliation are sometimes based upon a single, reluctant act of contrition or the savvy rhetoric of a hollow non-apology ('I am sorry if you were offended'). National leaders misuse the concept as a synonym for newfound stability; others begrudgingly accept it as the *status quo ante*. Judging the sincerity of an apology or the authenticity of true and heart-felt remorse is nearly impossible, yet the standard here is set as a truly unique, and rare, restorative moment. Reconciliation may encompass a multi-step process of tangible events such as refugee return, the demobilization of combatants, and public hearings, as well as the successful non-violent reintegration of all members into society and their acceptance by the victimized community. Just as justice is conceived here as an ideal type separate from peace, reconciliation represents a profound decision by victims and perpetrators to re-establish and rebuild social relations. In this book, reconciliation is a formal or informal process that achieves a lasting personal or social transformation and harmonizes or restores interpersonal or collective relationships based on an ethic of atonement, forgiveness, and healing for offenses committed by an individual or group actor.

## **Peacebuilding**

After its founding in 1945, the United Nations developed new and innovative means to preserve international peace and security. First named by Canadian Secretary of State for External Affairs Lester Pearson, peacekeeping is one such method not formally mentioned in the UN Charter. Lying somewhere between Chapter VI (pacific settlement of disputes) and Chapter VII (coercive methods including the use of force), peacekeeping arose from the desire of certain great powers to maintain international peace and stability and to use collective security to avoid interstate warfare alongside the growth of humanitarian concerns and has been transformed over more than half a century of practice.<sup>17</sup> Although the frequency of peacekeeping greatly expanded after the first UN peacekeeping mission (the United Nations Truce Supervision Organization, UNTSO) was deployed to stabilize the Israel-Palestine conflict in 1948, it always remained influenced by choices made immediately after World War II to grant the United Nations the legitimacy and capability to conduct various types of interventions and peace operations.<sup>18</sup> Adopting a limited mandate, the three foundational principles of traditional peacekeeping sought consent, impartiality, and minimum use of force, and peacekeepers observed and reported with the full agreement of all parties.<sup>19</sup> Traditionally, peacekeepers arrived

following a cease-fire, after gaining permission from host countries for deployment, to provide an interposition between protagonists, with lightly armed troops usually supplied by smaller or middle powers. UN peacekeeping remained centered on separating combatants and maintaining cease-fires to achieve stability, commonly to maintain the *status quo*, not to engage in comprehensive operations to build peace. Peacekeeping avoided infringement on state sovereignty, usually operated in realms outside the major Cold War hotspots, and was conducted by impartial countries with a neutral force commander and avoided troops from the Soviet Union, United States, or other major powers. The peacekeeping mandate was often to maintain law and order, remain neutral, and only occasionally to engage in humanitarian activities.<sup>20</sup>

The end of the Cold War and the breakup of the Soviet Union thrust the United Nations into an expanded peacekeeping role across the globe and soon stimulated a renewed attempt to build (and rebuild) the institutions necessary to try war criminals and deter war, and served as a catalyst to allow the formerly muted voices of transnational non-state actors (NGOs, media, activists, diasporas, and exiles) to be heard and neoliberal values and norms favoring human rights, international law, and multilateralism to ripen. Lobbying by human rights activists and NGOs and a sympathetic media and its resonant imagery formed a constituency in numerous countries interested in ending oppressive state behavior. Only 13 peacekeeping operations took place prior to 1988; however, post-Cold War ethnic conflicts in the former communist bloc and renewed violence in previous hotspots provided an endless array of locations in need of peacemaking and twenty new peacekeeping missions were instituted from 1988-1993. By the early 1990s, increased collaboration among the permanent UN Security Council members resulted in the deployment of several multidimensional peacebuilding operations, such as the United Nations Transition Assistance Group (UNTAG) to Namibia in 1989, the United Nations Observer Mission in El Salvador (ONUSAL) in 1991, and the United Nations Transitional Authority for Cambodia (UNTAC) the same year. In these cases, the United Nations took over a broad range of administrative functions in 'failed' states and nations emerging from civil war, as peacebuilding mandates encompassed greater responsibilities, including socioeconomic development, security, governance, human rights, refugee return, and rebuilding infrastructure. Other significant efforts by the United Nations to hold elections or otherwise rebuild states have taken place in Angola, Bosnia and Herzegovina, East Timor, Guatemala, Kosovo, Mozambique, and Nicaragua.

Meanwhile, humanitarian interventions to feed starving Somalis in 1991, to restore democracy to Haiti in 1994, and to stop ethnic cleansing in Bosnia (1994) and Kosovo (1999) signaled a new willingness to curtail human rights abuses and puncture the protections afforded by sovereign prerogatives. These interventions were not limited to actions taken by the remaining superpower; in 1999, the multinational, UN-endorsed and Australian-led International Force East Timor (INTERFET) intervened to protect the rights of an indigenous community's claim to national self-determination, and in 2003 alone, the United Kingdom deployed troops to Sierra Leone, France to the Ivory Coast, and Australia to the Solomon Islands. Former UN Secretary-General Kofi Annan specifically cited the mission to East Timor in outlining a more active UN role in his 1999 "Two Concepts of Sovereignty" essay in support of humanitarian interventions.<sup>21</sup> These 'humanitarian' interventions sometimes resulted from the 'CNN Effect,' as media moments captured the world's imagination;<sup>22</sup> just as easily, gruesome displays of unexpected casualties caused fickle publics and wavering politicians to demand the quick withdrawal of forces. Despite failures in Bosnia, Haiti, Rwanda, and Somalia in the mid-1990s, a more expansive transitional administrative authority for the United Nations developed in 1999 for East Timor and Kosovo, each a province that required a humanitarian intervention to wrest control from a larger nation-state on a pathway to independence and straddled the line between protecting human rights and observing national sovereignty, and ultimately promoting national self-determination. These newer missions granted the United Nations temporary sovereignty over civil administration, the justice system, police forces, and other competencies in former provinces of UN member states; essentially to build states from scratch. Although enormous intrastate violence continues to plague the world, multidimensional peacebuilding operations remain relatively rare, though missions have been formed across Africa, Asia, Europe, and Latin America.

Former UN Secretary-General Boutros Boutros-Ghali provided a useful taxonomy for the host of UN peace operations deployed in the 1990s in his landmark *Agenda for Peace*: pre-conflict preventive diplomacy, peacemaking (negotiation, mediation, sanctions, and peace enforcement), peacekeeping, and postconflict peacebuilding.<sup>23</sup> *Agenda for Peace* defined preventive diplomacy as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur."<sup>24</sup> Some see peacebuilding as an ongoing process that may be initiated at any moment, including before and after conflict. In 1998, the

Carnegie Commission's report on Preventing Deadly Conflict used structural prevention as a synonym for peace building and argued that any model must include security, well-being, and justice.<sup>25</sup> To measure and achieve the prevention of violent conflict is an exceedingly difficult enterprise, and preventive action has largely fallen from the agenda of the international community. Although all nations are in need of the holistic social rehabilitation and economic reconstruction that is essential in reducing the likelihood of violent conflict (perhaps to include an equal distribution of wealth, sustainable development, social harmony, and respect for human rights), such costs and the commensurate political will is beyond the scope and resources of any international organization, wealthy nation-state, or even coalition of states.

Peacemaking was "action to bring hostile parties to agreement, essentially through peaceful means as those foreseen in Chapter VI of the Charter."<sup>26</sup> Although *Agenda for Peace* included the use of military force and peace-enforcement units, peacemaking normally refers to negotiations, mediations, arbitrations, and similar dispute resolution techniques that bind parties to a mutually accepted agreement. Peacekeeping was "the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians."<sup>27</sup> Although peacekeepers were usually deployed following the peacemaking stage to keep a peace already established, in contemporary peace operations, 'blue helmets' are often mandated to enforce a tenuous peace and sometimes placed in direct hostilities. In East Timor, following intense diplomatic pressure on Indonesia, INTERFET was deployed to establish a peace amid chaos, and later these soldiers and new arrivals were transformed into a peacekeeping force to maintain security during the peacebuilding operation.

Peacebuilding is designed to rebuild or 'stabilize' states destroyed by civil war or reconstruct 'failed' states and is based on the notion that domestic instability could harm peace in the international system. International legitimacy is generally bestowed on multilateral or UN operations, though deployment, with its component agencies and linked organizations, requires the collaboration and integration of states (and their military forces), international organizations, and NGOs.<sup>28</sup> Peacebuilding was originally conceived as relevant to the postconflict context, later expanded to include actions across the spectrum of peace operations described above, and has generally returned to its initial formulation: to be employed after the cessation of hostilities to prevent a return to the recent violence and underwrite the fragile peace that is



slowly being constructed. Boutros-Ghali's *Agenda for Peace* report defined postconflict peacebuilding as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict."<sup>29</sup>

A case study of East Timor may be seen in light of these transformations. Many analysts suggest a transition from one generation to a second generation of peacekeeping and peace enforcement, exemplified in the Central American cases of the late 1980s and 1990s.<sup>30</sup> For Oliver Richmond, first generation peacekeeping embodied consent, impartiality, and neutrality, the second generation tackled the root causes of conflict, and the third generation promoted intervention over consent.<sup>31</sup> Generations may be a misnomer as various peace operations, from observer missions to traditional peacekeeping to humanitarian interventions, continue to operate. The passing of a generation does not mean the end of its usefulness. Thus, recognizing how peace operations have expanded in scope over time, resulting in more appropriate operations tailored to given circumstances, may be more useful. Since the end of the Cold War, demarcations between peacekeeping and peace enforcement have become blurred and multidimensional operations that focus more on election and state-building and less on enforcement have grown.

In this book, peacebuilding missions are the multidimensional operations mandated by an outside actor, usually the United Nations, to end political violence and build peace in a postconflict context. The mission in East Timor is illustrative of these new multidimensional peace operations that are qualitatively different from previous peacekeeping operations that strictly enforced armistices and separated combatants. The comprehensive and integrated program of peacebuilding includes aspects of nation-building that move beyond maintaining cease-fires or providing a military buffer to look at the relationship among all segments of society, and may include:

- the supervision of cease-fire agreements;
- destruction of weapons surrendered in disarmament exercises;
- designing and implementation of demining programs;
- demobilization of armed forces;
- reintegration of former combatants into civilian life;
- support for socioeconomic rehabilitation and reconstruction;
- provision of humanitarian assistance;
- facilitating the return of refugees and displaced persons;
- holding elections;

- support for implementation of constitutional, judicial, and electoral reforms;
- building a functioning judiciary and instilling the rule of law;
- fostering and monitoring respect for human rights;
- training new police forces;
- training lawyers and judges; and
- challenging hierarchical gender relations.

UN peacebuilding is evaluated according to its effectiveness at reaching a minimal negative peace and at fulfilling the mandate for a broad multidimensional peace. The book will interpret outward signs of peace and stability such as the end of civil war, the prevention of renewed violence, and a lack of extrajudicial killings. It will also evaluate whether peacebuilding reached the root causes of violence: poverty, lack of education, nationalism, centralized bureaucratic regimes that do not respect human rights, and politicized security forces used to intimidate and harass the population. Literature on peacebuilding rarely considers the role of nationalism in solidifying or harming peace, the applicability of these institutions in non-Western settings, the proper relationship between state and civil society in a democratic transition, and the possible underlying interests of powerful outside actors beyond 'peace' and 'justice.'<sup>32</sup> Outside forces have shaped and continue to impact the broad relationship between state and civil society, as structural influences conditioned the choices and responses of domestic actors. Modern, industrialized democracies in the West owe their legitimacy to an imagined social contract in a mythical 'state of nature' whereby citizens grant the state authority and control over the use of force in return for the protection of certain basic rights. Countries are evaluated based upon their respect for free and fair elections, representative government, protection of basic human rights, and promotion of the rule of law. Owing to the influence of these Western concepts, developing nations are commonly judged by the same standards, though few have matched the expectations of Western observers.

### **Transitional Justice**

The resurgence of identity conflicts and the concomitant vagaries of ethnic cleansing and genocide reawakened the ghosts of Nuremberg in the 1990s. The use of tribunals, truth commissions, and domestic courts to prosecute or shame international actors helped to give substance to

the notion of international justice and accountability. The formation of these international bodies and the weight of international public opinion now influence the practice of nation-states, discouraging foreign funding and aid to perpetrators and potentially deterring tyrants from committing such atrocities. Symbolically, these institutions offer a clear and visible statement by the international community that crimes against humanity are serious and grave and that sovereignty may not provide total insulation from international accountability. Figure 1.2 depicts the variety of transitional mechanisms and procedures now available to promote international justice and reconciliation, demonstrating a significant expansion of options since the end of the Cold War.

**Figure 1.2 Transitional Justice Mechanisms and Procedures**

Mechanisms	Post-WWII (1945-1949)	Cold War (1949-1991)	Post-Cold War (1991-now)
International Criminal Court	None	None	Formed
<i>Ad Hoc</i> International Tribunals	Germany/IMT Japan/IMTFE	None	ICTY ICTR
Hybrid Tribunals	None	None	East Timor Sierra Leone Cambodia
Foreign Courts (universal jurisdiction)	None	Eichmann/ Israel	Pinochet/Spain Karadžić /US
Truth & Reconciliation Commissions	None	None	South Africa Latin America
Tribunal & TRC in Tandem	None	None	East Timor Sierra Leone

A primary trade-off in this dilemma is between peace and justice: Do trials promote justice and human rights or undo a tenuous peace? Many argue that to achieve peace, defined as the absence of war or overt political violence, the populace should ignore or forget the past, accept the reality of ongoing hostility and recrimination, and not foment antagonisms through public trials or investigations. Thus, transitional justice is commonly avoided in favor of the *status quo*, with immunity used as bargaining tools to gain the departure of notorious characters for

long-term stability or social improvement. Part of the interplay among peace negotiations, accountability, and nation-building has been amnesty for political leaders. As Carla Hesse and Robert Post state, ‘Punishment and amnesty stand as alternative paths to what should constitute an ultimate goal, which is the transition to a democratic state that governs through law and that thereby safeguards human rights.’<sup>33</sup>

Some assert that tribunals exacerbate a tenuous situation and can destroy a fragile peace in a nation attempting to achieve some degree of harmony or reconciliation. The threat of trials may reduce the incentive for political elites to voluntarily withdraw from power; thus, amnesties can help to create a legitimate legal system by facilitating reconciliation, just as arrests could harm fragile peace accords. Leaders are desperate to maintain their grip on power and justice may be a strong enough disincentive to prolong the agony and disorder of civil war. Individual amnesties for middle and lower level perpetrators based on petition are one method to approach ‘truth,’ and some degree of reconciliation. When former leaders acquiesce, it is usually due to a credible coercive threat; U.S. pressure on former ally Ferdinand Marcos in the Philippines in 1986, Tanzania’s invasion of Uganda in 1978, or U.S. fighter planes in the Caribbean sky toward Haiti in 1994 are historical examples. However, if the political will has been mustered for coercion or intervention, the need to offer the incentive of a residence in Hawai‘i, Saudi Arabia, or Panama may be unnecessary; in these cases, no quarter need be granted to despots.

“Realists” in the field of international relations argue that international law is impotent in world politics and that ‘peacebuilding’ and ‘transitional justice’ are ill conceived and misguided idealism that do little to deter or end violence and war. From such a *realpolitik* perspective, war is policy by other means and its conduct far removed from moral considerations, with only hegemonic stability or the balance of power appropriate methods to mitigate war.<sup>34</sup> Here, war crimes trials either ignore national interests and power politics or are merely the punishment or revenge meted out by the stronger power.<sup>35</sup> Critics of the World War II tribunals level the following charges: there was no precedent and *ex post facto* legislation was illegal; it was victors’ justice and some killings during belligerency are normal incidents of war; the functions of lawmakers, prosecutors, judges, and jury were not separated; war was a national act and therefore individual responsibility should not apply under the Act of State doctrine.<sup>36</sup> The inequity of an atrocities regime is clearly comprehensible through an examination of the global power structure, which demonstrates the absence of universal justice when powerful states are immune from legal punishment.

The balance between justice and reconciliation is a second challenge, as the intersection between tribunals and truth commissions creates a host of troublesome value judgments. Much of the academic debate on transitional justice delineates between retributive justice (i.e. punishment) and restorative justice, a conceptualization closely related to reconciliation. Does a truth and reconciliation commission provide societal healing or fail to satisfy victims' demands and allow impunity without a simultaneous trial process? Hesse and Post explain the numerous dichotomies as personal rights versus the greater public good, punishment versus forgiveness, the present versus the future, international norms versus national cultures, and universal ideals versus particular circumstances.<sup>37</sup> Using this binary framework, one might argue that tribunals represent the more individualist orientation of the West with an emphasis on civil rights, while truth and reconciliation commissions suggest a more collective enterprise whereby social and cultural rights are promoted to achieve group harmony and solidarity. Yet a truth commission may create false expectations, provide contradictory findings, 'contaminate' evidence, produce a less accurate 'truth' than trials, use scarce resources, endanger confidentiality, and create differing expectations of political versus criminal responsibility.<sup>38</sup>

Ironically, some within the human rights community consider war crimes trials to be a heavy-handed approach to human rights violations where a more benevolent truth commission could offer reconciliation between former combatants. For many, especially victims themselves, reconciliation commissions provide no justice and the process fails to satisfy the need for equitable punishment or even vengeance. Those threatened with accountability usually see truth and reconciliation commissions as a rather unobtrusive method to avoid serious legal sanction rather than an instrument of restorative justice, choosing to cooperate with the truth commission while ignoring the tribunal. As a result, the option of a truth commission is less inflammatory and often more amenable to both sides in a conflict, encouraging war criminals themselves to testify truthfully and reducing great power obstructionism. In fact, commissions have operated far more commonly than international tribunals, reflecting the softer punishment that they deliver. In South Africa, the reconciliation option was adapted instead of retributive trials, granting amnesty to those that testified truthfully during its two years of operation.

Since truth and reconciliation commissions evolved alongside the war crimes tribunal, proponents suggest that commissions offer a restorative justice substitute for, or complement to, the punitive or retributive justice practiced through courts of law. In this sense, a

division of labor could be established, perhaps with TRCs used to gather evidence for a criminal trial and thereby integrated into a comprehensive war crimes regime. Developing tribunals and truth commissions jointly in East Timor and Sierra Leone suggests a new comprehensive approach, and this tandem model could be an avenue to transcend these divergent goals.

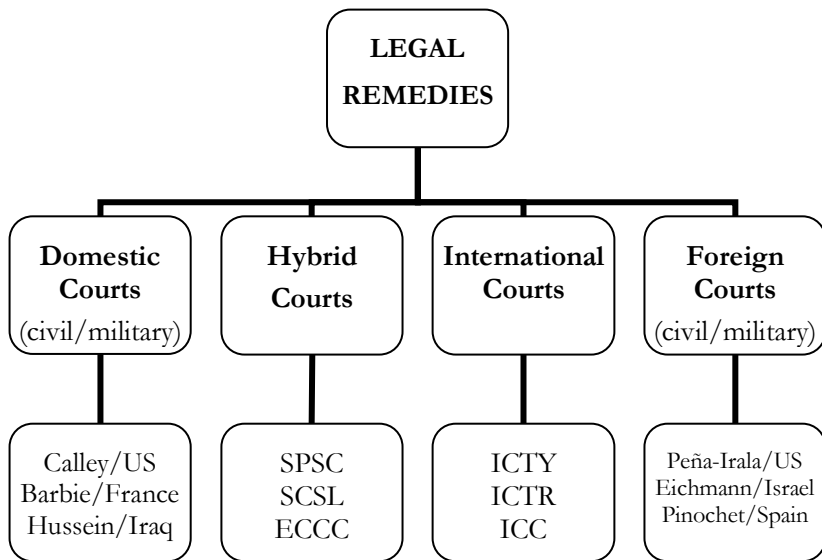
### **Institutions of Transitional Justice: The Options**

The last 60 years have witnessed an attempt both to make individuals responsible for their actions in war and to protect individuals from the dangers that prevail during times of war. The architecture of a war crimes regime lies in the norms, principles, rules, and decision-making procedures established by the United Nations, the International Military Tribunal at Nuremberg (IMT), the International Military Tribunal for the Far East (IMTFE), the 1948 Convention on the Prevention and Punishment of Genocide, and the 1949 Geneva Conventions and their Protocols; the two tribunals demonstrate the practical consequences of committing war crimes. Genocide, crimes against humanity, and war crimes are now proscribed in the conduct of war and during peace time, and a triumvirate of stipulations known as the Nuremberg Principles (individual criminal responsibility, no head of state immunity, and superior orders are not an excuse) have placed the individual at the center of sanction and penalty in international law. Sexual offenses (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, etc.) have also been incorporated in cases at the *ad hoc* tribunals, with the first verdict for rape as an act of genocide at the ICTR. Meanwhile, the nexus that war crimes actually be committed during war has eroded, allowing attention to be paid toward all pronounced intrastate violence.

The appropriate conventions and institutions of transitional justice are in place and identifiable areas of international cooperation exist: an expanding emphasis on legal recourse as opposed to ancient notions of vengeance, the death sentence is no longer an acceptable punishment in international tribunals, an appeals process has been instituted, and cooperation on apprehending war criminals has solidified.<sup>39</sup> The proliferation of transitional justice mechanisms suggests an expansion of human rights and humanitarian law, indeed the early formation of a transitional justice regime. Such a regime ultimately depends on the international community of states, especially the ambivalent great powers which have the ability to pressure reluctant states to allow such mechanisms and apprehend criminals at large.

The endeavor to achieve accountability has resurfaced in the past two decades. Ample remedies to seek accountability are available: customary mediation, commissions of inquiry, truth and reconciliation commissions, civil or military courts, hybrid or mixed courts, and international tribunals and foreign courts. The following figures (see Figures 1.3 below and 1.4 on p. 24) distinguish between those remedies of a legal nature and those reflective of a more social process.<sup>40</sup>

**Figure 1.3 Legal Remedies to Achieve Justice**



National courts and domestic procedures where the crimes occurred are presumptively the most appropriate venue for accountability since they can clearly establish jurisdiction (such as Rwanda's trials of its own *génocidaires*), and the international law concept of complementarity recognizes the priority of national remedies.<sup>41</sup> Numerous national war crimes tribunals and commissions, both civilian and military, arose in response to the vast chaos of World War II; Germany itself prosecuted nearly 13,000 defendants from 1945-1963.<sup>42</sup> In 1970, a domestic military court in the United States convicted U.S. Army Lieutenant William Calley of the premeditated murder of 22 infants, children, women, and old men in violation of Article 118 of the U.S. Uniform Code of Military Justice.<sup>43</sup> France convicted former Nazi Klaus Barbie

in 1987, though the aggressive defense by Jacques Vergès (later a lawyer for former Khmer Rouge head of state Khieu Samphan) indicting France's colonial history caused the French public to rethink its national narrative. In Argentina, General Jorge Rafaél Videla was convicted of torture in 1985 in an effort to address the dirty war and forced disappearances of the 1970s. Generally, domestic trials are not assumed to be impartial, offering either a whitewash or a show trial. Thus, international tribunals were formed to offer neutral forums to adjudicate criminal responsibility.

War crimes accountability has been on the march, apparent in the creation of the ICTY, the ICTR, and the now permanent ICC.<sup>44</sup> The ICTY was established by UN Security Council Resolution 827 pursuant to Chapter VII of the UN Charter on 25 May 1993 and is located in the Hague, the Netherlands.<sup>45</sup> The ICTY was mandated to prosecute persons responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991 and has the authority to prosecute four clusters of offenses: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.<sup>46</sup> Again acting under Chapter VII, UN Security Council Resolution 955 of 8 November 1994 created the ICTR with headquarters in Arusha, Tanzania, the Appeals Chamber and the Office of the Prosecutor in the Hague, and a deputy prosecutor in Kigali, Rwanda.<sup>47</sup> The ICTR is mandated to prosecute persons responsible for the genocide and other serious violations committed in Rwanda and neighboring territory during 1994.' The Rome Statute of the ICC was agreed upon on 17 July 1998 and entered into force on 1 July 2002, establishing the first ever permanent, treaty-based court (located in the Hague, the Netherlands) to handle the worst violations of international law by individuals: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (once aggression is defined by the court).<sup>48</sup> The ICC has already begun its investigations of four cases: Sudan, Congo, Central African Republic (CAR), and Uganda, and for the first time indicted a sitting head of state, President Omar al-Bashir of Sudan. *Ad hoc* international courts and the ICC have jurisdiction to try the most egregious violations of international human rights and humanitarian law and may expose important actors and war criminals to international scrutiny, as occurred with the ICTR's 1998 *Jean Paul Akayesu* judgment and the sentencing of former Prime Minister Jean Kambanda who pleaded guilty to crimes of genocide, the first ever by an international court for the crime of genocide.

Hybrid or 'mixed' tribunals have arisen in response to the shortcomings of the *ad hoc* international tribunals (in part a desire to

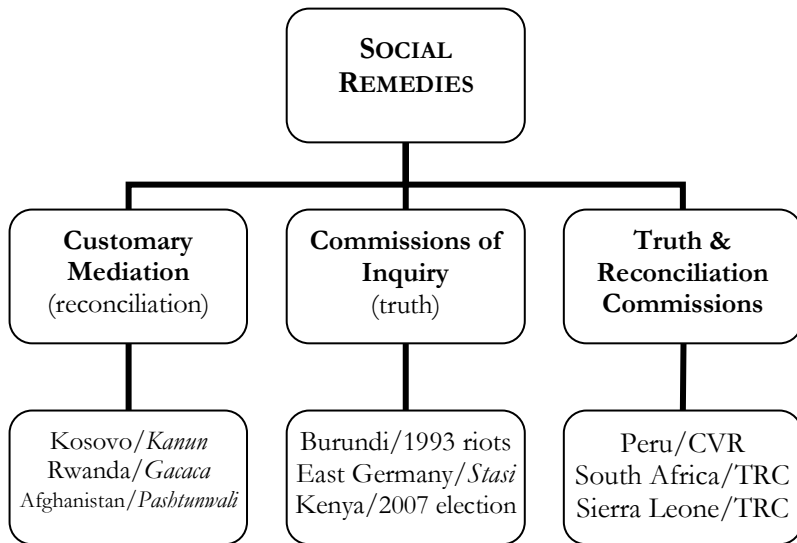


limit expenses), balancing international and domestic jurists, prosecutors, and public defenders embedded within the domestic court system. Hybrid tribunals employ international human rights standards while also seeking to build local court capacity and instructing domestic actors in effective and efficient legal practices, allowing the dual use of international law alongside a national constitution and domestic legal concepts. Hybrid tribunals demonstrate a realization that *ad hoc* international tribunals need to build infrastructure to establish long-lasting improvements. Simultaneously in Sierra Leone (Special Court for Sierra Leone, SCSL), East Timor (Special Panels for Serious Crimes, SPSC), and Cambodia (Extraordinary Chambers in the Courts of Cambodia, ECCC), three innovative experiments of hybrid war crimes tribunals have been practiced.<sup>49</sup> At the same time, the growing efforts to employ universal jurisdiction allow foreign courts with no material connection or claim of jurisdiction to hear cases that violated *jus cogens* norms of international law.<sup>50</sup> Various investigations and legal judgments that seek to review heinous acts and try human rights abusers have slowly proliferated, causing impassioned responses from human rights advocates and stirring great antipathy from foreign policy practitioners. While the powerful disdain a ‘rogue’ prosecutor or judge like Spain’s Balthazar Garzon, the weak have the most to fear since the ability to apprehend suspects is usually limited to strong states. In the case of Nazi war criminal Adolf Eichmann in 1961, Israeli secret agents simply seized the accused in Argentina and tried him under the claim of universal jurisdiction in Jerusalem.<sup>51</sup> The 1980 *Filártiga v. Peña-Irala* case in the United States employed an obscure domestic law, the 1789 Alien Tort Claims Statute, to claim jurisdiction and find a Paraguayan official guilty of torture. In 1998, former head of state General Augusto Pinochet of Chile was detained while seeking medical treatment in Great Britain on a Spanish arrest warrant.<sup>52</sup> The original basis for the extradition request was a Spanish law asserting universal jurisdiction to try certain kinds of cases, irrespective of where they occurred and without regard to the nationality of the victim.

Truth and reconciliation commissions have also played a role in the international system by exposing the role of outside forces in fostering domestic violence and recording political history to provide an essential public document to cast shame on a wide range of international actors. At a minimum, they offer a subtle reminder of past abuses and perhaps a deterrent to future adventurism. Priscilla Hayner outlined several goals of a truth and reconciliation commission: to punish perpetrators, establish truth, repair/address damages, pay respect to victims, prevent further abuses, promote national reconciliation, reduce conflict over the

past, and highlight a new government's concerns for human rights.<sup>53</sup> Hayner suggested that these goals may be accomplished through domestic or international trials, a government purge, a commission of inquiry, access to security files, reparations, memorials, reform of the police, military, judiciary, etc. Though joined together, the truth component and reconciliation component should be considered two wholly separate functions and judged on their respective abilities to reach these distinct goals.<sup>54</sup>

**Figure 1.4 Social Remedies to Achieve Reconciliation**



Commissions are often tasked with nearly impossible mandates: to achieve national reconciliation in postconflict societies. Nevertheless, many commissions actually achieved a measure of atonement. South Africa was the most successful, though several Latin American cases are notable as well. Expected retributions did not materialize in any systematic way, and Chile's 1990 National Commission on Truth and Reconciliation, the 1991 El Salvador Commission on Truth, and Guatemala's 1994 Commission for Historical Clarification provided some closure to victim's families and friends.<sup>55</sup> Dozens more truth commissions have been created around the world since the 1990s, such as Peru's 2001 Truth and Reconciliation Commission examining a wide range of social and political events.<sup>56</sup> Collectively, their achievements

are most evident in terms of providing individuals with the whereabouts of former ‘disappeared’ persons and documenting specific methods of torture, abuse, and murder. Truth commissions have even pressured foreign governments to take responsibility for past policies that contributed to human rights violations. The Latin American cases, particularly El Salvador and Guatemala, described the detrimental role played by foreign sponsors such as the United States. While this may not be justice, revealing the truth is a step in the rebuilding of personal lives destroyed by psychological and emotional trauma.

Traditional village level mediation practices offer another alternative to attain social harmony and reconciliation, incorporating religious or spiritual components into the procedure. South Africa highlighted a form of restorative justice incorporating the Xhosa and Zulu concept of *ubuntu* (“humanity toward others”) and the Christian ethic of forgiveness. Often conducted in collectivist cultures, traditional mediation emphasizes group stability and seeks to ensure the viability of the community. The ritualistic methods of such practices may differ from Western notions of justice and reconciliation, but its historical foundations make it more meaningful locally. Rwanda revived its customary *gacaca* (“justice in the grass” in Kinyarwanda) process because of the failure to expedite the court proceedings of the more than 100,000 detainees that were mired in prison for nearly a decade. Customary justice was also incorporated into the reconciliation aspect in East Timor and Sierra Leone, furthering the legitimacy of each process. Though with a strong cultural relevance, traditional justice is often dictated by hierarchical social relationships based on kinship and rarely adopts internationally recognized human rights standards.

This book adopts the United Nations’ definition of transitional justice: transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”<sup>57</sup> Using this version as a standard definition, the book explores this process in slightly more specific terms and questions the cultural relevance of these very notions to East Timor. Although philosophical and theoretical debates about the notion of justice in postconflict societies are wide ranging, few have problematized the applicability of these Western orchestrated transitional justice mechanisms to non-Western settings. The literature on transitional justice frequently ignores these historical and cultural underpinnings; overlooked are the voices of the affected community and often absent is the role of culture from deliberations over success and failure. Regarding justice as a standard of fairness and accountability

and reconciliation as an ethic of social restoration and personal transformation, this book considers whether (1) mechanisms were deployed where needed, (2) an inclusive time period that encompassed the broad context for the violence was adopted, (3) ample resources were provided to actualize the project, and (4) all perpetrators were held accountable. The book also evaluates whether the transitional justice process and its results were acceptable and understandable to the local population and effectively built greater capacity for further implementation. Ultimately, each society determines whether its justice system should seek to improve, 'correct,' deter, or simply punish.

### **The Relationship between Peacebuilding and Transitional Justice**

Peacebuilding and transitional justice must always be situated within the larger context of international relations and cannot be judged independently of global politics. Sometimes, peacebuilding and transitional justice are façades to mask the foreign policy choices of a previous generation: great powers or neighboring states often support despots, fund insurgencies, and supply warring factions that destabilize societies and create conditions that lead to crimes against humanity. At other times, the choice to deploy peacebuilding operations or adopt transitional justice mechanisms follows a decision to do nothing, when acting quickly could have saved tens of thousands of lives. Prominent international actors (powerful states and the UN Security Council) often conspire to avoid intervention and seek political cover when faced with uncertain risks, willfully ignoring massive atrocities such as occurred in Rwanda.

Ironically, following these political decisions, human rights groups often assign these same powers the 'responsibility to protect' when domestic actors commit grave human rights violations within their own sovereign borders.<sup>58</sup> Likewise, the application of international 'justice' is more symbolic than substantive and more tailored to a foreign audience for public consumption than to building sustainable political and judicial structures that will help to ensure long-term peace and stability. The presence of an international peacekeeping force with a proper mandate to maintain security could have (likely would have) prevented the savagery of Rwanda's genocide.<sup>59</sup> However, sometimes when the international community takes a hands-off approach, the brutality of war occasionally exhausts its combatants and naturally leads to peace. In Rwanda, while the rest of the world watched, Paul Kagame's Rwandan

Patriotic Front (RPF) rebels acted to stop the genocide, though the RPF committed their own massacres, albeit on a much smaller scale.

An examination of East Timor reflects the changing nature of the international reaction to massive human rights violations and war crimes accountability following the end of the Cold War and at the beginning of the U.S. 'war on terror.' The Cambodian mission of 1991-1993 was an initial attempt after the end of the Cold War to expand the purview of the United Nations into rebuilding states, and thus serves as a benchmark to evaluate subsequent operations. The interim between the Cambodia and East Timor missions witnessed the humanitarian intervention in Somalia to provide food relief, the peacemaking U.S.-led forces in Bosnia, Haiti, and Kosovo, and the failure to prevent or end the worst human rights atrocities of the past three decades in Rwanda. Nearly a decade after the Cambodia case, the East Timor mission allows for a review of changes in the status of human rights as a criterion for intervention and as an element of a peacebuilding operation, as well as the opportunity to improve linkages between and among transitional justice mechanisms and peace operations. Increasingly, the notions of human rights and transitional justice have become embedded in peacebuilding operations, yet best practices have not fully developed from recent cases and the relationship between nation-building and transitional justice is not firmly established. The introduction of hybrid tribunals and tribunals and truth commissions in the early 2000s in East Timor and Sierra Leone sought to encourage judicial reform in the domestic arena by blending local and international personnel as a form of capacity building. This temporal distinction can be useful to distinguish the proper sequencing of institution-building as the United Nations seeks to better integrate human rights and transitional justice into its peacebuilding projects. Of course, one must bear in mind that the United Nations has had limited experience with transitional authorities; only the United Nations Temporary Executive Authority (UNTEA) in West New Guinea in 1961 and the United Nations Transitional Administration for Eastern Slavonia (UNTAES) in 1996 preceded East Timor, which itself was conterminous with the United Nations Mission in Kosovo (UNMIK).

Thus, this book begins a dialogue that seeks to match the proper institutions of transitional justice to a particular set of given circumstances in order to determine which desired outcome will best accommodate a specific constituency. Institutions range from independent domestic mechanisms such as customary mediation or national courts, to mixed tribunals or truth and reconciliation commissions, to wholly international tribunals. Circumstances refer to

the cultural, economic, political, and social realities on the ground and the unique factors that contributed to political violence (whether interstate war, civil war, crimes against humanity, genocide, or other) in a given area or region. Such factors may include ethnic hostilities, competition for state authority, personal disputes over leadership, secessionist ambitions, control over natural resources, outside manipulation by foreign powers, opposing ideological perspectives, and nationalist tensions. Desired outcomes are peace, justice, and/or reconciliation. Constituencies (or audiences) comprise individuals (victims and perpetrators), the community, state decision-makers, and international actors (the human rights community and interested nations). Particular segments of society may require special consideration: elites, arbiters of political power or mediators of public opinion, ethnic or religious minorities, spoilers, etc. Targeting of such groups usually includes incentives and disincentives along with informational and educational outreach.

### **Plan of the Book**

Following this introductory chapter, Chapter 2, “Colonialism, Cold War, and Crimes Against Humanity,” describes the historical antecedents that led to a humanitarian intervention in East Timor, the nature of the atrocities committed, and the implementation of the UN peace operation. Many positive currents run through the East Timor intervention as a whole. The international community achieved national self-determination for an oppressed minority and re-established the pathway to self-rule of a non-self-governing territory that missed its opportunity for independence during Portugal’s long awaited decolonization process in 1976. A robust peace enforcement force led by Australia physically ended Indonesia’s 23-year occupation and ended crimes against humanity while relief agencies admirably staved off a far worse crisis by assisting refugees in their movement and delivering adequate food, aid, and support.

Chapters 3 and 4 evaluate the successes and failures of peacebuilding and transitional justice in East Timor. In evaluating the performance of the international community, it may be helpful to keep in mind the setting upon deployment of international forces that structure the context of success and failure. Three primary factors were at play in Timor that offered a benevolent environment for potential success. First, the territory is a geographically small area in close proximity to the lead actor in the mission (Australia), allowing for a rapid deployment of forces and the ability to secure the population with

a smaller armed contingent than in larger contexts. Second, the majority of the local population, having long sought an international intervention, was very compliant with outside forces and demonstrated little initial hostility toward the armed peacekeepers. Finally, the offending party, Indonesia, had consented to the operation and was essentially removed from the equation in the aftermath of the intervention, reducing the likelihood of spoiler violence or a major long-term obstacle to internal stability. Although border incursions remained a threat, and occasional outbreaks of violence along the generally porous frontier did occur, compared to zones where a fragile stalemate was enforced by peacekeepers, East Timor was quite secure. Yet one major pre-condition was not operating in favor of international actors: East Timor was utterly devastated by the effects of the Indonesian withdrawal (active with militias, thus requiring robust policing) and would be tasked with building a state from ground up where essentially no nation-wide, independent political entity had ever existed.

Chapter 3, “As Good as it Gets? The International Rebuilding of East Timor,” re-evaluates UN attempts to build peace in East Timor five years after the bulk of the UN mission left and subsequent to the first post-independence presidential and parliamentary elections took place in 2007. It asks the question “Did the United Nations help to create a peaceful state and society capable of self-governance?” Countless observers have labeled the East Timor mission one of the UN’s few success stories in a post-Cold War era of many frustrations and catastrophes, from Somalia to Bosnia, Haiti, and Rwanda, though the results are mixed in light of sporadic violence in 2002, 2006, and 2007, as well as larger institutional problems related to the failure to build an impartial judiciary and reintegrate former combatants into the new political project. Nevertheless, the UN transitional authority initiated the institutions of self-government in an extremely poor territory ill-equipped and still unprepared for its own administration. With international assistance, this unique peace operation even took the further step of initiating a war crimes tribunal and truth and reconciliation commission to promote justice and reconciliation in the postconflict environment.

Chapter 4, “Justice and Reconciliation: Culture, Courts, and the Commissions,” problematizes the practice of transitional justice, as it explores the dilemmas and pragmatic choices in the operation of these mechanisms according to set of analytical criteria. It asks two questions: “Did transitional justice satisfy demands for accountability, justice, and/or reconciliation?” and “Which model of transitional justice can best achieve these goals?” By way of conclusion, Chapter 5,

“Connecting Peacebuilding and Transitional Justice,” offers policy recommendations through an integrated approach to improve the coordination of various mechanisms and link transitional justice to peacebuilding, and suggests some opportunities to improve the implementation of accountability mechanisms by linking responses across several sectors to choices made at different temporal phases.

This book does not deny the successful aspects of the East Timor operation overall, nor does it consider the operation an unmitigated failure. Rather, with the benefit of hindsight and ample time to consider fundamental aspects of the mission, it asks the three questions mentioned above. In so doing, it does not wish to re-evaluate every component of the UN role in East Timor solely as an external audit or search for best practices for the next operation. Instead, this book seeks to situate the state-building project within Timor’s postconflict social and political development and adopts an often sociological and ethnographic evaluation of its legacy upon the historic moment of the first election in a free and independent East Timor and subsequent attacks on both the president and prime minister, the former shot twice and evacuated to Australia, perhaps punctuating the UN peace building process and puncturing previous assertions of success. All of this is to suggest that when it comes to judging peace operations (whether unilateral or multilateral), one cannot become solely focused on the scope of mandates, the efficiency of bureaucracies, or the appropriateness of institutions. These choices will enormously impact the ultimate performance of such operations, yet public support and ultimately the local perspective on the mission is another standard of success, one heavily dependent on simple, ordinary encounters between people. Therefore, this book seeks to systematically evaluate the mandates, institutions, and effectiveness of peacebuilding and transitional justice in East Timor, but also to intersperse that with stories and observations about people, their behaviors, and their attitudes.

## Notes

1. From 2006-2009, Guido Valadares Nacional Hospital was the site of a makeshift refugee camp for 2,000 homeless persons following the 2006 riots. Livestock of goats, pigs, and chickens wandered the hospital grounds creating an unsanitary environment.

2. Prior to 1986, *Kopassus* was known as *Komando Pasukan Sandhi Yudha* (Secret Warfare Command, *Kopassandha*).

3. Those few patients in the VIP room that could pay for their own medical care received bottled water, fans, air conditioning, and a seemingly attentive staff.



4. By contrast, development is more economically-oriented and arguably a more tangible public policy choice, though an exceedingly rare occurrence based on traditional standards of economic growth. In essence, development is a modern notion of technical expertise, planning, cost-benefit choices of sustainability, autonomy, and growth and is complicated by environmental constraints, domestic lobbyists, poor infrastructure and human resources, as well as the tumultuous global trading and financial system. Although still value-laden, development is a more evaluative term (whether by gross domestic product-GDP, a human development index-HDI, or another catalogue of criteria) than the aforementioned categories that are very politically-loaded and hard to quantify.

5. Cédras had overthrown the democratically-elected President Jean-Bertrand Aristide.

6. Amin was invited to Britain on a state visit after his ethnic cleansing; he died in 2003.

7. This time period includes the brutal regime of Milton Obote that preceded Amin's coming to power. The Yoweri Museveni regime, which took power in 1986, launched a Commission of Inquiry into Violations of Human Rights (The Commissions of Inquiry Act Legal Notice No. 5 [16 May 1986]), though little was accomplished, owing in no small part to lack of funding.

8. Galtung, "A Structural Theory of Aggression," pp. 95-119. Definitions of peace sometimes include *gaia* (peace as ecological sustainability), feminist, and other notions.

9. "Liberal" is used in the sense of the normative theory of international relations favoring international organization and law to foster peace.

10. Bass, *Stay the Hand of Vengeance*, p. 286. For further discussion of the merits of war crimes trials, see Ball, *Prosecuting War Crimes and Genocide*; Hesse and Post, *Human Rights in Political Transitions*; Neier, *War Crimes*; Ratner and Abrams, *Accountability for Human Rights Atrocities in International Law*; Robertson, *Crimes Against Humanity*; and Roht-Arriaza, *Impunity and Human Rights in International Law and Practice*.

11. France, Great Britain, and Russia denounced Turkey's genocide of Armenians as "crimes against humanity and civilization," but accountability was not forthcoming. Yet by using the term humanity, the Allies were beginning to recognize the place of individuals in international law. On the contrary, the relative ambiguity of the term was problematic as it imparted a moral connotation and was not firmly established in codified law, nor in positivist interpretations of customary law. Later, crimes against humanity were enumerated in such a way as to give more legitimacy to the notion. Falk, Kolko, and Lifton, *Crimes of War*, pp. 22-23.

12. In the United States, see *Filartiga v. Pena-Irala* 630 F.2d 876 (1980), *Kadic v. Karadžić* 70 F.3d 232, 518 U.S. 1005 (1996), and *In Re Marcos* 103 F.3d 767 (1996). See also the Inter-American Court of Human Rights, *Aloeboetoe et al. Case* (1991) IACHR 1, Judgment of 4 December 1991 on compensation. Civil suits may become a more common forum for achieving some degree of redress in cases of human rights abuses, especially with passage of domestic legislation in the United States like the 1992 Torture Victims Protection Act (28 U.S.C. 1350), the 1994 Cambodia Genocide Justice Act (22 U.S.C. 2656), and the 1998 Torture Victims Relief Act (22 U.S.C. 2152).

13. S/2004/616, *The Rule of Law and Transitional Justice in Conflict and Postconflict Societies*, 23 August 2004.

14. The South Africa Truth Commission explains the trade-off as “Reconciliation involves a form of restorative justice which does not seek revenge, nor does it seek impunity. In restoring the perpetrator to society, a milieu needs to emerge within which he or she may contribute to the building of democracy, a culture of human rights and political stability. The full disclosure of truth and an understanding of why violations took place encourage forgiveness. Equally important is the readiness to accept responsibility for past human rights violations.” *Truth and Reconciliation Commission (TRC) of South Africa Report* (29 October 1998): vol. 5, ch. 9: Reconciliation, pars. 146-148.

15. In South Africa, based on the Promotion of National Unity and Reconciliation Act No. 34 of 1995, the reconciliation option was chosen instead of retributive trials and those who testified truthfully were granted amnesty. There, the Human Rights Violations Committee investigated human rights abuses that took place from 1960-1994, taking a reasonably long-term view of apartheid. *Truth and Reconciliation Commission (TRC) of South Africa Report* (29 October 1998): vol. 5, ch. 9: Reconciliation, pars. 146-148 and vol. 5, ch. 8: Recommendations, Prosecutions for apartheid as a crime against humanity, par. 114.

16. ‘Denazification’ was an effort, in conjunction with judicial, economic, and political processes, to rebuild Germany and remove the last vestiges of the Nazi era and is a precursor to the later truth commissions that aspire to restore peace and democracy and promote reconciliation in postconflict situations.

17. Bellamy, et al, *Understanding Peacekeeping*, pp. 73-74.

18. The UN Emergency Force (UNEF) from 1956-1967 to end the 1956 Suez Crisis is generally accepted as the first mission to be called peacekeeping, but others began as early as the late 1940s.

19. Bellamy, et al, *Understanding Peacekeeping*, p. 96.

20. Diehl, *International Peacekeeping*, pp. 5-6.

21. Annan highlighted the “developing international norm in favour of intervention to protect civilians from wholesale slaughter” and the legitimacy of UN endorsement as key factors to validate intervention with force. Kofi Annan, “Two Concepts of Sovereignty,” *The Economist*, 18 September 1999.

22. See Warren P. Strobel, “The Media and U.S. Policies Toward Intervention: A Closer Look at the “CNN Effect”,” in Crocker, et al, *Managing Global Chaos*, pp. 357-376.

23. Boutros-Ghali, *An Agenda for Peace*.

24. Boutros-Ghali, *An Agenda for Peace*, p. 11.

25. Carnegie Commission, *Preventing Deadly Conflict*, p. 69. The Carnegie Commission states that “structural prevention—or peacebuilding—comprises strategies to address the root causes of conflict, so as to ensure that crises do not arise in the first place, or that, if they do, they do not recur.”

26. Boutros-Ghali, *An Agenda for Peace*, p. 11.

27. Boutros-Ghali, *An Agenda for Peace*, p. 11.

28. For a discussion of the challenges posed by coordinating the military, NGOs, and IGOs in peace operations, see Aall, et al, *The Military, NGOs, and IGOs in Peace Operations*.

29. Boutros-Ghali, *An Agenda for Peace*, p. 11.

30. See Weiss, et al, *The United Nations and Changing World Politics*. Diehl, et al, classify 12 types of peacekeeping: traditional peacekeeping, observation, collective enforcement, election supervision, humanitarian assistance during conflict, state/nation building, pacification, preventive deployment, arms control verification, protective services, intervention in support of democracy, and sanctions enforcement, Diehl, et al, "International Peacekeeping and Conflict Resolution," pp. 33-55. In the late 1990s, William Durch identified four types of peace operations: traditional peacekeeping, multidimensional peace operations, peace enforcement, and humanitarian intervention, Durch, "Keeping the Peace: Politics and Lessons of the 1990s," in William J. Durch, ed., *UN Peacekeeping, American Policy and the Uncivil Wars of the 1990s* (London, UK: Macmillan, 1997), pp. 1-34. Michael Doyle differentiated four types as well: monitoring or observer missions, traditional peacekeeping, multidimensional peacekeeping, and peace enforcement, Doyle and Sambanis, "International Peacebuilding," pp. 779-802. Steven Ratner and John Mackinlay and Jarat Chopra distinguished two generations of peacekeeping, while Marrack Goulding identified three. Steven R. Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War* (New York, NY: St. Martin's Press: Council on Foreign Relations, 1995); John Mackinlay and Jarat Chopra, "Second Generation Multinational Operations," *The Washington Quarterly* 15, no. 3 (1992): 113-131; and Marrack Goulding, "The Evolution of United Nations Peacekeeping," *International Affairs* 69, no. 3 (1993): 451-465.

31. Richmond, *Maintaining Order, Making Peace*, pp. 41, 76, 140.

32. See Milliken, *State Failure, Collapse, and Reconstruction*. Normative theoretical perspectives that effectively incorporate these factors include John Paul Lederach's *Building Peace*, whose integrated framework systematically examines root causes, crisis management, prevention, vision, and transformation. Lederach, *Building Peace*, pp. 79-82.

33. Hesse and Post, *Human Rights in Political Transitions*, pp. 20-21.

34. For a presentation of the idea of hegemonic stability and the decline of hegemonic power, see Robert Gilpin, *War and Change in World Politics* (Cambridge, UK: Cambridge University Press, 1981) and Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984).

35. Realists within the field of international relations or legal positivists in international law generally put forward these arguments. In classical terms, leading critics of Wilsonianism include Georg Schwarzenberger, *Power Politics: A Study of International Society* (New York, NY: Praeger, 1951); Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York, NY: Knopf, 1948); E.H. Carr, *Twenty Years Crisis, 1919-1939: An Introduction to the Study of International Relations* (New York, NY: St. Martin's Press, 1946); and Henry Kissinger, *Nuclear Weapons and Foreign Policy* (New York, NY: Harper, 1957), to name a few.

36. Minow, *Between Vengeance and Forgiveness*, p. 30. For a discussion of various perspectives on historical trials, see Ferencz, *Enforcing International Law and Telford Taylor, The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York, NY: Knopf, 1992).

37. Hesse and Post, *Human Rights in Political Transitions*, p. 28.

38. *Ibid.*, p. 208.

39. The death sentence continues to be within the scope of numerous national procedures and is practiced in Rwanda.

40. See Horowitz and Schnabel, *Human Rights and Societies in Transition: and Romano, et al, Internationalized Criminal Courts and Tribunals*.

41. The ICC would only have jurisdiction over crimes in which no national court had jurisdiction, where a national court with jurisdiction chose not to prosecute, where crimes occurred in several countries or against nationals of different countries, or if crimes were committed by the heads of states. See *Rome Statute of the International Criminal Court*, Articles 1, 12, 13.

42. Barry E. Carter and Phillip R. Trimble, *International Law* (Boston, MA: Little, Brown and Co., 1995), p. 1434.

43. In 1969, President Nixon claimed that the U.S. military's killings of unarmed civilians at My Lai in Son My, Vietnam was an isolated incident and favored a military commission over a civilian one to investigate. Calley was sentenced to dismissal from the army and 20 years hard labor, which was upheld by the U.S. Military Court of Appeals, though he was paroled early in 1974. See *United States v. Calley*, 46 C.M.R. 1131 (1973).

44. Formally, the ICTY is known as 'The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.' Formally, the ICTR is known as 'The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.' The ICTR began its work in November 1995 with its headquarters in Arusha, Tanzania; the Appeals Chamber and the Office of the Prosecutor are based in the Hague, the Netherlands, with a deputy prosecutor in Kigali, Rwanda.

45. S/RES/827 (1993), UN Security Council Resolution 827 of 25 May 1993.

46. As of 19 April 2009, 161 individuals have been indicted for violations of international humanitarian law in the former Yugoslavia (including Serbian head of state Slobodan Milošević, who faced, an albeit unproductive, trial); 58 were sentenced, ten were acquitted, 36 had cases withdrawn or deceased, and 44 accused were in ongoing proceedings, <http://www.icty.org>.

47. S/RES/955 (1994), UN Security Council Resolution 955 of 8 November 1994.

48. The court can exercise jurisdiction only when cases are recommended by a state that is party to the treaty or the UN Security Council, or if the prosecutor launches his or her own investigation following authorization of the Pre-Trial Chamber. If the crimes occur on the territory of a state party to the statute or the suspect is from such a state, no investigation can occur (unless the given state subsequently accepts ICC jurisdiction); however, investigations authorized by the UN Security Council can occur anywhere. According to Article 13, the Court may exercise its jurisdiction if a crime is referred to the prosecutor by a state or by the Security Council acting under Chapter VII. The prosecutor can initiate an independent investigation if a given state is party to the convention. The inclusion of legal persons (states and corporations) failed, and thus only natural persons are subject to the Court. Article 120 also

stipulates that there can be no reservations to the treaty, though the Security Council can defer an investigation for renewable one-year periods. The statute was approved 120-7-21 in an unrecorded vote. Descriptions of the court in this section are taken from the ICC website, <http://www.icc-cpi.int>.

49. S/RES/1315 (2000), UN Security Council Resolution 1315 of 14 August 2000 mandated a trial to consider crimes since 30 November 1996, and on 16 January 2003, Sierra Leone and the United Nations agreed to the Special Court for Sierra Leone. The Trial Chamber comprises two internationals and one Sierra Leonean, while the Appeals court has three internationals and two Sierra Leoneans. Other hybrid mechanisms have been adopted in some form in Bosnia and Hercegovina, Cambodia, and Kosovo.

50. *Jus cogens* norms are peremptory norms of international law reserved for the most egregious offenses like torture, genocide, etc.

51. Universal jurisdiction developed from Israel's 1961 seizure of accused Nazi war criminal Adolf Eichmann in Argentina and his subsequent trial. Eichmann was brought to stand trial in Israel, despite the fact that "Israel had not existed at the time of Eichmann's crimes, no acts had been committed on Israeli territory, and there was no prospect of a fair trial." In fact, the Israeli decision found that "the authority and jurisdiction to try crimes under international law are *universal*," setting an important precedent. The trial focused on the crime of genocide, specifically acts committed against the Jewish people. Eichmann was found guilty and hanged to death on 1 June 1962. See *The Attorney General of Israel v. Adolf Eichmann* (1961), District Court of Jerusalem, Criminal Case 40/61.

52. Chile's 1978 Amnesty law afforded immunity to Pinochet as a Senator-for-Life, though Chilean courts have limited its application. When Pinochet traveled to England in September 1998 seeking medical treatment, a court in Spain sought his extradition. The British House of Lords ruled 3-2 that Pinochet did not have immunity. See *Regina v. Bartle (Ex Parte Pinochet)*, 1999. Subsequent decisions by the British courts have limited extraditable charges to torture and conspiracy to torture committed after December 1998.

53. Hayner, *Unspeakable Truths*, p. 11.

54. The most comprehensive analysis of truth commissions is Hayner's *Unspeakable Truths*. Most analyses of truth commissions focus on specific cases. For more comparative or theoretical interpretations, see Kritz, *Transitional Justice*; Minow, *Between Vengeance and Forgiveness*; Rotberg and Thompson, *Truth v. Justice*; and Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge, UK: Cambridge University Press, 2006).

55. The Chilean goal was to establish a complete picture of the causes, circumstances, and events which created human rights violations; to gather evidence in order to identify victims by name and location; to recommend reparation and the restoration of honor; and to recommend legal and administrative measures to prevent further violations. The Commission was created under Supreme Decree No. 355, with a mandate to examine the period from 1973-1990, *Report of the Chilean National Commission on Truth and Reconciliation* (February 1991), Objectives of the Commission. The Salvadoran commission sought to investigate serious acts of violence since the 1980s, and recommended dismissals from the armed and civil services, disqualification from holding public office, judicial reform, protection of human rights, police reform, material and moral compensation to victims, creating a forum for truth

and reconciliation, and penalizing the guilty. *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador* (15 March 1993), Introduction. Guatemala's Commission sought to clarify the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people during the more than three decades of fratricidal war, and was tasked with recommending "measures to preserve the memory of the victims, to foster an outlook of mutual respect and observance of human rights, and to strengthen the democratic process." *Guatemala: Memory of Silence ('Memoria del Silencio')*, *Report of the Commission for Historical Clarification* (25 February 1999), Conclusion, par. 122.

56. Other commissions include Argentina's National Commission on the Disappeared (CONADEP), Honduras' 1992 Commission for the Protection of Human Rights, Haiti's 1995 National Commission on Truth and Justice, Czechoslovakia's Commission for the Investigation of Events in 1967-1970 and November 17 Commission, Poland's Constitutional Accountability Commission, Chad's 1992 Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and/or Accessories, Ghana's 2002 National Reconciliation Commission, and Truth and Reconciliation Commissions in Sierra Leone in 2001 and Liberia in 2006.

57. S/2004/616, *The Rule of Law and Transitional Justice in Conflict and Postconflict Societies*, 23 August 2004.

58. See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*.

59. Zisk, *Enforcing the Peace*, p. 34.