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Abstract

The international community is increasingly interested in promoting post-conflict reconciliation in a variety of forms, with trials and truth commissions featured most prominently. The contemporary academic discussion over transitional justice (and the practice of transitional justice itself) is largely focused on whether and how these types of large-scale national transitional justice mechanisms contribute to reconciliation. This article examines the promise and reality of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to contribute to national reconciliation. Ultimately, the ability of state-wide policies to contribute to reconciliation rests on the active participation of local level actors. This requires political backing at the state and local level beyond that of just the international community. More attention needs to be paid to domestic cultural factors in the initial decision to implement state-wide transitional justice procedures, and bottom-up mechanisms must be built into any large scale approach to reconciliation.

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA: THE PROMISE AND REALITY OF RECONCILIATION IN CROATIA

Sara Parker

The international community is increasingly interested in promoting post-conflict reconciliation in a variety of forms, with trials and truth commissions featured most prominently. The contemporary academic discussion over transitional justice (and the practice of transitional justice itself) is largely focused on whether and how these types of large-scale national transitional justice mechanisms contribute to reconciliation. This article examines the promise and reality of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to contribute to national reconciliation. Ultimately, the ability of state-wide policies to contribute to reconciliation rests on the active participation of local level actors. This requires political backing at the state and local level beyond that of just the international community. More attention needs to be paid to domestic cultural factors in the initial decision to implement state-wide transitional justice procedures, and bottom-up mechanisms must be built into any large scale approach to reconciliation.

Introduction

When you work on producing conflict you work on a general level … The recipe for violence is always the same … If you work on reconciliation, you must work on a personal level. (NGO worker in Vukovar, Croatia)

At the end of conflict, how can transitional justice and reconciliation be achieved? Agreement barely exists over the definitions of these terms, much less agreement on how they can be accomplished. Yet, interest in, and attention to, these topics continue to grow. Kaminski *et al.* (2006) define transitional justice as the formal and informal procedures implemented by a group or institution around the time of transition out of an oppressive or violent social order for rendering justice to perpetrators, collaborators, and victims. Lederach (1997, p. 27) defines reconciliation as "the point of encounter where concerns about both the past and the future can meet"; a point where truth, justice, mercy and peace convene. Other authors have aptly described reconciliation as an "opening", a time or a space where a willingness to work towards this point exists (Doxtader, 2001).

The two transitional justice mechanisms that feature most prominently in the discussion are trials, whether domestic or international, and truth commissions. Both of these mechanisms are implemented at the state level. Other state-wide transitional justice options include instituting or upholding amnesties, providing reparations, or utilizing purges (also known as lustration). As an additional number of states started to implement truth commissions in the 1990s, a "truth vs. justice" debate emerged in which the positive and negative attributes of truth commissions began to be examined against the positive and negative attributes of trials (see Rotberg and Thompson, 2000; Minow, 1998; Méndez, 1997). According to Leebaw (2003, p. 27), "morally, prosecutions were viewed as unambiguously superior to truth commissions, and to other forms of transitional justice". In response, advocates of truth commissions sought to build a case for their superiority in comparison with trials. By the mid 1990s, "human rights advocates and scholars increasingly began to argue that many of the dilemmas once associated with transitional justice were based on false dichotomies and limited thinking about the range of forms transitional justice might take" (Leebaw, 2008, p. 102). Both trials and truth commissions are currently promoted as uniquely important elements of transitional justice and there is an emerging scholarship on how trials and truth commissions can co-exist (Schabas, 2003; Kelsall, 2005; O'Flaherty, 2004; Hannum, 2006; Lanegran, 2005).

Regardless of whether trials, truth commissions, or a hybrid of both are used, the contemporary discussion over transitional justice (and the practice of transitional justice itself) largely focuses on whether and how large scale national transitional justice mechanisms contribute to reconciliation. Furthermore, both of these mechanisms have become increasingly institutionalized in international organizations that help states to implement them. This has led to a standardization of how trials and truth commissions operate, making culturally dependant adaptations difficult.

While the academic literature recognizes the relevance of civil society and the importance of culturally-sensitive programs in the quest for transitional justice and reconciliation, this has not resulted in adequate incorporation of these programs into national level mechanisms. In this paper, I argue that the initial promise that the International Criminal Tribunal for the former Yugoslavia (ICTY) would be able to promote societal reconciliation in Croatia was largely undermined by the fact that there was no discussion or plan on how to incorporate bottom-up approaches into national-scale policy decisions. More attention must be paid to domestic cultural factors in the initial decision to implement state-wide transitional justice procedures, whether a truth commission, a trial, or something else. In addition, regardless of what mechanism(s) are chosen (and choice is likely to be highly

restrained), there must be a plan for local participation. Ultimately the ability of state-wide policies to contribute to reconciliation rests on the active participation of local level actors. This requires political backing at the state and local level beyond that of just the international community.

This article proceeds by first examining the decision to implement the International Tribunal and Croatia's record of cooperation with the Tribunal. A lack of cooperation on the part of the Croatian government is not surprising given the lack of attention that was paid to the cultural appropriateness and practicality of utilizing this mechanism in the first place. In the second section, I look at the initial belief that the ICTY would be able to contribute to reconciliation processes. In the third section I show that this has not been the case. Whether the consequence of lack of will, lack of foresight, or lack of adequate international pressure and support, the failure of the Croatian government to integrate locally based efforts into the national reconciliation plan only made the challenge of reconciliation via the Tribunal more difficult. In the last section I highlight the benefits that can be gained by incorporating grassroots activism into any national plan to promote effective reconciliation. Throughout, I offer anecdotal evidence based on field research conducted in eastern Croatia in the summer of 2005 to substantiate my suggestions.[1] This case illustrates the need to widen the discussion on transitional justice to include a dialogue on how state level mechanisms can incorporate bottom-up reconciliation practices.

Establishment of the ICTY

Punishment dominates our contemporary conception of transitional justice (Teitel, 2000). The trial, with its emphasis on retribution, prosecution and justice, is perhaps the best recognized mechanism for dealing with past abuse. The suggested benefits of prosecution include: enhancing the prospects for solidifying the rule of law, educating citizens about the wrongs of the past, identifying victims for compensation, punishing those responsible, deterring future violations, and healing societal wounds (Landsman, 1996). "It has been argued that society cannot forgive what it cannot punish. If that argument is correct, the first real step to restoring social harmony comes with prosecution" (Landsman, 1996, p. 84). Along with the prosecution of individuals in state-run trials, international tribunals have gained popularity with the establishment of the ICTY and International Criminal Tribunal for Rwanda (ICTR), International Criminal Court, Special Courts in Sierra Leone and Cambodia, and the Iraq Tribunal (see Meron, 2006 for a discussion on the evolution of International Tribunals).

The ICTY was created through Security Council Resolution 827 in 1993 outside the purview of the Croatian government. It can be viewed as the result of a trend (one that began with the Nuremberg trials) towards holding national leaders responsible for abuses committed while they were in power. "Not only did the [Nuremberg] tribunal reject the fiction that leaders acted on behalf of their societies and therefore should be immune from punishment, but in prosecuting the crime of aggression, it discarded the assumption that the decision to go to war was a state prerogative beyond normative scrutiny" (Thomas, 2005, p. 30). Aldana-Pindell (2004, p. 67) calls the culmination of this trend the "duty to prosecute norm", which "requires states to conduct an effective criminal investigation and prosecution with the aim of punishing those responsible for right to life and humane treatment violations". As Roht-Arriaza and Gibson (1998, p. 843) point out, "anti-impunity measures are no longer simply a question of national choice".

Prior to the creation of the ICTY and ICTR, Nuremburg (and to a lesser extent the Tokyo trial), was the pivotal example of justice at work. "The Nuremburg trials were to be a history lesson, then, as well as a symbolic punishment of all the German people—a moral lesson cloaked in all the ceremonial trappings of due legal process" (Buruma, 2002, p. 145). The ICTY was seen as an improvement over Nuremberg (which is often described as "victors' justice") because it was implemented prior to the resolution of conflict and because it required Croatia to try its own citizens, i.e. to practice "victims' justice" (Scheffer, 1996).

The decision to create the ICTY was not a response to the specific demands of Croatia's situation, but a foreign-imposed decision that appeased an international normative demand for justice. The ICTY gained a reputation of having come into existence to assuage Western powers' guilt for their own failure to prevent the atrocities: "At the time of its establishment, rather than being universally hailed as a moral triumph, the ICTY was derided by some observers as an act of hypocrisy" (Akhavan, 1998, p. 744). Talk of a truth commission circulated sporadically, but never gained mass backing in Croatia. The idea may have originally been thwarted by the concern that revelations could undermine the historic International Tribunal. Today, there continue to be efforts to promote such commissions throughout the region. [2]

The Croatian government did support the creation of the court, and has pressured the court to prosecute Serbs. However, the government has also fought for immunity for Croatians accused of war crimes (Peskin and Boduszyński, 2003). Although Croatia's cooperation with the ICTY has steadily improved since its inception, this cooperation should not be seen as indicative that either the government or Croatian citizens support the trials. Peskin and Boduszyński (2003, p. 1117) argue that, "no issue has polarized the post-authoritarian Croatian political scene as much as the issue of

cooperation". The premature death of President Franjo Tudjman (and the failure of the Court to indict him prior to his death) prevented Croatia from outright denouncing the Court. Consecutive governments since Tudjman's death have found themselves caught politically between support (or at least cooperation) and opposition to the ICTY. On the one hand, the Tribunal offers the potential to vindicate Croatia's steadfast position as having been victimized by Serb aggression. Cooperation also bodes well for Croatia's EU accession process (Cruvellier and Valiñas, 2006; Peskin and Boduszyński, 2003). On the other hand, cooperation requires turning over Croats at The Hague's request – in effect an admission that Croats had actually committed war crimes and that alleged crimes were not merely defensive acts.

Since full statehood status was granted in 1998, the Croatian cooperation record has varied. In some cases, wanted criminals turned themselves in and in other cases threats from the World Bank were required before Croatia agreed to comply (Sharp, 1997).[3] An overall positive evaluation on compliance in various international appraisals has been consistently overshadowed by a perceived lack of diligence on the part of the Croatian government in tracking down a few high level Croatian Army officials, and due to the strong public reactions opposing the extradition of these individuals. Peskin and Boduszyński (2003, p. 1121) write: "Its assistance to tribunal investigators and prosecutors notwithstanding, the Croatian government has appeared increasingly hesitant to comply with its international legal obligations when it comes to the biggest tests of cooperation – the arrest of indicted war suspects and their transfer to The Hague". Only when threatened with EU refusal to initiate accession talks did Croatian authorities begin to adopt "a more pragmatic, if ambivalent, approach" (Cruvellier and Valiñas, 2006, p. 7).

Overall, "Croatian authorities have sent inconsistent messages to the public regarding war crimes, and the European Commission has described Croatia's attitude towards the ICTY as 'lukewarm'" (Zoglin, 2005, p. 58). The public has responded negatively to the Tribunal based on the perception that it is anti-Croat, despite the fact that the most of the cases for crimes committed in Croatian territory have been against Serbs (Cruvellier and Valiñas, 2006). Although it was originally assumed that the ICTY would contribute to societal reconciliation, there was little thought given as to what this process would actually entail.

The Promise of Reconciliation

Despite its lukewarm reception, advocates of the ICTY nonetheless initially believed that the justice doled out by the Tribunal could offer a path to reconciliation. This expectation was based on the assumption that justice and peace necessarily complement one another. As Scheffer (1996, p. 34), a former senior advisor and counsel to the U.S. permanent advisor to the U.N. put it: "We are finally learning that the pursuit of peace can coexist with the search for justice and that the pursuit of justice is often a prerequisite for lasting peace". It was believed that the use of legal mechanisms to bring perpetrators to justice was not just as a putative means of addressing human transgressions, but a symbol of justice, and therefore, a burden-lifting experience for witnesses and a necessary component for peace (Rudolph, 2001).

There is an assumed link between criminal procedures, whether on an international or a national scale, and healing on an individual level (Fletcher and Weinstein, 2002). Snyder and Vinjamuri (2003) make three claims about the effectiveness of trials in this regard. First, they argue, trials send a signal to potential perpetrators of atrocities that they will be held individually accountable. In other words, trials have deterrent value. Secondly, trials are seen as having the effect of strengthening the rule of law and establishing justice. Lastly, trials emphasize the guilt of individuals, thereby defusing the potential for future violence. International tribunals (as opposed to domestic ones) are particularly presented as facilitators of reconciliation due to their rarity, international scale, and higher standards of neutrality. In addition to the tangible products international tribunals produce – perpetrators behind bars, court transcripts and witness testimony, and proof that humanitarian norms are relevant – there is a belief that, "individual accountability for massive crimes is an essential part of a preventative strategy and, thus, a realistic foundation for lasting peace" (Akhayam, 2001, p. 10).

The association between peace, justice, and reconciliation was automatically assumed in the case of the ICTY. The United Nations ICTY website describes the trials as paving "the way for the reconciliation process within the war-torn societies of the former Yugoslavia". Speaking on the same subject, former U.S. Secretary of State Madeline Albright stated that, "in the end, it is very difficult to have peace and reconciliation without justice" (Rudolph, 2001, p. 656). This understanding "was subsequently echoed by leading members of the ICTY itself and became a central component of its ideology" (Akhavan, 1998, p. 756). For instance, following the passing of Security Council Resolution 1503, which implemented a completion strategy for the ICTY, Chief Prosecutor Carla Del Ponte stated in an Address to the

U.N. Security Council on October 9, 2003: "By completing these investigations, ICTY will have proven that it worked impartially towards achieving justice, peace and reconciliation in the former Yugoslavia".

The Reality of Reconciliation

Unfortunately, at this point in time, the promise of the ICTY to promote reconciliation has been largely discredited. As Akhavan (1998, p. 770) notes: "Of course, even if the ICTY can establish a factual record of what happened, it cannot contribute to national reconciliation if this record is not recognized and internalized by the peoples of the former Yugoslavia".

An outreach office was created in 1999 through voluntary country donations. According to the ICTY website, it was meant "to bridge the divide separating the organisation in The Hague from the communities it serves in the states and territories that have emerged from former Yugoslavia". This was, perhaps, the most direct attempt to increase the Tribunal's ability to reach the Croatian public. Given that the trials were being held in The Hague and were very much removed from the daily lives of the average Croatian, this was an important step. Yet, the office is located at the outskirts of Zagreb behind barbed wire and guarded walls and is staffed by only one outreach officer. As the picture below shows, a cryptic graffiti of the word "Vukovar", referring to the eastern town held under siege by Serb forces and a symbol of the atrocities committed in Croatia, marks a wall protecting the facility (see Figure 1, below).

Information about the trials in general has been poorly disseminated: To the extent that peoples in the former Yugoslavia are denied access to the proceedings of the ICTY, the truth exposed through the judicial process may have no appreciable impact on interethnic reconciliation. Despite the importance attached to this truth-telling function, the proceedings of the ICTY remain somewhat inaccessible to peoples of the former Yugoslavia (Akhavan, 1998, p. 793).

The outreach office never made a valid effort to reach the Croatian people and explain what they were doing. In contrast to Bosnia and Serbia, ICTY hearings have not been broadcast in full on Croatian TV. "This has made it easier for politicians to manipulate popular perceptions of the process" (Cruvellier and Valiñas, 2006). According to Dr. Charles Tauber (2009), Head of Mission for Southeastern Europe of The Coalition for Work with Psychotrauma and Peace: "There was – and is – massive opposition by the politicians, not only to the ICTY but to any form of possible reconciliation. Nationalism still serves virtually all of the politicians of whatever ethnicity and thus reconciliation is counterproductive for them".

The reaction in 2007 to the ICTY verdict that convicted Mile Mrkšić and Veselin Šljivančanin, former senior officers in the Yugoslav People's Army, exemplified this tension. Mrkšić was sentenced to 20 years, and Šljivančanin to five years for their role in the murder and torture of over 200 Croat prisoners held in a Vukovar hospital. The third man accused was acquitted by the Tribunal Chamber. The rulings set off a widespread reaction among the public, who took to the streets to protest. The government

supported their reaction; the following day, Prime Minster Sanadaer condemned the verdict as a defeat for the Court, and sent a letter to the U.N. General Secretary expressing his "disappointment and consternation" with the "shameful ruling" (OSCE Spot Report, 2007).

Coinciding with the strong reaction the court has at times elicited among the Croatian public (one that has been encouraged by politicians and the media), there is also widespread disinterest in the Tribunal. For example, in July 2005, the head of the city council in Osijek (the largest city in eastern Croatia) came under scrutiny after allegations of war crimes surfaced. A poll conducted by the newspaper *Glas Slavonje* on July 31, 2005 found that 81 percent of respondents (all of whom were self-subscribers to the poll) believed the issue should not be pursued, reinforcing the impression that "many, if not most people, in Osijek and the rest of Croatia regarded Glavaš as a hero, not as a criminal". The same summer, the Ovčara trial began, yet coverage was far from front-page news.[4] Because most of the news in Croatia since 1991 has revolved around war topics, said the founder of a local Serb radio station, "people are sick of it" (interview with author, 27 July 2005). An assistant at the ICTY outreach center expressed concern that all interest in the trial would cease to exist once Croatia definitively secured EU accession (interview with author, 15 July 2005). Perhaps more realistically, many simply do not acknowledge the relevance of the ICTY to their own lives.

Stover (2004) looked at evidence to evaluate whether the ICTY was able to effectively connect with the public through those who had actually testified at the Tribunal. He found that courtrooms are, by nature, neither safe nor secure environments for recounting dramatic events. His study of 87 ICTY witnesses found that those who expected to receive appreciation from the lawyers were let down, cathartic feelings often faded upon their return to shattered communities, and witnesses experienced feelings of "helplessness, abandonment, and anger" when light sentences were handed down. For many witnesses, testifying "required an act of great courage", yet the Tribunal statute does not grant victims or witnesses specific rights, and information about the protective measures offered were not appropriately provided (Stover, 2004). Witness protection is a matter of concern in Croatian war trials, as fear and intimidation remains high (Cruvellier and Valiñas, 2006). Witnesses who testify face vilification in their own communities. Stover (2004, p. 119) concluded: "If potential witnesses come to regard their treatment as demeaning, unfair, too remote, or little concerned with their rights and interests, this neglect may hinder the future cooperation of the very people we are trying to serve". According to Tauber (2009), the ICTY has been so politicized by both sides that any cooperation is seen as quite risky and unsafe.

Fletcher and Weinstein (2002) argue that there is a communal engagement with mass violence left unaddressed by criminal trials. In their field research, they conducted interviews with judges and prosecutors in Bosnia-Herzegovina and found that all three ethnic groups in Bosnia (Bosniaks, Croatians, and Serbs) saw themselves as victims (Fletcher and Weinstein, 2000). This is because international criminal trials can have the effect of stigmatizing ethnic groups (Fletcher and Weinstein, 2004). A study done by Meernik (2005) attempted to find empirical evidence to affirm or deny the impact of criminal arrests and judgments of war criminals on ethnic violence. His study was also carried out in Bosnia, where he found little evidence to suggest that the ICTY had any positive impact on societal peace, and in some cases it appeared that ICTY actions inflamed ethnic tensions rather than contributed to cooperation or reconciliation. The controversy over General Ante Gotovina suggests that these authors' findings also hold true in Croatia.[5]

Gotovina became a symbol of Croatia's refusal to admit complicity in war crimes. In August 2000, a survey reported that over 78 percent of Croatian citizens "think that Croatia must not extradite its citizens if the Hague Tribunal requests it" and 60 percent polled believed the ICTY was "unfair" (Akhavan, 2001, p. 22). According to the article "No Gotovina, No Cash" in *Transitions Online* on March 21, 2005, polls put Croatian opposition to Gotovina's extradition prior to his capture as high as 70 percent. After Gotovina was finally arrested in December 2005, the national championship football team pledged to donate proceeds from their last match of the 2006 season to the Foundation for the Truth about the Homeland War, which raises money in support of Croats facing trial in The Hague; Gotovina was the presumed beneficiary (Hawton, 2006). Gotovina's trial, along with two other Croatian army Generals (Ivan Cermak and Mladen Markac) opened in March 2008. At that time, Merdijana Sadovic of the Institute for War and Peace Reporting suggested that the prevailing opinion in Croatia was that the Generals had been wrongly accused. In short, nationalist groups have been able to raise the cost of political cooperation by the Croatian government by "effectively designing a rhetorical strategy which equates the Tribunal's indictments against Croatia's war heroes with attacks on the dignity and legitimacy of the so-called Homeland war" (Peskin and Boduszyński, 2003, p. 1117).

Another attempt to make the ICTY more relevant for Croatians came in the form of a law passed in October 2003 that included provisions related to the transfer of proceedings from the ICTY to Croatia. It gave Croatia the ability to hear war crimes cases[6] and outlined various mechanisms for moving them there.[7] Trainings were instituted in May and June of 2004 to inform the Croatian judiciary of comparative aspects of Croatian and ICTY law (OSCE

Background Report). According to a report of the International Center for Transitional Justice, "monitoring organizations still consider the number and type of war crimes cases brought before Croatian courts to be unsatisfactory (cited in Cruvellier and Valiñas, 2006, p. 19). Zoglin (2005) highlights excessive trial delays, inefficiencies, unqualified staff, and a lack of political will and public support to try war criminals as major obstacles to Croatia's ability to try their own cases. This fits well with the observation that "legalist tactics for strengthening human rights norms can backfire when institutional and social preconditions for the rule of law are lacking. In an institutional desert, legalism is likely to be either counterproductive or simply irrelevant" (Snyder and Vinjamuri, 2003, p. 12).

That the ICTY has not been an effective means for societal reconciliation in Croatia is not an unexpected finding. We should continue to view war crimes trials as a valuable component of the transitional justice process. However, their utility in terms of reconciliation can only be evaluated in the context of receptivity in the communities they hope to reach. In Croatia, where strong existing nationalist sentiment was given a voice through trial indictments and verdicts, this notion was not adequately taken into account. Doing so would have required the Croatian government to have a plan to supplement activities in The Hague with local measures and the support of local actors also working on reconciliation. "As the ICTY has learned, trials do not exist in a vacuum and must be accompanied by public discussion and education" (Zoglin, 2005, p. 74). When the government is either unable or unwilling to initiate this discussion or enact programs to facilitate engagement with the trials in a way that might further societal reconciliation, that responsibility is left to local organizations.[8]

The Importance of Incorporating Local Level Participation

Generally speaking, scholars of international relations have begun to pay increasing attention to the role that non-state actors play in the international system (see, for example, Finnemore, 1996; Hall and Biersteker, 2002; Risse-Kappen, 1995; Risse *et al.*, 1999;). Non-governmental organizations are believed to occupy a primary role in world politics and domestic politics. They are frequently the main suppliers of services that governments are either unwilling or incapable of providing. Many provide social programs, advocate for underprivileged groups, and give attention to less "popular" issues on the national or international agenda. In this role, they form a link between the government, and the population.

The term used to describe the existence of strong, permanent linkages is "civil society". According to Belloni (2001, p. 168), civil society can be

understood as, "a sphere where the power of the state is limited by the capacity of individuals to organize themselves collectively". Authors have clasped onto the idea that civil society enables states to jumpstart desirable processes such as democratic participation, respect for human rights, and enhancement of other global social norms such as environmental protection. The relevance (and importance) of grassroots activism in reconciliation processes has not been ignored. Over the last decade there has been a growing recognition and confidence in the potential for civil society to play an important role in deeply divided societies (Belloni, 2001).

Locally-based programs, or grassroots approaches are often seen as promising for the promotion of reconciliation because they operate at the community level and are therefore more attuned to the unique demands of that community. Halpern and Weinstein (2004, p. 567) write: "To be effective, reconciliation must arguably begin at the level of the individual—neighbor to neighbor, then house to house, and finally, community to community". Many authors are also in agreement that it is important to pay adequate attention to the unique cultural practices of the society in question when working towards reconciliation. For example, writing about the case of Sierra Leone, Shaw (2005) suggests that the goals of the national truth and reconciliation commission actually conflicted with cultural expectations of justice and reconciliation, perhaps even undermining its effectiveness. In another study on the effectiveness of the "truth-telling" objective in Sierra Leone's truth and reconciliation commission, the author argues that truth was not told for a variety of reasons, one of which was due to the fact that "public truth-telling – in the absence of strong ritual inducement – lacks deep roots in the local cultures of Sierra Leone" (Kelsall, 2005, p. 363).

Similarly, Theidon's (2006, p. 456) field research in Peru leads her to conclude that "reconciliation is forged and lived locally, and state policies can either facilitate or hinder these processes". In Rwanada, the Gacaca courts are seen as holding greater promise for reconciliation than the International Criminal Tribunal for Rwanda because they are based on local models of restorative justice (Drumbl, 2000). International organizations like the U.N. and the International Center for Transitional Justice acknowledge that any transitional justice mechanism must be adapted in response to unique circumstances. However, even these adaptations tend be somewhat prescribed because they are based on prior knowledge and lessons learned.

Many authors have elaborated eloquent theories of how both bottom-up and top-down approaches are needed if reconciliation is to be achieved. For example, Lederach (1997) proposes that we think of leadership in conflict populations as a pyramid. At the top, leadership is focused on negotiations and cease-fires, and is led by single mediators; middle-range leadership includes those working in respected education, religious, ethnic and

humanitarian sectors on problem-solving and conflict resolution; grassroots leaders are locals, who work on grassroots training, prejudice reduction and psychosocial work. Afzali and Colleton (2003) classify different paradigms of coexistence projects: those that focus on dispute resolution and conflict management, social services, income-generating projects, and reconciliation projects. They point out that there are numerous ways to promote coexistence, each targeting different audiences. They, too, distinguish between top- and bottom-level approaches: "As top-down efforts resolve the fundamental political and legal concerns, bottom-up efforts can provide vital reinforcement and actualization of coexistence on a more immediate and more personal level" (Afzali and Colleton, 2003, p. 15). Johan Galtung (2001, p. 19) outlines twelve unique approaches to reconciliation, including the juridical/punishment and historical/truth commission approach, but points out that, "taken singly, none of the approaches is capable of handling the complexity of the 'after violence situation.'"

My intention is not to reiterate their work, but to suggest that their insight – the importance of including multiple levels of reconciliation approaches – is lost when national scale policies are implemented and carried out. The following questions need to be addressed prior to implementation of large-scale national policies: How will state level mechanisms work in tandem with local activists and culturally accepted reconciliation mechanisms? How will the government support initiatives that integrate national transitional justice policies with local community outreach and support local organizations? To what degree will the international community support these efforts?

Effective implementation of national policies relies on grassroots efforts; even the best-planned national programs need local partners. Local NGOs are best able to deal with the challenges posed by the uniqueness of different communities. In Croatia, NGOs "have helped create a public space for a public debate on the human rights abuses in the country" (Cruvellier and Valiñas, 2006, p. 27). For instance, The Center for Peace, Osijek, a non-profit organization, has provided legal advice to over 36,000 clients since opening in 1993. Because they operate at the societal level, their lawyers have a level of knowledge about specific populations that even the best-designed state run programs, or even a large international NGO would not be able to achieve. Their work has provided the voice of advice in the region on legal matters, including on complex amnesty laws that kept many Serbs from returning to the area. They also helped write the legislation for the creation of a government funded legal aid service.

As a group, and as Kosic and Byrne (this volume) note, NGOs in Croatia face substantial problems (particularly in the Slavonia region), including lack of governmental support, lack of know-how (in terms of

running an effective and efficient NGO), lack of funds, and public skepticism. Problems of segregation, intense competition among organizations, and corruption also exist. Disagreements between Serb and Croat associations also pose a serious problem (Cruvellier and Valiñas, 2006). Of these four the most critical issue is lack of support from the Croatian government. "State funding for NGO development declined sharply, from approximately E3 million in 2001 to E2.3 million in 2002 and remained at E2.3 million in 2003" (Stabilization and Association Report, 2003). The NGO Youth Peace Group Danube had the opportunity to participate in a government-sponsored dialogue that resulted in an agreement on the part of the government to implement a youth policy called the National Action Plan for Young People in 2003, comprised of 110 measures. As of summer 2005, only one of these measures had been financed, though others were supposedly in the process of implementation (interview with author, 1 July 2005).

Many of the NGO workers I spoke with commented on the lack of governmental recognition of the important services they provide as well as an overall lack of rhetorical support. An employee from the NGO Europe House Vukovar said that the government does not seem to be conscious of the important role that NGOs play (interview with author, 24 June 2005). A project coordinator at another NGO had a more cynical view: "They [the government] produced the war, they produced the trauma, and now they manipulate the trauma" (interview with author, 28 July 2005). Those organizations that attempt to work towards reconciliation face the very difficult task of trying to prove their worth. An NGO worker from the Nansen Dialogue Center illustrated this point when he explained that those organizations that fund the re-building of houses get to point to a structure when they are finished and say, "I built that". The resulting product for those working on reconciliation is often difficult to recognize or quantify.

A U.N. report titled Lessons Learned *(1998, p. 39) regarding the United Nations' Transitional Authority for Eastern Slavonia (UNTAES) mission states: "The civil society [sic] in countries in conflict are an important mechanism for national reconciliation and the United Nations needs to establish early dialogue and cooperation with them and where possible strengthen them". In spite of this, the experience of many NGOs is that while U.N. Agencies claim to engage in dialogue with the NGOs, they do not actually do so. Rather, they take on an attitude of superiority which is most often not based on good grassroots contact (Tauber, 2009).*

Dusanka Ilić, President of The Bench We Share Association offers an example of how NGOs can directly facilitate reconciliation. She has personally led and/or organized hundreds of groups from local communities where individuals from diverse backgrounds come together again and talk. While this is an ideal situation for promoting reconciliation, it will never be

feasible on a national scale unless there is broad base support from both the government and the international community. Tauber (2009) recalls that at one point in 1997, the Croatian government made an agreement with UNTAES to do this but after a few meetings the scheme quickly died.

The international community could help to overcome some of these problems by encouraging capacity building measures and education programs (Zoglin, 2005). Fletcher and Weinstein's (2004, p. 43) research in Bosnia and Herzegovina found that international trials need to "support the development of parallel teaching and rehabilitative structures addressed to domestic audiences. In this manner, international trials might contribute to achieving justice in its broadest sense. However, this potential has remained largely untapped". When trials are transferred without appropriate training mechanisms and community education programs in place, as in Croatia, there is a potential to actually undercut the contributions to reconciliation that a tribunal could make. In Croatia, there was never a holistic plan for reconciliation, no step-by-step plan that sought to address issues of justice, promote dialogue and trauma healing. UNTAES did not begin working on reconciliation until the last three months of their mission. Tauber states: "I have been told by a number of local and international officials that reconciliation and trauma healing are 'peripheral'. The same is true of such ideas as restorative justice, which I believe would be highly appropriate in these contexts. The point is that these concepts quite simply are off the radar".

Conclusion

Reconciliation is not a modern phenomenon, but one that can be found across all times and places (Borneman, 2003). What are unique are attempts at atonement, not at the individual or societal level but on a national scale; such efforts are largely applauded internationally. Reconciliation, through the use of both trials and truth commissions, is seen as attentive to needs of individuals. However, without an explicit plan to engage individuals and their communities, these national-scale policies will not result in "trickle-down" reconciliation.

According to Tauber, as well as other professionals in the field, the collective recovery from the war in Croatia has been virtually non-existent. The real harm caused by Croatia's failure to address this trauma through effective reconciliation mechanisms is the transmission of trauma and prejudices to the next generation, and the potential for further violence. Scholars who write on trauma believe that, if left unaddressed, the ramifications of individual and collective trauma can have severe effects on individuals and societies, as well as be passed down from generation to

generation (for more on trauma see Lewis-Herman, 1992; Abu-Nimer, 2001; Chayes and Minow, 2003; Stover and Weinstein, 2004; Volkan, 1997). Currently, high levels of ethnic tension remain in Croatia, and the public is still "ill-prepared, ten years after the end of the war, to full face its legacy" (Cruvellier and Valiñas, 2006, p. 36).

Academic interest in reconciliation is an encouraging step towards understanding how to eliminate violent conflict. In addition, the promotion and use of mechanisms such as international tribunals and truth commissions which attempt to achieve reconciliation offer promise that this interest is, with increasing frequency, accompanied by action. Practically speaking, however, not enough attention has been given to thinking about how state-wide policies such as these can best achieve reconciliation. Acknowledging the importance of bottom-up approaches and actively soliciting the participation of local organizations has enormous potential to improve the success of national-scale reconciliation projects.

The ICTY is set to close in 2010. The possibility for the court to contribute to reconciliation over the course of its seventeen years in existence was squandered due to a lack of foresight and lack of initiative. National level mechanisms must be considered with local level politics in mind. There is currently an international expectation of transitional justice in countries emerging from violent pasts; as this norm continues to strengthen, it is important that one-size-fits-all mechanisms are not advocated or initiated simply because they are "supposed to". Furthermore, national level mechanisms must be integrated with grassroots efforts working towards the same goals. Grassroots efforts must be appropriately funded and supported by both the national government and the international community. The academic dialogue on transitional justice revolves around whether or not truth commissions and/or trials and tribunals can achieve, or have achieved, reconciliation. We now need to widen the discourse in order to pay more specific attention to how individual and community level participation – the levels on which reconciliation actually needs to occur – can be incorporated into these mechanisms.

References

Abu-Nimer, M. (ed.). *Reconciliation, Justice, and Coexistence*. Lanham: Lexington Books, 2001.

Afzali, A. and Colleton, L. "Constructing Coexistence." In A. Chayes and M. Minow (eds.), *Imagine Coexistence*. San Francisco: Jossey-Bass, 2003, 3-20.

Akhavan, P. "Beyond Impunity: Can International Justice Prevent Future Atrocities?" *The American Journal of International Law*, 2001, 95, 7-31.

Akhavan, P. "Justice in the Hague, Peace in the Former Yugoslavia? A commentary on the United Nations War Crimes Tribunal." *Human Rights Quarterly,* 1998, 20, 737-816.

Aldana-Pindell, R. "An Emerging Universality of Justiciable Victims' Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes." *Human Rights Quarterly*, 2004, 26, 605-685.

Belloni, R. "Civil Society and Peacebuilding in Bosnia and Herzegovina." *Journal of Peace Research*, 2001, 38 (2), 163-180.

Borneman, J. "Why Reconciliation? A Response to Critics." *Public Culture*, 2003, 15 (1), 199-208.

Buruma, I. *The Wages of Guilt*. Detroit: Phoenix, 2002.

Chayes, A. and Minow, M. (eds.). *Imagine Coexistence*. San Francisco: Jossey-Bass, 2003.

Cruvellier, T. and Valiñas, M. "Croatia: Selected Developments in Transitional Justice." *International Center for Transitional Justice,* Occasional Paper Series, 2006, December.

Doxtader, E. "Making Rhetorical History in a Time of Transition: The Occasion, Constitution, and Representation of South African Reconciliation." *Rhetoric and Public Affairs*, 2001, 4 (2), 223-260.

Drumbl, M. "Punishment, Postgenocide: From Guilt to Shame to *Civis* in Rwanda." *New York University Law Review*, 2000, 75 (5), 1221-1326.

Fletcher, L. E. and Weinstein, H. M. "A world unto itself? The application of international justices in the former Yugoslavia." In E. Stover and H. M. Weinstein (eds.), *My Neighbor, My Enemy,* Cambridge: Cambridge University Press, 2004, 29-48.

Fletcher, L. E. and Weinstein, H. M. "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation", *Human Rights Quarterly*, 2002, 24, 573-639.

Fletcher, L. E. and Weinstein, H. M. "Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors", *Berkeley Journal of International Law*, 2000, 18.

Finnemore, M. *National Interests in International Society*. Ithaca: Cornell University Press, 1996.

Galtung, J. "After Violence, Reconstruction, Reconciliation, and Resolution: Coping with Visible and Invisible Effects of War and Violence." In M. Abu-Nimer (ed.), *Reconciliation, Justice, and Coexistence*. Lanham: Lexington Books, 2001, 3-24.

Hall, R. B. and Biersteker, T. J. *The Emergence of Private Authority in Global Governance*. Cambridge: Cambridge University Press, 2002.

Halpern, J. and Weinstein, H. M. "Rehumanizing the Other: Empathy and Reconciliation." *Human Rights Quarterly*, 2004, 26, 561-583.

Hannum, H. "Human Rights in Conflict Resolution: The Role of the High Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuilding." *Human Rights Quarterly,* 2006, 28, 1-85.

Hawton, N. "Croatia champs aid Hague Suspects." *BBC News*, 13 May 2006. http://news.bbc.co.uk/2/hi/europe/4768605.stm

Kaminski, M., Nalepa, M. and O'Neill, B. "Normative and Strategic Aspects of Transitional Justice." *Journal of Conflict Resolution,* 2006, 50 (3), 295-302.

Kelsall, T. "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone." *Human Rights Quarterly,* 2005, 27, 361-391.

Landsman, S. "Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions." *Law and Contemporary Problems*, 1996, 59, 81-92.

Lanegran, K. "Truth Commissions, Human Rights Trials, and the Politics of Memory." *Comparative Studies of South Asia, Africa, and the Middle East*, 2005, 25 (1), 111-121.

Leebaw, B. "The Irreconcilable Goals of Transitional Justice." *Human Rights Quarterly*, 2008, 30, 95-118.

Leebaw, B. "Legitimation or Judgment? South Africa's Restorative Approach to Transitional Justice." *Polity,* 2003, 34 (1), 23-51.

Lederach, J. P. *Building Peace*. Washington, D.C.: United States Institute of Peace Press, 1997.

Lewis-Herman, J. *Trauma and Recovery*. New York: Basic Books, 1992.

Meernik, J. "Justice and Peace? How the International Criminal Tribunal Affects
Societal Peace in Bosnia." *Journal of Peace Research*, 2005, 43, 271-289.

Méndez, J. E. "In Defense of Transitional Justice." In M. McAdams (ed.), *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press, 1997, 1-26.

Meron, T. "Reflections on the Prosecutions of War Crimes by International Tribunals." *The American Journal of International Law*, 2006, 100, 551-579.

Minow, M. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.

O'Flaherty, M. "Sierra Leone's Peace Process: The Role of the Human Rights Community." *Human Rights Quarterly*, 2004, 26, 29-62.

OSCE Background Report: Domestic War Crime Trials 2003, published 22 June 2004.

OSCE Spot Report: Reactions in Croatia to the ICTY Verdict on the "Vukovar Three," published 2 October 2007.

Peskin, V. and Boduszyński, M. P. "International Justice and Domestic Politics: Post Tudjman Croatia and the International Criminal Tribunal for the Former Yugoslavia", *Europe-Asia Studies,* 2003, 55 (7), 1117-1142.

Risse, T., Ropp, S. C. and Sikkink, K. (eds.). *The Power of Human Rights*. Cambridge: Cambridge University Press, 1999.

Risse-Kappen, T. (ed.) *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures, and International Institutions*. Cambridge: Cambridge University Press, 1995.

Roht-Arriaza, N. and Gibson, L. "The Developing Jurisprudence on Amnesty." *Human Rights Quarterly,* 1998, 20, 843-885.

Rotberg, R. I. and Thompson, D. (eds.). *Truth V. Justice*, Princeton: Princeton University Press, 2000.

Rudolph, C. "Constructing an Atrocities Regime: The Politics of War Crimes Tribunals." *International Organization,* 2001, 55, 655-691.

Schabas, W. "The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone." *Human Rights Quarterly,* 2003, 25, 1035-1066.

Scheffer, D. J. "International Judicial Intervention." *Foreign Policy,* 1996, 102, 34-51.

Sharp, J. M. O. "Dayton Report Card", *International Security,* 1997, 22 (3), 101-137.

Shaw, R. Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone", *United States Institute of Peace*, 2005*,* Special Report 130, February.

Snyder, J. and Vinjamuri, L. "Trials and Errors: Principle and Pragmatism in Strategies of International Justice." *International Security,* 2003, 28 (3), 5-44.

Stabilisation and Association Report, Staff Working Paper, Croatia, Commission of the European Communities, Brussels, 26 March 2003.

Stover, E. "Witnesses and the promise of justice in The Hague." In E. Stover and H. M. Weinstein (eds.), *My Neighbor, My Enemy*. Cambridge: Cambridge University Press, 2004, 104-120.

Stover, E. and Weinstein, H. M. (eds.). *My Neighbor, My Enemy*. Cambridge: Cambridge University Press, 2004.

Tauber, C. Interview with author, 1/25/2009, via email communication.
Thomas, W. "The New Age of Assassination." *SAIS Review*, 2005, 25 (1), 27-39.
Teitel, R. G. *Transitional Justice*. Oxford: Oxford University Press, 2000.
Theidon, K. "Justice in Transition." *Journal of Conflict Resolution,* 2006, 50 (6), 433-457.
Volkan, V. *Bloodlines: From Ethnic Pride to Ethnic Terrorism*. New York: Farrar Straus and Giroux, 1997.
Zoglin, K. "The Future of War Crimes Prosecutions in the Former Yugoslavia: Accountability or Junk Justice?" *Human Rights Quarterly*, 2005, 27, 41-77.

Endnotes

[1] Field research was conducted under the guidance of the Dutch-based non-profit organization, The Coalition for Work with Psychotrauma and Peace between June 25 and August 12, 2005.

[2] For example, the United States Institute for Peace Balkans Initiative has a program entitled "Bosnian Truth and Reconciliation" that is working towards submitting draft legislation to the parliament. It is also important to point out that Serbia and Montenegro did establish a truth commission in 2001, but it went largely unnoticed and quickly fell apart. The likelihood that Croatia will implement a truth commission is very low; a truth commission would demand that Croatians admit a degree of complicity in committing atrocities, a position that goes against the Croatian attitude toward the war as put forward by Tudman and the leadership of the HDZ and promulgated by the media that it was almost a holy war.

[3] General Rahim Ademi, for example in 2001, and former Army Generals Cermak and Markac in 2004. In 2004, the government turned over Army General Mirko Norac, and facilitated the transfer of seven additional voluntary surrenders to The Hague.

[4] Ovčara is the location of a mass gravesite about ten kilometers west of the city of Vukovar, where 200 civilians were purportedly taken from the Vukovar Hospital and shot in October of 1991 by JNA soldiers.

[5] Gotovinia is accused of responsibility for the murder of 150 Serb civilians and the expulsion of 150,000 more in 1995.

[6] Trying perpetrators for War Crimes is the only criminal recourse the Croatian government has due to a 1996 law negotiated between the Croatian Department of Justice and the Republika Sprska Krajina (RSK) which granted amnesty to all who had been sentenced (in absentia) for armed rebellion.

[7] Law on the Implementation of the Statute of the International Criminal Court and Criminal Prosecution for Acts against War and Humanitarian International Law.

[8] It is important to point out that the international community should also be held responsible to a certain extent. UNTAES had a special ability to begin this process

during its two-year presence in Eastern Croatia. Similarly, foreign governments that were heavily involved in the region had enough political clout to demand that the Croatian government do the same and political entities such as the European Union have the unprecedented ability to dictate that Croatia implement such measures even today. As important as this is, it is not the central focus of this paper.