Post-Conflict Justice: The Role of the International Community

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Affiliations are listed for identification purposes only. Participants attended as individuals rather than as representatives of their governments or organizations.

Conference Report

The international community is becoming increasingly involved in assisting war-torn nations in establishing and maintaining peace and rebuilding their societies. Traditionally, the international community focused on the military aspects of peace operations, which generally took the form of multinational interpositional forces. Keeping the peace, however successful in providing physical security in the immediate post-conflict environment, does not by itself establish the foundations for enduring and just peace. Nor does it reduce the threat of violent conflict in the future. Instead, stability will depend on fostering genuine national reconciliation and a sense of justice for past wrongs along with the establishment of the means with which to solve future domestic conflict peacefully and within the bounds of the law. Since the end of the Cold War there has been a growing appreciation among analysts and practitioners of the importance of rehabilitating defunct police, judicial, and penal systems—areas that earlier had received little or no attention. Accordingly, policymakers increasingly advocate that the international community act simultaneously on what is occasionally referred to as the "Triad" of peace-building: ensuring post-conflict public security (i.e., police), rehabilitating judicial systems and dealing with war crimes and criminals, and creating functioning penal systems. Often this involves direct intervention in the internal affairs of states rather than conflicts between states and thus risks overriding traditional inhibitions found in the UN Charter.

A growing number of nongovernmental organizations (NGOs), international organizations, and individual donor governments are expanding their scope of activities to assist nations in rehabilitating their police forces. However, there has been considerably less attention paid to judicial systems and still less to improving penal systems. International judicial assistance efforts—including advising or serving on truth commissions, training lawyers and judges, prosecuting war criminals, or by other means—have either not lived up to expectations or have been wholly inadequate. As international intervention in support of post-conflict justice becomes more common (and opportunities for it will no doubt increase), it behooves policymakers, analysts, and practitioners to take a closer look at which actors in the international community are doing

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The rapporteurs prepared this report following the conference. It contains their interpretation of the proceedings and is not merely a descriptive, chronological account. Participants neither reviewed nor approved the report. Therefore, it should not be assumed that every participant subscribes to all recommendations, observations, and conclusions.

what and what it is they hope to achieve. Fundamental questions need to be addressed, such as: How can a determination be made about whether a country emerging from violent conflict needs international assistance in support of post-conflict justice? What should guide the international community's decision to lend assistance? When should that assistance be rendered, and how? How can the activities of the various actors be improved and better coordinated? Can short-term assistance to restore order become long-term assistance to rebuild nations? When is the job done? The policymaking community is only in the early stages of exploring these critical issues.

To help fill the gap in the policy debate, the Stanley Foundation organized a conference that included participants from NGOs, national governments, international organizations, and academia with extensive experience in peacekeeping, policing, judicial rehabilitation, and international criminal law. Drawing on a diversity of perspectives, the group engaged in a lively critique of post-conflict justice efforts to date and recommended ways to improve the international community's approach to assisting countries with their post-conflict justice needs.

Who Is the "International Community" and Who Is Doing What?

As a preliminary matter, participants explored what is meant by the "international community." Although it was beyond the scope of the conference to delve deeply into this issue, some discussion was necessary since this phrase is often misused, often implying an imaginary monolithic entity who is making decisions to lend assistance or intervene in a crisis.

The phrase "international community" in reality loosely describes many types of actors, most typically the coalitions of (or even individual) governments and the United Nations, particularly the Security Council, Secretariat, and its ad hoc war crimes tribunals. The lack of a clear definition also impacts directly on discussions relating to the will of the international community to act (or not) on a particular issue. Depending on the crisis in question, participants noted, the identity of the "real" players varied. For example, in Haiti, the "international community" was, in essence, the United States with help from Canada and the United Nations. In Cambodia, it was a combination of the five permanent members of the UN Security Council in coordination with the UN Secretariat, Japan, and the Association of South East Asian Nations (ASEAN). Also, especially for purposes of this conference, the "international community" includes the UN specialized agencies, regional organizations, and NGOs that are now active in relief, rehabilitation, human rights and, in particular, judicial reconstruction, civilian policing, criminal justice, and other post-conflict justice matters. Therefore, the "international community" is an amalgam of these actors. Depending on the country in question and the nature of the post-conflict needs, the cast of characters—and the activities they engage in—may change.

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While the increase in the number of actors engaged in these areas is considered positive, the ability of the international community to provide coordinated, efficient, and effective assistance is an issue that concerned many participants. In some countries, participants

described a veritable "circus atmosphere" of UN agencies, international organizations, NGOs, and individual donor governments all engaged in the often uncoordinated monitoring of human rights, policing assistance, judicial rehabilitation, investigating war crimes, training police, and administering prisons. Given the broad scope of activities and the sheer number of actors, some participants observed that the groups all too often duplicate effort and even compete over resources and areas of responsibility.

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Some of the UN agencies involved include the Office of the UN High Commissioner for Human Rights (UNHCHR), the Geneva-based UN Crime Prevention and Criminal Justice Division (CPCJD), the UN Development Program (UNDP), as well as three departments at UN headquarters in New York: the Department of Humanitarian Affairs (DHA); the Department of Peace-keeping Operations (DPKO), and the Department of Political Affairs (DPA). Regional organizations that are increasingly active include the Organization of American States, the Organization for African Unity, the Organization for Security and Cooperation in Europe, and the North Atlantic Treaty Organization (NATO). Notable NGOs that have joined the fray include the American Bar Association's Central and Eastern European Law Initiative (CEELI) and the International Human Rights Law Group as well as traditional actors such as Amnesty International, Human Rights Watch, etc. Finally, many individual governments have lent their civil servants and provided development funds to assist in rehabilitating criminal justice systems, police training, and prison building. Within the United States, the Agency for International Development, the Department of Justice's International Criminal Investigative Training Assistance Program, and the Department of State's Bureau of Narcotics and Law Enforcement are the most prominent agencies lending their expertise and providing material assistance.

Within the United Nations, there is a need to restructure and consolidate the various agencies and programs responsible for civilian police training and designing and supervising judicial and legal reform. In theory, the UNHCHR and the CPCJD, both in Geneva, are the UN entities concerned with crimes prevention and criminal

justice. Unfortunately, these offices rarely conduct field operations. The UN DPKO in New York usually directs on-the-ground police training and supervision of judicial reconstruction operations as well as other activities. Moreover, the other offices are largely underfunded, ineffective, or irrelevant, in the opinion of some participants.

Politics and Justice

Participants generally agreed that the international community's decision making with respect to the nature and extent of post-conflict justice needs is governed more often by geopolitical considerations than by notions of international law, ethics, and morals. Debate centered on whether these political influences could be minimized and, if so, how.

Participants disagreed on when the international community should engage in peace operations. While some advocated participation only if it is within (or does not conflict with) the national interest, others saw a role for the international community if the international rule of law was violated. The former tended to focus on strategies and outcomes that reflected primarily what is politically feasible and mission possible. The latter advocated building a global overlay of institutions, laws, and norms that would reframe the international approach to justice and even obligate certain responses for specified scenarios (e.g., for genocide). The various approaches, each of which is entirely valid, at times increased the difficulty of arriving at a group consensus on some issues.

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One participant maintained the international community could and should strive to "insulate justice from political considerations" at least with respect to the most heinous of crimes; i.e., war crimes, crimes against humanity, and genocide. For these crimes, impunity simply should not be tolerated regardless of the circumstances. Nations should seriously con-

sider adopting an international convention in which they would pledge not to use immunity from prosecution by international tribunals as a bargaining chip in negotiations to facilitate a transfer of power from the interim "criminal" regime to an international entity. By this instrument, signatory states would pledge as well to ensure that perpetrators of these crimes will be held accountable (presumably by either an international or a national criminal tribunal).

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Others characterized this position as "maximalist" and were skeptical of its viability. They believed political considerations are inescapable and have, and always will, shape the international response. Although the international community may weigh the needs of the country requiring assistance, the interests of the international community (or of its more influential members) ultimately determine whether assistance will be forthcoming. For example, one participant noted, in Haiti the international community intervened not only to protect Haitian human rights or the international rule of law but to create a stable environment in order to stem the waves of Haitian immigrants who were seeking asylum in the United States. Similarly, the international community opted not to intervene in either Liberia or Sri Lanka in recent years because Western countries had no interest in staving off the hostilities which warranted taking risks and committing the resources required. Although the human rights and other abuses were severe and, in the opinion of one participant, the international community could have made a difference, the conflicts had a negligible impact on the national interest of prominent countries within the international community. Minimal aid was therefore offered. Thus "internationalist" approaches aimed at formally obligating certain responses for specified crimes are not apt to be viable.

Public Security, Judicial Rehabilitation, and Justice

The participants focused primarily on the difficulties of civilian policing in post-conflict environments and the problems—both philosophical and practical—of rehabilitating justice systems. They

also critiqued the international community's efforts to bring war criminals to justice and weighed the advantages and disadvantages of the range of accountability mechanisms that have been employed thus far and gauged the extent to which they have actually fostered national reconciliation and a just peace.

In the aftermath of violent civil strife, the international community should work simultaneously on civilian policing, rehabilitating the criminal justice system, and dealing with war crimes and criminals. Some tasks, such as separating warring factions and restoring public security, can be completed relatively quickly. For other tasks (e.g., accountability for war crimes and institution-building), the international community will likely only be able to provide stopgap measures while establishing the foundation for the country to receive more comprehensive assistance in the future.

Immediate Post-Conflict Objective: Public Security

Participants agreed that public security must be established before the international community attempts any other tasks of post-conflict nation-building. Preferably, law enforcement functions would be undertaken by the national government. But the international community is usually confronted with nations in different states of disarray. For example, in Somalia, there was not a "state" but a constellation of warlords vying for control. Similarly, Haiti possessed the rudimentary elements of a state, but its decrepit public institutions had all been established and controlled by the ousted discredited regimes of the past. In Bosnia, each of the factions has established its own institutions, all of which share the heritage of state repression. Depending on the degree of societal disintegration, international military peacekeepers and UN Civilian Police (Civ-Pol) have assumed de facto, if not de jure, authority over law enforcement functions.

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Civ-Pol forces have increasingly come to complement military peacekeeping forces in recent years, forming an integral part of post-conflict peace operations. By assuming some of the tasks of national civilian police forces, Civ-Pol forces bridge a "public security gap" until a local professional force is recruited and trained

to assume its proper role. They also enable military operations to wind down.

Without an adequate criminal justice system, public security is compromised even if there is a police force.

International law enforcement assistance programs (including Civ-Pol) have been plagued by a number of problems. Perhaps the most significant with respect to post-conflict justice is that military peacekeepers, international police, and human rights monitors must operate in environments where the local criminal justice system has been decimated or simply no longer exists. Detainees, once arrested, need to be dealt with by a functioning judiciary and a penal system; i.e., prisons to house the detainees and the lawyers, judges, and court administrators to process them. Without an adequate criminal justice system, public security is compromised even if there is a police force. In Somalia, for example, the international community helped reestablish a rudimentary police force, but the country lacked a judicial system. The Australian government attempted to fill the void in one geographic location, but prisoners languished for months before charges were even made against them. Eventually, many Somali prisoners were released because there had been no judicial review of their confinement.

The United States faced a similar problem in Haiti. Originally the rule of engagement for US military personnel did not include arrest of common criminals. Then CNN televised US military personnel standing aside while violent Haitian-on-Haitian crimes occurred directly in front of them. Under pressure, the Clinton administration decided to permit its soldiers to make arrests under such circumstances (which they did) and assist the Haitian police. However, given the absence of adequate prisons, the US military had to incarcerate suspects in severely crowded prisons that did not meet even minimal international health standards and where rampant human rights violations occurred. When the poor prison conditions were publicized by a member of the US armed forces, American troops were accused of violating Haitian human rights for having used such prisons. Under the resulting uproar, US forces released all detainees except those that presented a direct threat to US troops. Moreover, the judicial system was in such disarray that

almost no detainees were tried. Eventually, many Haitians arrested by the interim police security force (which were supervised by US-led international police monitors) also had to be released under the governing Napoleanic code. While strong international assistance for the police began immediately, it took a year before a weak, faltering judicial assistance program began. Haiti is a clear illustration of the assertion that without the other two legs (judiciary and prisons) of the "Triad," a police force cannot function effectively and public security is compromised.

Participants also discussed the confusion regarding the division of labor between military peacekeeping and Civ-Pol forces. Theoretically, the functions of peacekeepers and civilian police are separate. In practice, however, their functions have been blurred. Few UN Security Council resolutions calling for peace operations provide guidance regarding the division of labor and authority (e.g., police powers) between the two forces. This is further complicated by the lack of advance planning, as well as coordination on the ground, between the different nationalities composing the multinational forces. But not all participants believed this was a problem. A few were of the opinion that a "firewall" between peacekeepers and civilian police was not practicable given the fluid context in which they operate, nor was it necessarily desirable. At a minimum, the UN Security Council should be cognizant that because peacekeepers are not "occupying forces" in the traditional sense, their powers and duties need to be more carefully outlined at the outset. It was noted, however, that because only military forces have surge capabilities, they will need to provide public security immediately until Civ-Pol can be deployed. Even after Civ-Pol arrives, there may be an initial period of danger that warrants close military support, perhaps as liaison officers.

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Participants lamented the shortcomings of some recent Civ-Pol operations. They agreed that the Civ-Pol office in the UN DPKO is understaffed, underfunded, and suffering from second-class status in relation to their military counterparts. Until recently, the competence,

professionalism, and skill of international Civ-Pol varied greatly. While some countries recruited excellent policemen for the job, others recruited individuals with little or no experience in community policing, training in human rights, or familiarity with international law. Fortunately, UN DPKO standards have been toughened and enforced. Although it is true that those who do make the cut are primarily from Western industrialized countries, police from some Western European countries have not always performed as expected. To make up for the shortfall, some participants proposed that the UN DPKO develop a roster of several hundred competent retired military police and other law enforcement personnel who would be "on call." Part of the difficulty in recruiting enough Civ-Pol is the hesitancy of donor governments in sending their unarmed cops into harm's way. Unless the police forces can be armed or there is direct military support in dangerous environments, the police understandably will continue to assume a defensive, low-key and, therefore, ineffective approach to their work.

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Judicial Rehabilitation

Justice systems are among those institutions that suffer most during violent internal conflict. International assistance is often needed on many fronts to rehabilitate, or create from scratch, independent judiciaries. Participants agreed that the international community should strive to rehabilitate judicial systems in a manner that is consistent with local legal traditions. Essential to this process is local input from the government (assuming one exists and is receptive) of the country in question and from local NGOs. However, it is often the case that the justice system in existence before the outbreak of violence was weak, corrupt, or dependent for its existence on political power bases. Under these circumstances, what should the international community rehabilitate and how? Against what standards should the international community measure the worth of a judicial system? Are there identifiable international standards of an independent judiciary? If so, how can the international community preserve some aspects of the existing legal system and discard others that are not consonant with inter-

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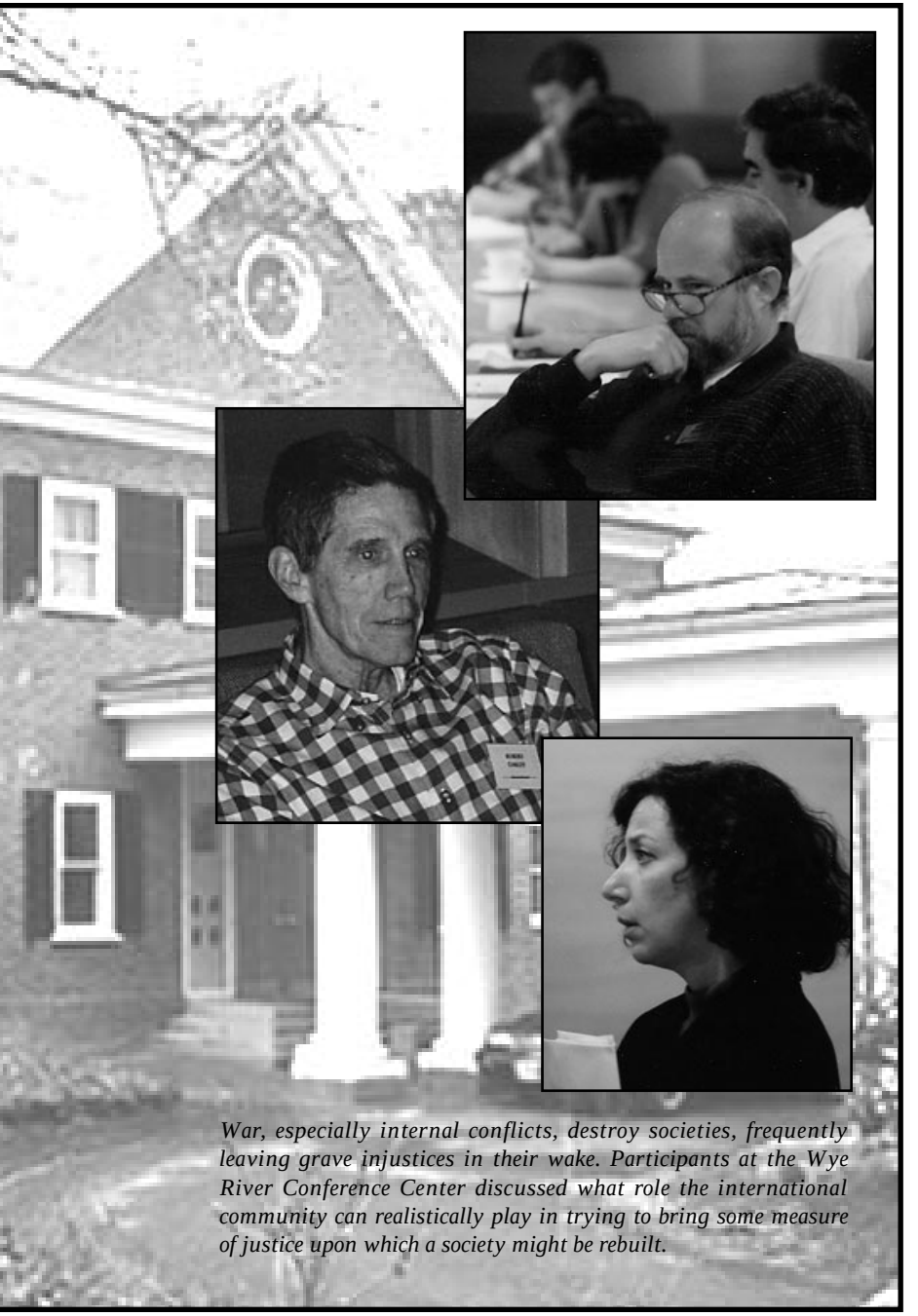

War, especially internal conflicts, destroy societies, frequently leaving grave injustices in their wake. Participants at the Wye River Conference Center discussed what role the international community can realistically play in trying to bring some measure of justice upon which a society might be rebuilt.

national standards? To what extent should the international community attempt to shape a judicial system to mirror those standards?

A few participants maintained that there are clear, objective international standards of judicial independence against which the health of judicial systems can be measured. These universal standards are generally accepted to mean the absence of political interference in judicial decision making, the preservation of the rights of parties to the proceedings, freedom of association of judges, minimum standards for qualification for judges, conditions of judges' service and tenure, and immunity from prosecution for judges' decisions. Individuals and organizations working to rehabilitate the defunct judicial systems of war-torn nations should rely for guidance on these universally accepted standards. Advocates of this approach assert that measuring adherence to, and deviations from, these standards can be a straightforward determination.

Other participants were less certain, and questioned whether these, or any other, international standards are truly objective and universally accepted. Is the international community (or, perhaps more accurately, its dominant Western members) essentially reshaping foreign legal systems to mirror their own in the name of preserving international standards? Moreover, even if nations agree on certain standards, effective and coordinated implementation is not guaranteed. For example, one participant noted, what constitutes fair and free elections inevitably varies from country to country—even within the United States, different states have different concepts of what constitutes a good electoral process. While consensus was not possible on this theoretical debate, further exploration of these questions may become more compelling as the international community continues to assist war-torn nations in rebuilding judicial systems.

A few participants, steering away from theoretical debate, asserted that, notions of the applicability of international standards aside, what is most important is the legitimacy of the international community's involvement in the eyes of the citizens of the country receiving assistance. The "illegitimacy" of international aid springs not from its "international" character (i.e., international personnel applying international standards) but from real or perceived

incompetence; ignorance of local culture, politics, and legal systems; and unwillingness to complete the job. That the aid is "international" in character will not necessarily determine its legitimacy or acceptance one way or another. Other participants reminded their colleagues that, instead of resisting international aid, many countries have actively welcomed it and a few (e.g., Romania) have been quite aggressive in soliciting the help of foreign NGOs. According to this view, what ultimately has made assistance programs "legitimate" is the practical value of the assistance and that the commitment was sustained.

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Bringing War Criminals to Justice: Accountability Mechanisms

Once local law and order are secured, the international community may concentrate on the immense challenges of fostering national reconciliation, dealing with war criminals, and rebuilding the foundations for a society governed by the rule of law. This is a tall order for the international community. It involves collecting the remnants of a state and forming them into a cohesive system of governance while simultaneously tackling the more amorphous task of engendering a sense of justice for past wrongs. To be successful the international community must sustain a high level of political commitment and make a substantial long-term investment of human and financial resources.

Participants discussed a number of ways the international community may assist countries in coming to terms with war crimes and achieving genuine and lasting reconciliation. Presumably, one approach, or a combination thereof, could be tailored to meet the individual country's post-conflict justice needs. Since no two conflicts are the same, it would be difficult to design a generic template to guide the international community in all situations. There are, however, some parallels among recent efforts from which common lessons can be drawn. Participants compared the experiences of national reconciliation in various countries, focusing on Haiti, Rwanda, Bosnia, and South Africa. Both the international community and recovering nations have employed a variety of accountability mechanisms in these countries, including a national apology

by the head of state, victim reparations, international public pressure, truth commissions, and prosecution by international criminal tribunals. Each method can be effective if used under the appropriate political conditions.

On a philosophical level, participants grappled with what it means for the international community to become intimately involved in assisting countries in bringing war criminals to justice. If criminal prosecutions appear to be the best option, should the international community assume that task or is that job best left to national courts? Who should be prosecuted? The leadership only? Rank and file? If national courts cannot or will not seek accountability for war crimes, should the international community intervene? Are truth commissions more effective in healing collective psychological wounds and promoting post-conflict peace than national or international tribunals? Who determines the one truth?

Criminal Prosecution by International Tribunals

A critical component of the process of national reconciliation is holding individuals accountable for war crimes, genocide, and crimes against humanity. Without some sense of justice for citizens who have either suffered under severely abusive regimes or who are bitterly divided by ethnic slaughter or civil war, the prospects for an enduring peace and for national reconciliation are greatly diminished. But after the participants assessed the track record of the international tribunals for Rwanda and the former Yugoslavia and evaluated their usefulness as a tool of national reconciliation, it was not clear whether prosecution by international tribunals was an optimal approach to fostering justice. It may work well for certain countries but not for others.

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Participants were most critical of the performance of the International Criminal Tribunal for Rwanda (ICTR). The Rwandan government had requested that the United Nations establish the tribunal (obviating issues of legitimacy) but, at the same time, had reservations about it and wanted more international assistance for rebuilding its own shattered judiciary. The UN

Security Council may have responded positively for a number of reasons. According to one participant, the Security Council was under the impression that creating a war crimes tribunal would help avoid the immediate threat of bloodshed in the overcrowded Rwandan prisons. It may have believed that relieving the new Tutsi government of the burden of having to conduct the complicated war crimes trials would free it to focus on the time-consuming and delicate process of reconciliation and nation-building. (In fact, some believed the creation of the tribunal enabled the Tutsi-led regime to include Hutus in their government.) The Security Council's broader objectives were most likely to bring war criminals to justice, enhance the international rule of law, and to foster national reconciliation within Rwanda. To avoid the appearance of "victor's justice" by the new Tutsi government, the Security Council located the tribunal in neighboring Tanzania in the northern town of Arusha. Only a satellite investigative office was placed in Kigali. Given the modest size of the ICTR's resources, it was clear that the tribunal could prosecute only a small fraction of those who took part in the massacres. (However, even those modest resources greatly exceeded the international help to Rwanda's judiciary.) The intention, if not explicitly stated, was to prosecute only those leaders who had orchestrated the genocide, leaving the rank and file to be dealt with by the Rwandan national courts. However, inside Rwanda, the new government had a political imperative to bring to justice all those associated with genocide. It thus arrested some 80,000 persons and packed them into deplorable prisons to await eventual trial.

In retrospect, most participants agreed, the ICTR was ill-conceived and poorly executed. First, the Security Council, in creating the court, was not addressing the full dimensions of Rwanda's judicial needs. Since the vast majority of judges, attorneys, and court administrators inside Rwanda had fled or perished during the four-month killing spree, the country lacked a judicial system capable of handling the tens of thousands of prisoners crowding Rwandan prisons—prisoners that the international tribunal would clearly never reach. Although some international agencies have devoted their efforts to rehabilitating the judiciary, international attention and financial resources flowed primarily to the ICTR. The wisdom of placing the court in Arusha was also questioned. No facilities existed there at the time, and the distance from Kigali presented

significant practical difficulties in moving victims, witnesses, investigators, and defendants back and forth between Rwanda and Arusha. Moreover, the physical distance contributed to a serious psychological detachment between the tribunal's proceedings and the Rwandan daily business of national reconciliation. The distance also led to inadequate press coverage, both within Rwanda and abroad, limiting the deterrent effect and public education. In addition, the tribunal had been plagued by gross mismanagement and, according to some, continues to receive inadequate funding from UN headquarters. Not surprisingly, prosecutions have proceeded at a snail's pace causing widespread resentment of the tribunal.

Participants also criticized the record of the International Criminal Tribunal for the former Yugoslavia (ICTY). There are persistent challenges to the jurisdiction of the ICTY. Furthermore, the continuing inability of NATO-led Stabilization Forces (SFOR) to apprehend the most prominent of the indicted war criminals—Ratko Mladic and Radovan Karadzic—who continue to wield power, seriously undermines the legitimacy, moral authority, and power of the tribunal. To gain custody of indicted war criminals, the ICTY can only rely on exerting what political pressure it can on recalcitrant states and on the limited willingness of SFOR to apprehend suspected war criminals. According to one participant, SFOR's caution has been harmful to the peace process and arresting the leading criminals would boost it considerably. Some participants asserted that such arrests would be supported by "moderate" Bosnian Serbs. It was noted as well that SFOR and the United States "are not coterminous" and that if the United States is reluctant to have SFOR or its own troops arrest the suspects, other nations should step up the pressure. However, as long as the continued freedom of prominent indictees is deemed by decision makers of key SFOR governments as necessary to preserve a fragile peace treaty and SFOR continues to insist that arresting criminals is not part of its mandate, these arrests are not likely to occur.

A significant shortcoming of both [the Rwanda and the former Yugoslavia] tribunals is that they are powerless to enforce arrest warrants and subpoenas.

The problems outlined above call into question the utility of the international community's involvement in criminal prosecutions. A significant shortcoming of both tribunals is that they are powerless to enforce arrest warrants and subpoenas. Their viability and livelihood rely on the continuing political and financial support of UN members, particularly of those on the Security Council who have not been entirely supportive. Arrests ultimately depend upon the cooperation of governments on whose territory the indicted persons are located, whatever the mandate of the tribunal (or the UN Security Council) may say. The failure to apprehend indictees has greatly diminished the effectiveness of both tribunals and prompted one participant to question whether international criminal tribunals should even exist if they are not provided with power to arrest.

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Some participants questioned the motive of the UN Security Council in creating the tribunals. To some, they were fundamentally a facade that by their mere creation eased consciences but concealed the international community's failure to help Rwanda and the former Yugoslavia when they needed it most. Since "the word is equivalent to the deed" within the Security Council, their creation of the two war crimes tribunals was a way to show some commitment without risking much. They were accused of aiming for just a few prosecutions in order to be viewed as credible. The tribunals may also be seen as a testing ground of sorts for a permanent international criminal court currently being negotiated under the auspices of the United Nations. At first many observers were of the opinion that the viability of an international criminal court depended on the performance of the ICTY and ICTR. More recently, the prevailing view is that an international criminal court is necessary to avoid many of the difficulties plaguing the ad hoc tribunals. In the words of one participant, the UN Security Council's creation of the courts was a "combination of hubris and conscience-clearing."

A few participants believed the more relevant question is whether the tribunals have served justice and helped to facilitate national reconciliation within Rwanda and the former Yugoslavia. Measured

against this standard, neither tribunal has yet been successful. Other participants cautioned, however, that criticism of the tribunals' performance must be tempered by the fact that they have been hindered by insufficient funding, the lack of political and military support, and the absence of the opportunity to be fully effective. They have been useful in exerting psychological pressure on the indicted by "blotting their good name and making life tougher" and providing needed political space to the fledgling governments by assuming the highly politically charged task of indicting and prosecuting war crimes.

Alternatives to Criminal Prosecution

Participants agreed there should be more discussion in policymaking circles on alternatives to criminal prosecution by international tribunals. With varying degrees of success, countries have employed truth commissions, amnesties, monetary compensation, national apologies, and criminal prosecutions by national courts.

Participants agreed that truth commissions can be successful in fostering peace and national reconciliation. In their attempt to establish a historical record of the crimes and the context in which they occurred, they can provide a needed sense of closure. The South African truth commission was seen as particularly useful as a tool of national reconciliation. It grants amnesty to those who divulge fully their crimes during the era of apartheid; but if the crime committed was "disproportionate to the political aim," amnesty will not be forthcoming. Through its combination of amnesties and prosecutions, the South African approach has transcended the usual dichotomies of truth commissions. Its success was attributed to the presence of the right conditions: peace, political will, and a functioning local judicial system.

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Some participants believed truth commissions generally need to be supplemented with other accountability mechanisms. They have their limitations. One participant was doubtful that a truth commission can establish an "authoritative truth" of the war, particularly in countries such as Bosnia where ethnic divisions are particularly fierce. There, a truth commission

would be divisive and ultimately counterproductive, hindering national reconciliation. It was noted as well that the South African model was not intended as the final arbiter of the truth. Instead, it was intended as a component of a broader process of reconciliation.

Recommendations

Throughout the discussion, participants raised a variety of creative solutions to the problems outlined above. Some thought these could be best resolved through the creation of new UN bodies or the enhancement of existing ones. Others were skeptical and warned against loading too much onto the United Nations or other international organizations. They tended to believe the expertise, flexibility, and commitment of NGOs would make them better suited to take on the complex, time-consuming responsibilities of post-conflict reconstruction. One proposal—to create one agency or office to coordinate all aspects of post-conflict justice assistance—was quite ambitious and, not surprisingly, more controversial. Other proposals were more modest in scope and, therefore, perhaps more viable, at least in the near future. There was general agreement that careful choices would need to be made for individual post-conflict situations.

Participants considered the desirability of creating a mechanism that would coordinate all post-conflict international aid for civilian policing, judicial rehabilitation, and prison administration.

Create One Entity Responsible for Coordinating All Post-Conflict International Public Security Aid

Most participants believed that the United Nations, international organizations, NGOs, and individual governments providing post-conflict assistance need to better coordinate their activities and ensure that their programs are complementary and collectively meet the country's needs.

Participants considered the desirability of creating a mechanism that would coordinate all post-conflict international aid for civilian policing, judicial rehabilitation, and prison administration. Such an entity would be in the best position to comprehensively assess a

target country's needs and coordinate the plethora of actors and ensure that activities are undertaken simultaneously, efficiently, and rationally. It would enter the scene as a follow-on to peacekeeping operations, serving merely as the "locus" of international assistance by bringing all specialized agencies, NGOs, and donor governments to "read off the same page." It would not assume direct responsibility for performing the functions. This would be inadvisable, if not impossible. Instead, the coordinating entity would function similarly to the CEO of a large company, bringing together ideas, people, and NGOs and mobilize its forces through a common set of principles and goals.

The advantages and disadvantages of having the United Nations serve as this coordinating entity were discussed at some length. According to a few participants, the United Nations would be best suited to take on this broad responsibility. Given the United Nations' institutional memory and experience in various countries—particularly Cambodia, Haiti, Somalia, the former Yugoslavia, and Rwanda—it is able to develop a checklist outlining the necessary components of post-conflict justice aid and identifying the applicable norms and protocols (it was noted that UN staff within the UN DPKO, DHA, and DPA is already accustomed to making these kinds of analyses). Part of this effort could include the development of international guidelines that would identify the appropriate type of "accountability mechanism" for each kind of conflict. The United Nations is also capable of developing a database of the appropriate organizations and individuals who have extensive experience in post-conflict reconstruction and could provide expert advice as well as the resources necessary to support each type of activity. This would obviate the need to reinvent the wheel every time the international community ventures into a post-conflict situation.

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Others doubted the viability of the United Nations serving in a comprehensive coordinating role. It may be unrealistic to expect a functioning marriage between NGOs and the United Nations. (In fact, one participant noted that UN agencies resist cooperation and coordination

among *themselves* as evidenced by the infighting among specialized agencies such as the UNHCHR and the UNDP.) Because NGOs also tend to cherish their independence, they generally avoid bureaucratic entanglements with the United Nations. NGOs would not be amenable to relinquishing freedom—even if it is to a mere "coordinating" body—especially if they have already been performing their tasks on the ground before the United Nations ever took interest in a country. Moreover, as each NGO has its own proven approach to delivering assistance, efforts to coordinate their work could prove counterproductive.

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Participants also questioned whether member state governments could agree on how the new UN agency should respond to individual situations even if they agreed on its creation. What would be its degree of freedom from member states? Then there are the practical concerns of sequencing and the division of labor: Who would do what? Could the vast array of UN specialized agencies and NGOs ever agree to cooperate with the new agency? Would the coordinating entity limit itself to coordinating, or would it be tempted to become more directly involved? Should the international community try to formalize their working relationships between NGOs and the United Nations by creating a coordinating entity, it might jeopardize the cooperation that already exists. In addition, it is not clear that the United Nations actually possesses all the necessary experience. For example, how well can the United Nations determine what future judicial assistance might best be done by the many NGOs that already have a permanent (i.e., pre-conflict) presence in the countries in question?

A few participants doubted whether coordination among UN agencies, donor governments, and NGOs was really a problem. Some argued that "chaos in and of itself may not be bad; the real challenge may be to know what everyone is doing and where they are going." If all actors agree on the goals with respect to international intervention, there might not be a need for one central coordinating and planning body. Should the United Nations get involved on a macro level, the most it should do is create a road

map identifying what is needed within the country to create a viable public security apparatus.

Participants suggested that, instead of the United Nations, the justice ministry (assuming one exists) in the country in question would be the natural candidate to plan and coordinate international assistance. The host country is likely the one most concerned with the long-term outcome of international assistance and will ensure that the various programs are continued beyond the point when the international community loses its interest.

Organize a "Judicial Rapid Response Unit"

A more modest proposal was to create a coalition of NGOs to devise a "judicial rapid response unit" that would focus on judicial rehabilitation in the immediate post-conflict environment. Since there is currently no international mechanism to coordinate NGOs in the conduct of judicial rehabilitation as there is with humanitarian and refugee groups who are coordinated by the UNHCHR, one participant recommended the creation of a consortium of NGOs that are already involved in judicial reconstruction. The unit would provide assistance to nations that have recently emerged from violent conflict and where there is a reasonable prospect for peace and stability. The unit could follow closely behind military forces and would perform the basic tasks required to resuscitate the courts, assess the health of the judicial system, and take inventory of short-term and long-term needs. It could also help mediate between factions and provide stopgap measures until a rudimentary justice system is up and running. At a later stage, the unit could train local NGOs to carry on the same activities. Its work would complement that of other NGOs and UN personnel who focus on civilian policing. Such a judicial rapid response unit would be transitional, paving the way for more comprehensive programs of judicial reconstruction of the type conducted by CEELI and the International Human Rights Law Group which require a much longer-term commitment. The unit would not investigate war crimes. In essence, the unit would serve as a bridge between

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peacekeeping and the establishment of CEELI-type programs.

Participants considered how the unit would be organized and governed. It was suggested that the consortium either exist independently or be "dropped into an existing NGO." To recruit NGOs to form the consortium described above, an organizing committee would develop a mission statement that NGOs could sign on to and use as their road map. Participants did not envision a formal role for national governments in the proposed consortium since their involvement inevitably would be inconsistent. NGOs have more staying power, and they are more capable of grooming local NGOs to take over the job. They also tend to have more committed people than international governmental organizations, have more relevant experience, and are better situated to bridge cultural barriers. In addition, NGOs have more imaginative and less costly ways to make contributions.

It was proposed that a public education campaign be undertaken to inform the public that injuries from war crimes never really fade away....

An alternative model is to have the UN DPKO assume the responsibility of organizing the NGOs. Under this model, the group of NGOs would serve collectively as an expert resource to whom the United Nations would contract out judicial assistance projects when needed. Some participants contended that to ensure a truly rapid response, UN support and involvement would be necessary because it can more readily garner logistical and financial assistance from donor countries. Others cautioned against relying once again on the United Nations for reasons already outlined above. The United Nations should not be entrusted with primary responsibility because it is overly bureaucratic and perpetually plagued by financial difficulties. At the same time, however, the United Nations should not be alienated should a consortium be formed separate from it.

Improve Public Perception of International Assistance for Post-Conflict Justice

The public needs to be educated about the importance of rehabilitating judicial systems in post-conflict situations. To garner public support for long-term involvement in countries needing assistance, domestic constituencies must make the connection between stability and justice. It was proposed that a public education campaign be undertaken to inform the public that injuries from war crimes never really fade away; they are "always screaming to get out from under the surface." Lack of justice and governance by the rule of law can only contribute to future instability. As such, justice is a component of "real-politik." Such a campaign could also argue that a stable, predictable legal system is good for business in that it provides a peaceful means of dispute resolution and redress for corrupt practices.

Conclusion

The international community can play a prominent role in fostering genuine national reconciliation and providing the means with which war-torn nations may solve future conflicts peacefully, democratically, and within the bounds of the law. To be effective, the international community must act *simultaneously* to provide assistance to troubled states on three fronts:

1. Establishing and maintaining public security through peacekeeping and policing
2. Rehabilitating (or even creating) independent judicial systems and dealing with war crimes and criminals
3. Establishing penal systems, including safe and functioning prisons

While deploying civilian police forces and recruiting and training professional local police can be accomplished relatively quickly, others require many months, if not years, to complete. It is important that all three are pursued simultaneously from the start. There are a wide variety of mechanisms for doing this and choices will inevitably need to be made by both the international community and the state in need. However, there is a need to bring about greater cohesion and cooperation, work toward a more systematic approach and, above all, forge a greater political will and commitment of resources by the international community.