Accountability After Mass Atrocity:
Latin American and African Examples
in Comparative Perspective

Rapporteur’s Report of an International Symposium
Washington, D.C.
May 6, 2009

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with the support of:
Latin America Program,
Open Society Institute

Center For Global Studies
The past several decades have seen the rise of criminal prosecutions—through local, national, regional, and international institutions—as a means of holding alleged perpetrators accountable for war crimes, genocide, crimes against humanity, and other serious offenses. Critiques and assessments of these options have also increased. The moment is ripe not only for evaluating the efficacy and appropriateness of accountability efforts but also for raising foundational questions about the principles that underlie responses to mass atrocity.

Given the variation across local and regional contexts, it is crucial to pay attention to differences and disjunctions in, for instance, the role of victims, the symbolic resonance of trials, or the public conception of the international criminal court. Hence, this symposium was mounted to draw lessons from a cross-regional comparison that would go beyond stereotypical assumptions and disclose the nuances and complexity of these phenomena.

Accountability itself raises many questions, such as: How has the concept of accountability been constructed and deployed in the different regional contexts? What role does retributive justice play in these concepts of accountability? How do competing approaches to justice (e.g., restorative) intersect or collide with the accountability agenda? What can be learned by comparing the different trajectories of justice and accountability, as well as the interplay between local and global perspectives on justice and accountability in Latin America and Africa?

The conference organized by the Center for Global Studies at George Mason University and the Institute for Conflict Analysis and Resolution at George Mason University was intended to provide a forum for scholars and practitioners to explore existing and emergent institutions of accountability after mass atrocity from an explicitly comparative perspective. Nations in Latin America and Africa have seen considerable, yet quite different, attention to accountability. This conference therefore offered participants an opportunity to examine the variety and varied success of justice initiatives in these contexts.

Timed to take place shortly after a three-judge panel of the Peruvian Supreme Court found former Peruvian president Alberto Fujimori guilty of human rights crimes and the International Criminal Court issued an arrest warrant against Sudan’s head of state, Omar al-Bashir, the conference objective was to sustain and interrogate the momentum of the ‘justice cascade’, a phrase coined by scholars Kathryn Sikkink and Ellen Lutz to describe the growing judicialization of world politics internationally as well as locally.

This report on the Washington conference, prepared by Arnaud Kurze, Ph.D. Candidate in the Public and International Affairs Department at Mason whose research focuses on truth and justice issues in Southeast Europe, reveals the strides Latin America and Africa have made in their efforts to combat impunity and promote the rule of law and democratic governance. Though obstacles remain, as several conference participants indicated, these efforts represent a key departure from the past, and merit careful scrutiny by policymakers, scholars, and the human rights community.

We would like to especially thank the Center for Global Studies, the Institute for Conflict Analysis and Resolution (ICAR)/Point of View, which made this conference as well as this publication possible. We also thank all ICAR and Mason graduate students for their assistance with the conference.

Jo-Marie Burt & Susan F. Hirsch
Center for Global Studies,
George Mason University
April 2010
Welcome

Terrence Lyons, Center for Global Studies, George Mason University
Susan Hirsch, Institute for Conflict Analysis and Resolution, George Mason University

Latin America’s Efforts to Account For Human Rights Violations

Moderator
Susan Hirsch, Institute for Conflict Analysis and Resolution, George Mason University

Speakers
Ronald Gamarra, National Human Rights Committee, Peru
Jo-Marie Burt, Center for Global Studies, George Mason University
Pilar Gaitán, Historical Memory, Colombian National Commission on Reparation and Reconciliation

African Mechanisms of Accountability After Mass Atrocities

Moderator
Terrence Lyons, Center for Global Studies, George Mason University

Speakers
Mark Drumbl, Washington and Lee University
Stephen Lamony, Coalition for the International Criminal Court
Graeme Simpson, International Center for Transitional Justice

Preventing The New American Professionalism: Accountability For Lawyers, Doctors and Psychologists Shaping Torture

Keynote Address
Gitanjali Gutierrez, Center for Constitutional Rights

Research Notes: Comparative Analysis of Trials And Their Impact

Moderator
Susan Hirsch, Institute for Conflict Analysis and Resolution, George Mason University

Speakers
Leigh Payne, University of Oxford
David Backer, The College of William and Mary

Roundtable Discussion: Prosecutions As Mechanisms Of Accountability

Moderator
Jo-Marie Burt, Center for Global Studies, George Mason University

Speakers
Ruti Teitel, New York Law School
Diane Orentlicher, American University Washington College of Law
Susan Benesch, Georgetown University Law Center

Closing Remarks
Jo-Marie Burt, Center for Global Studies, George Mason University

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Department of Public and International Affairs, Latin American Studies, Global Interdisciplinary Programs and Global Affairs.
Rapporteur’s Report
By Arnaud Kurze

Introduction

In 1946 at the Nuremberg trials, Robert H. Jackson, chief United States prosecutor and US Supreme Court Justice, noted about the court in his closing address that

As an International Military Tribunal, it rises above the provincial and transient and seeks guidance not only from international law but also from the basic principles of jurisprudence which are assumptions of civilization and which long have found embodiment in the codes of all nations.

Over 60 years later, actors in various institutions on the local, national, regional and international level and in different geographical locations continue to break the spell of impunity, amnesty and silence by holding war criminals, human rights violators and alleged perpetrators of other serious offenses accountable for their abominable atrocities.

While in recent decades these efforts have grown in size and impact, critiques and assessments of these options have also increased. Seizing this unique opportunity, it is important not only to assess the influence and usefulness of accountability efforts but also to grapple with crucial questions about the basic paradigms that underlie responses to mass atrocity.

The conference organizers were especially concerned with examining the role of regional and international courts in accountability efforts in each context and particularly their effects on domestic initiatives. For instance,

1 Arnaud Kurze is Ph.D. Candidate in Political Science at Mason, researching transitional justice issues in Southeast Europe.


the Inter-American Court for Human Rights and the International Criminal Court have had significant impact in Latin American and Africa, respectively. The levels of impact have been studied but what lessons might be drawn through comparing these? What implications do these very different approaches have for empowering local responses to mass atrocity? Or for developing a global approach to accountability?

Participants explored differences in each context with respect to conceptualizing key actors, such as victims, perpetrators, impartial judges, witnesses, and others, and also core concepts, such as accountability, justice, sovereignty, healing, transnationalism, reparations, and reconciliation, among others. The goal was to answer some of the following questions: What premises about accountability fuel calls for justice made by and on behalf of victims and/or other parties, such as human rights advocates, conflict resolution practitioners, international institutions (e.g., the United Nations and the International Criminal Court), and the world community? Do these differ in Latin American and African contexts?

In each region retributive justice efforts have been pursued alongside other initiatives, such as restorative justice. While some specialists assert that the various justice mechanisms (e.g., truth-telling, prosecutions, reparations, peace-building) are complementary, others challenge trials and tribunals after mass atrocities and assert that restorative justice and similar notions are more appropriate. Debates over the degree to which retributive justice contributes to resolving conflict and/or peace-building have gripped scholars and practitioners in conflict analysis and resolution, some of whom argue that reconciliation mechanisms hold greater promise for lasting peace. How do these debates play out regionally? What can we learn by developing more systematic comparisons that
extend over time?

The conference was organized into four panels with a keynote speaker during lunch. The first two panels focused on Latin America and Africa, respectively: Latin America’s Efforts to Account for Human Rights Violations and African Mechanisms of Accountability After Mass Atrocities. Speakers presented country- and area-specific experiences that provided foundational insights to generate a broader cross-national and cross-regional discussion. The lunchtime keynote speech, Preventing the New American Professionalism: Accountability for Lawyers, Doctors and Psychologists Shaping Torture, focused on accountability issues in the United States. It addressed current obstacles to implementing prosecutions and pointed to geo- and socio-political consequences of the current situation. The third panel, Research Notes: Comparative Analysis of Trials and their Impact, featured research presentations by scholars working comparatively on prosecutions and their relationship with other transnational justice mechanisms. The last panel of the day, Roundtable Discussion: Prosecutions as Mechanisms of Accountability, brought together distinguished experts on international law and human rights to discuss and debate trials as a mechanism of accountability following mass atrocities.

This report provides a brief summary of the presentations made in each panel and the subsequent discussion. Complete biographical information on each speaker can be found at the end of this report. The Center for Global Studies has also published a special Fall/Winter 2009 issue of its quarterly publication, Global Studies Review, with articles authored by some of the speakers.
PANEL 1

Latin America’s Efforts to Account for Human Rights Violations

The moderator, Susan F. Hirsch, launched the first panel after a brief introduction on the importance of comparative analysis in the field and its role in providing a better understanding of regional differences and eventually furthering the development of theory, both of which are key objectives of the symposium.

Jo-Marie Burt presented a snapshot of transitional justice in Latin America, particularly focusing on issues of accountability. To underline the dramatic changes—at least for parts of the region—she introduced Ruti Teitel’s genealogy of transitional justice as a useful conceptual tool. The phases include the post-World-War-II period, when International law replaced national justice structures, such as the Nuremberg trials. These conditions are, however, not easily replicable and were left aside with the advent of the Cold War. The subsequent phase emerged in the late 1970s and the early 1980s, during the wave of transitions to democracy. Political realities resulted in moving away from the Phase I model and its retributive justice. In Phase II, justice was therefore subordinated to complex issue of nation building and democratization. The last phase, coined by Teitel as “fin de siècle,” could best be described as the product of globalizing mechanisms that have led to a greater international awareness of human rights law and an increase in bottom-up demands for justice. Yet, normalization of transitional justice is problematic, given the greater instability and violence in the international system.

How does this conceptual framework apply to the Americas? Particularly in Southern Cone countries, where transitions took place in the early to mid-1980s, intense debates took place over the consequences for torturers, triggering two diametrically opposed responses. Uruguay and Brazil went the route of silence, amnesia and amnesty. Despite the efforts of civil society to unveil state repression, the prevailing official response was to negate the past and emphasize the need to look forward.

Argentina constituted a distinct case, Burt affirmed, with the new government of Raúl Alfonsín attempting to link truth and justice as a way to promote national reconciliation and to establish faith in the state institutions again. Inspired by the belief that, for victims, knowledge of the truth was central to restoring democratic institutions, a truth commission was formed—one of the first in the world—to investigate disappearances during the previous military dictatorship. The mandate was directly linked to the formulation of a proposal of retributive justice and the commission’s findings were key in the later trial of the members of the military juntas, as recounted by Carlos Santiago Nino in Radical Evil on Trial. However, military uprisings challenged these decisions, leading to a series of amnesty laws and eventually a pardon of the previously tried and convicted junta members. Conservative intellectuals, such as Samuel Huntington, and politicians, such as Julio Maria Sanguinetti, seized on this example to reinforce their claims that retributive justice was destabilizing to new and fragile democracies and that

“[G]lobalizing mechanisms... have led to a greater international awareness of human rights law and a push in bottom-up demands for justice.”

—Jo-Marie Burt

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3 Susan F. Hirsch is Associate Professor in the Institute for Conflict Analysis and Resolution (ICAR) at George Mason University. Her latest publication is In the Moment of Greatest Calamity: Terrorism, Grief and a Victim’s Quest for Justice.

4 Jo-Marie Burt is Associate Professor of Political Science at George Mason University and author of Political Violence and the Authoritarian State in Peru: Silencing Civil Society.


the Uruguayan and Brazilian model was the best path. Consequently, Argentina became a counterexample of accountability.

The direct effect of this outcome can be seen in countries such as Chile, El Salvador, and Guatemala, which followed a restorative model that relied on truth commissions but precluded mechanisms for holding human rights violators accountable. It was perceived as an inevitable trade-off between truth and justice in each case. Despite the transition to democracy, the persistence of powerful actors—particularly armed forces—in El Salvador, were established after the truth commissions finalized their reports in order to impede judicialization of human rights violation cases.

Thus, some scholars began to argue that truth was not only an acceptable alternative to justice but that it was in fact a superior form of justice, in that it prioritized the perspectives and needs of survivors and victims and sought to promote national reconciliation.

This view, however, came under heavy criticism from activists, as well as practitioners and academics, who questioned the renunciation of justice for the promise of potentially elusive reconciliation. In 1997, for instance, Juan Méndez, President of the International Center for Transitional Justice, challenged this view and advocated strongly that trials and criminal prosecutions are essential to reconciliation and democratization processes. While these debates continue to evolve, Teitel’s third phase consolidates, due to globalizing consequences and increasing political instability and violence. As Naomi Roht-Arriaza points out in her

“[T]rials and criminal prosecutions are essential to reconciliation and democratization processes.”

— Jo-Marie Burt

made it difficult if not impossible to prosecute those responsible for human rights crimes. Burt referred to José Zalaquett, former member of the Chilean Truth Commission who summarized this phenomenon by emphasizing the need to work within the realm of the possible. In other words, due to the constraints of transition agreements, there was a need to accept that retributive justice was not possible, which put truth telling in the center of reconciliation models. As a consequence, amnesty laws were maintained or, in some cases as

Ronald Gamarra (left) and Jo-Marie Burt (courtesy Tristan Golas).
book, *The Pinochet Effect*, we begin to see a dynamic relationship between changes at the international level and efforts on the part of human rights and other civil society groups in the region to achieve truth and justice. Shifts on the international level include, for instance, the creation of the International Criminal Tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR) in the early and mid-1990s; the watershed year of 1998 when Pinochet was arrested in London, confirming the concept of universal jurisdiction; and the adoption of the Rome Treaty in the same year, initiating the process that would ultimately lead to the creation of the International Criminal Court in 2002.

In the case of Latin America, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have played a crucial role. Peru and Argentina in particular used this system to challenge impunity and push for accountability, even in the face of standing amnesty laws. These efforts resulted in resolutions that have had an important effect in the region and contributed to current efforts to hold human rights violators accountable. In 2001, for instance, the Inter-American Court on Human rights ruled in the Barrios Altos case that the Peruvian state was not only responsible for the massacre, which had occurred ten years earlier, and that it had an obligation to investigate and sanction those responsible, but also that the 1995 amnesty law was a violation of the American Convention on Human Rights and should be nullified. Later, at the request of Argentine NGOs, the Court established that this ruling was valid across the region. This opened the door for some countries in the region to overturn amnesty laws and advance trials.

These shifts in the global regime put the issue of accountability and the centrality of retributive justice squarely at the center of the debate again. At the local level, human rights organizations, survivors, and relatives of victims groups continued their work, even in the face of amnesty laws and unpropitious climates for accountability, to seek ways to advance the cause of justice. They sought loopholes in existing amnesty laws and in Argentina, for instance, Jorge Videla—one of the junta members who had been prosecuted in 1985 and pardoned in 1990—was arrested in June 1998 for baby kidnapping. In Chile, judges began investigating disappearances by claiming that the statute of limitations did not apply to crimes that were considered ongoing because the bodies had never been found. Such efforts were reinvigorated by the shifts in the global human rights regime.

By the late 1990s, particularly in the Southern cone, a great shift appeared in efforts to bring to justice human rights violators. A new Chilean truth commission began to work on crimes that had not been investigated by the previous commission, and a new wave of trials emerged in this climate. To date, about 700 cases have been prosecuted with roughly 250 prosecutions currently under way. Although human rights groups criticize some aspects of the judicial process, such as light sentencing, the “shift from no trials to an avalanche of trials” is significant, explained Professor Burt. In 2005, Argentina’s Supreme Court declared the amnesty laws unconstitutional, which opened the way to new trials. Today there are over 1,200 trials in process. Even Uruguay, which the Uruguayan writer, Eduardo Galeano referred to as the “sanctuary of impunity,” was inspired by its neighbors to use new approaches to seek truth and justice.

The above cases share two key characteristics. First, elected center-left governments were willing to pursue or to facilitate the justice agenda. Second, Burt emphasized the idea of “late justice,” which refers to the fact that some of the crimes currently subject to prosecution occurred over
twenty years ago, which raises concerns. The delay could pose challenges to the quality of justice rendered.

To lead into the next presentation, Burt highlighted that Peru’s transition since 2000 was closely linked to Teitel’s third phase. Though many actors advocated for maintaining the regime of silence, the international changes helped to generate the truth commission, which established that justice was an important element of national reconciliation and that truth alone would not be effective. Currently, the number of ongoing trials in Peru is estimated at about 1,000, which demonstrates once again the dramatic shift in the region. In conclusion, three points are important to bear in mind:

- The ongoing efforts, especially in the Southern Cone of Latin America, by ruling elites to bring to a rapid close demands for justice and truth have failed. This development is partly the result of the human rights ‘cascade’ in recent years in international relations.
- There is wide variation in the organization of civil society in different countries, with weaker actors (e.g., Uruguay and Brazil) versus those with strong movements (e.g., Argentina). Nonetheless, all were able to mobilize and keep the justice agenda visible.
- Brazil and Central America remain stagnant and improvements need to gain momentum in these countries as well.

Ronald Gamarra7 filled out the portrait begun by Burt by describing the circumstances that made possible the domestic trial and eventual guilty verdict on April 7, 2009 of former Peruvian President Alberto Fujimori. While such a historic turn was almost unthinkable less than a decade ago, he argued that recent events would foster an accountability movement not only in the Andean state but also across Latin America.

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Since 2000, governments have slowly but surely embraced the politics of ‘esclarecimiento’.8 In spite of persist-

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7 Ronald Gamarra Herrera is Executive Secretary of Coordinadora Nacional de Derechos Humanos, Peru’s human rights umbrella organization, and one of the lawyers representing the civil parties in the proceedings against former President Alberto Fujimori for grave violations of human rights.
8 Spanish for ‘enlightenment’.
ing obstacles and difficulties, they have shed light on past human rights abuses by the state and have mounted over 1,000 investigations currently underway against members of the armed forces. Although members of military juntas have been tried in the past by international and regional courts, such as the Inter-American Court of Human Rights, the fact that a former head of state has been tried under a local jurisdiction is unprecedented. This was possible because the process was not based on allegations of crimes against humanity but rather on corruption charges. By mid-2000, publicly released videos illustrated the significance of the corruption scandal within the Fujimori government and further investigations revealed that some of the accused were also implicated in human rights violations. It was this corruption/human rights crimes formula that eventually led to the fall of Fujimori.

Furthermore, in June 2001, a new transition government emphasized the importance of reckoning with the past by creating a truth and reconciliation commission, which was in charge of examining atrocities committed in the 1980s and 1990s. The justice system also played a crucial role in the Peruvian transition period, in particular the Supreme Court, with its decision to establish the supremacy and direct applicability of international human rights treaties and rulings of the Inter-American Court of Human Rights to national jurisdiction. All the above factors eventually led to Fujimori’s condemnation, based on the supplementary principle of law, which recognizes the validity and primacy of international and universal laws. The state therefore has the obligation to draw on these general principles in order to investigate and prosecute violators of human rights using the local judicial system. In order for these prosecutions to happen, it was key to rely on experienced and competent judges, which cannot be taken for granted in countries that are in the process of stabilizing and consolidating democratic institutions. In the case of Peru, however, a number of accomplished judges with excellent track records and academic backgrounds were at hand to take charge and ensure that those accused would receive a fair trial.

The legal framework for Fujimori’s sentence is based on the Peruvian penal code, which has an important effect on state-society relations. According to Gamarra, applying na-
tional criminal law to punish human rights crimes of the former president promotes a transparent judicial process, which Peruvian citizens are able to understand and follow. Fujimori was formally charged with perpetration by means, also known as ‘autoria mediata’, which refers to those who hold key institutional positions and order individuals to commit crimes or human rights violations. Despite responsible judges referring to international and regional court decisions, the novel character of the Fujimori case made the application of domestic rules all the more important, and the judges therefore grounded their decision in Peruvian law and case law.

It is noteworthy that Fujimori’s trial would not have been possible without the help of judges on the Chilean Supreme Court, who decided to extradite the former head of state after his surprise visit to Chile in November 2005. After five years of exile in Japan, Fujimori stopped in Chile to prepare for a political comeback in Peru. Important regional support came also from the Inter-American Court of Human Rights (IACHR). While several decisions based on other Latin American countries proved useful, the IACHR also established Peru-specific decisions that helped build the case against Fujimori. Picking up on Burt’s discussion of the “Barrios Altos Case,” Gamarra emphasized that the Inter-American court judges lifted any barrier that the Peruvian judiciary could have had with respect to prosecuting human rights violations cases. In the past, amnesty laws, issued by the Peruvian government, prevented any investigation or prosecution of mass atrocity perpetrators. Yet with the Inter-American Court ruling, any prior legal impunity guarantees were nullified, which allowed Peruvian judges to continue or open cases against alleged violators of human rights.

In his concluding remarks, Gamarra outlined the three significant principles of the trial:

- **Principle of equality before the law.** Although this right was inscribed in Peruvian law and international treaties to which Peru was a signatory state, Peruvians have been frustratingly aware that, before this watershed trial, individuals with political, military, and economic power routinely escaped prosecution and punishment. Thanks to the trial of former president Fujimori, however, the principle of equality was reinforced.

- **Legitimization of the judiciary.** Following internationally and domestically respected judicial processes, justice could finally be done. The Peruvian judicial system hence established its reputation not only internationally but, more importantly, also within the country.

- **Respect of justice.** Fujimori was not tried out of hatred or vengeance, but according to the law and as a consequence, had the opportunity to defend himself. Nonetheless, the victims had the same access to justice as did Fujimori and third parties, such as international observers, were also involved.

The sentence of Fujimori was the result of an exemplary process, and Peru can now bring forward more perpetrators and serve as a model for other Latin American countries in order to prosecute and convict individuals involved in human rights abuses.

Drawing on her experience in the Colombian case, the last speaker on this panel, Pilar Gaitán, first reminded the audience that the word ‘accountability’ does not exist in Spanish. Her country emblematically

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9. The same legal concept of ‘autoria mediata’ was also applied against the members of the terrorist group of the ‘Shining Path’.

10. Pilar Gaitán Pavía is a member of Historical Memory, the Colombian National Commission on Reparation and Reconciliation.
illustrates transitional justice processes without transition. In contrast to other countries, such as Chile, Argentina or South Africa, Colombia is a hybrid state with a fragmented society and fragile institutional structures, where transformation and democratization processes have not been accomplished. Rather, armed conflict—which started over 40 years ago—is still overshadowing the country. Nonetheless, reckoning with past atrocities has been increasingly successful in recent years, despite difficulties during the early phase. In 2002, for example, the parliament passed an amnesty and rehabilitation law, followed by the Justice and Peace Law in 2005, which offered paramilitaries incentives to demobilize yet still left their criminal activities unpunished. In 2006, however, the Constitutional Court declared the Justice and Peace Law unconstitutional. Although it kept considerable sentence reductions to incite paramilitaries to lay down their arms, it required them to confess their crimes and cooperate with authorities to put an end to organized crime activities. Moreover, the court also nullified a provision, which extremely limited the case preparation time for prosecutors.

In contrast to failing states in Africa, Colombia has a stable electoral and institutional history; yet, it also has a very high and alarming record of human rights violations and is the number-two country with respect to displaced populations. Over three million individuals have been forced to leave their homes. Given this context, it is not an exaggeration to speak of a severe humanitarian crisis. Gaitán evoked the vulnerability of state authority in certain regions of the country, underlining the lack of territorial integrity and thus the lack of rule of law. The chronic violent conflict that has undermined the Colombian state for decades is key for explaining the overall process of accountability and justice at present. Suffice to note that the objectives and motivations of the guerilla movement in the 1970s have changed; today, drug and arms trafficking are crucial operations for their survival. Furthermore, the Colombian conflict is different from other regional conflicts (e.g., Guatemala) because of its complexity and the difficulty of pinpointing the exact origins and causes as well as specific conflict phases. Outlining reference dates, such as the ‘Gran Violence’ in the 1940s, the urban guerilla war during the 1970s, or the drug war of the 1990s, help create a collective memory and create a historical truth. Identifying the parties involved—including the perpetrators—has become a political struggle that takes place alongside claims by victims for recognition of human rights crimes and for reparations.

Yet another crucial point in understanding the Colombian case is the devastating sociopolitical con-
sequences of the current political system, which is characterized by the interrelations among politicians, paramilitaries, and other actors. In other words, their activities intermingle, with guerrilleros entering the realm of politics and members of the political establishment striking deals with the latter. This intricate network of corruption and nepotism lacks transparency and accountability. This situation not only renders any political effort to end the current deadlock nearly impossible, but also hampers any attempt of initiating a transitional justice processes. Colombia finds herself in a state of war and peace, epitomized by conflict and post-conflict scenes. Despite the persistence of violence and the limitations of the negotiation and peace processes, Gaitán remains optimistic that recent developments will generate a greater momentum toward a positive future.

In this context, she also referred to the internationalization of the Colombian conflict. Although in many other cases heightened attention from the international community has helped to end internal conflict, this does not hold true for the Colombian experience. The results were ambiguous, to say the least, when turning to U.S. foreign assistance in the war against terror and drug cartels. Additionally, a look at neighboring countries, such as Venezuela and Nicaragua, illustrates that despite increased bilateral cooperation in recent years, the issues remain complex and border disputes unresolved. Regionally, she pointed to the positive impact of the Inter-American Court’s human rights regime, which has, with the help of other regional activist groups and international human rights organizations, helped sustain the transition. Although in the long-term, she hopes that Colombia will be able to bring forward strong local judicial mechanisms to follow the path Peru has taken, for now, outside help is crucial to successfully engage in this transition process.

Finally, the transition process, which began in 2002, cannot be looked at as a zero-sum game. At present, immunity laws persist, sentences do not reflect the grave crimes perpetrators have committed within the past ten years\(^{11}\), and access to the ‘truth’ is still difficult due to the persisting influence of the military. Despite these continuing obstacles, progress has been made and justice done. As a case in point, victims have entered the political arena and formed local and national organizations that represent them and will eventually guarantee justice and truth. There has been an explosion of interest in social memory in Colombia, which is fortunately very difficult to stop. Bongani Finca, a former commissioner on the South African Truth and Reconciliation Commission (TRC), said, “When the victims express the need to speak, no time should be wasted to start this process.”

Questions that remain are how and what allies and actors should be included in order to sustain the process and generate a broader movement. Notwithstanding the rocky road that lies ahead, the positive strides that have been made in recent years will serve as a catalyst in the future. A paramilitary leader, for instance, who thought that the Colombian government would never extradite him to the United States, was handed over to the proper authorities in 2007. This proves the emergence of “parapolitics,” as Pilar Gaitán explains. Never before in Colombian history was it possible that Congressmen could be tried due to their links to paramilitaries. While Colombia’s outlier status does not fit the Latin America pattern discussed by Jo-Marie Burt—and therefore truth commissions might not be the best mechanisms to cope with the past—comparative and cross-regional research helps to determine the proper tools to grapple with the difficult question of establishing truth and justice in a fragmented and

\(^{11}\) Gaitán speaks of more than 2,500 massacres and 14,000 victims since the late 1990s.
war-torn society.

The comments and questions following the presentations helped clarify some of the issues and extended the discussion to other problems, such as the role of the United States in the region and the tradeoff or consequences of expedience in post-conflict reconstruction. Put differently, how do short-term goals compare to long-term objectives in transition scenarios. One conference attendee commented on Colombia’s striking difference, characterized by a sequence of civil wars, as compared to other Latin American states that were marked by dictatorships. One conference attendee, Isais Rojas from Johns Hopkins University, wondered about the political repercussions of the Fujimori trial and whether this would open the door for further prosecution, such as in the case of current president Alan García Pérez.

The panel members took turns answering each of the questions, grounding their responses in particular socio-political contexts. Pilar Gaitán, for instance, expressed that the U.S. has played an ambiguous role in the region; yet emphasized that U.S. society in general, with its human rights organizations and activist groups, has had a positive impact on the Colombian reconciliation process. Furthermore, she explained that a truth commission couldn’t be established prior to the end of the hostilities. Evaluating the impact of such a mechanism is difficult given the nature of the ongoing conflict.

In response to the question on the impact of the Fujimori trial on future developments in Peruvian society, Ronald Gamarra asserted that the quest for justice is an ongoing process in Peru. Fujimori’s trial and sentence were the result of a long and dramatic process, which revitalized domestic demands for judicial transparency. The Fujimori case, however, is not the end of a powerful justice-seeking process, but rather the beginning. Nonetheless, Gamarra remains optimistic, as possibilities of having justice done have become more concrete. As a case in point, three weeks after the end of the trial, judges opened yet another procedure, which included accusations against members of the military for sexual violence in armed conflicts, which is unheard of in Peru. He expressed concern about the politiciza-

“In Colombia,] access to the ‘truth’ is still difficult due to the persisting influence of the military.”

— Pilar Gaitán
Last but not least, Jo-Marie Burt clarified that there is no cookie-cutter approach for post-conflict reconstruction by the international community; rather, any transition process depends on the local context. Complementing Gaitán’s response about the role of the United States in the region, she expressed her dismay that only a few truth commissions actually address the impact of U.S. foreign policy, which has had a crucial role in certain cases, such as El Salvador. Although President Clinton formally apologized for the U.S. involvement in the 1954 coup in Guatemala, the questions still remain whether apologies are enough and whether external actors could be held responsible in the future.

“[T]here is no cookie-cutter approach for post-conflict reconstruction... rather, any transition process depends on the local context.”
—Jo-Marie Burt
hybrid court that investigates and sanctions atrocity crimes in Sierra Leone; and 3) the permanent International Criminal Court (ICC), created by the Rome Statute in 1998, which is actively investigating four situations in Uganda, the Democratic Republic of the Congo (DRC), Sudan, and the Central African Republic. Contrary to the Latin American context as described in the previous panel, the judicial bodies that handle crimes of mass atrocity in Africa exhibit, according to Drumbl, a high level of internationalization and institutionalization.

Drumbl drew on his own work in Rwanda to illustrate the advances in judicialization on the continent. At present, the ICTR has convicted thirty-five individuals; seven cases remain under appeal; and there have been six acquittals so far. At the national level, over 10,000 persons have been adjudicated by specialized chambers, which operated for a decade. According to the Ministry of Justice, over one million people have been tried by 12,000 neo-traditional gacaca courts, which wrapped up their work in June 2009. Most of the individuals convicted, who were not part of the original suspects imprisoned by the government, have been released into society, opening the next step of transitional justice: “the coexistence of neighbors who killed, with neighbors who were victimized and whose family members were killed.” Although the twenty-five percent acquittal rate of gacaca proceedings is relatively high, the Rwandan government has standardized procedures since 2001. Through legislative amendments it controls what first started out as a communal, bottom-up dispute resolution mechanism. Judges are elected but not required to have any previous legal training or experience; proceedings take place in local contexts; and there are no defense lawyers—gacaca courts serve a punitive and juridical function with sentences that can go up to life imprisonment. As of April 2009, the Rwandan government estimates launched due to the high number of crime involvement and the scarcity of resources in the penitentiary system.

This figure is significant, as the country comprises only about eight million citizens. The pilot project for these local courts were

Mark Drumbl (courtesy Tristan Golas).
that approximately 3,000 individuals still have open cases, including many suspects accused of grave human rights violations. Those “category I offenders” will require more formalized procedures at the national level.

Notwithstanding the pressure weighing on the ICTR to finish its work, international judges have been reluctant to transfer their cases to Rwandan institutions. They question the Rwandan due process of law, witness protection, and severity of sentences. While the prosecutor would prefer to discharge the cases to the national level, international judges have qualms about judicial procedures in Rwanda. In this context, it is noteworthy that a small number of countries have used the principle of universal jurisdiction to prosecute Rwandans for genocide or instigate extradition proceedings. In the United States, for instance, a Burundian national who was granted asylum and U.S. citizenship, currently faces denaturalization due to involvement in the Rwandan genocide.

Drumbl then conveyed an update on other courts in the region, such as the Special Court in Sierra Leone, which has convicted eight individuals, and notably the ongoing Charles Taylor case, which was moved from Freetown to the Hague, due to security concerns. He also referred to the ICC, with its earlier cases mentioned initially, adding that some of them have proceeded to the trial stage. For instance, Thomas Lubanga of the DRC faces war crimes charges of conscription and enlistment of child soldiers. Other cases, however, remain in the investigation or pre-trial stage with the indicted individuals still at large. In the case of Sudanese president Omar al-Bashir, the Pre-Trial Chamber of the ICC did not find enough grounds to issue an arrest warrant on the basis of genocide, but only for crimes against humanity and war crimes.

Given the current situation, Drumbl summarized some of the accomplishments of international and national jurisdiction:

The simple reality that a certain number of individuals have been incapacitated, prosecuted, and punished by international criminal tribunals for extraordinary international crimes does something to chip away at the impunity gap. I think this is a positive step forward.

He also underscored that one of the major contributions of international criminal tribunals is less the quantity of sentences than the generation of substantive law, which serves expressive, constructivist, and jurisprudential functions. The ICTR and the Special Court in Sierra Leone have done much to mainstream the criminalization of violence against women and children, and the ICC is continuing in this tradition. The ICTR has expanded the scope of genocide, in terms of what exactly constitutes an ethnic group, which acts constitute genocide, and who is liable for that particular crime. In this regard, “international criminal law cabins the permissible, denounces the impermissible, and stigmatizes those who bust the global trust.”

Additionally, the generation of substantive international criminal law is not limited to the international level but seeps into national jurisdictions. International modalities of prosecution and punishment are also replicated at the national and local level via a catalyzing and transplant effect that injects accountability at the domestic level even though it may be conformist. Drumbl, however, emphasizes also one major caveat: more criminal law does not necessarily lead to more justice. In other words, the legal narrative faces challenges, such as increasing politicization. International criminal law might help incumbent governments to consolidate their own power and stigmatize opponents, while shielding their own illiberal practices from scrutiny. As a case in point, the Ugandan as well...
as Rwandan governments have used these tactics with the ICTR and the ICC. Drumbl then questioned whether arrest warrants and indictments truly help victims and asserted that the pursuit of criminal justice might come at the expense of humanitarian justice.

In his final remarks, Drumbl pointed to future challenges. He identifies a need to move from technique to context. Even as the problem of neutrality has put technique and externalization of law in the center of the issues, it is important to promote synergy (e.g., a connection with grassroots initiatives), and renationalization; in other words, bringing home the justice narrative, similar to the case for Peru, as mentioned by Gamarra. Mechanisms of accountability in addition to law are necessary. Drumbl urged the need for more research on how international criminal law punishes crime globally, given that the etiology of violence differs in every context. He suggested the necessity of a polycentric approach to justice in these contexts. Furthermore, a greater level of interdisciplinary scholarship on trials is necessary to move from faith to science. A key research question in this regard would be whether these institutions attained their goals or failed and if so why.

Last but not least, Drumbl counseled that we need to move from convenience to discomfort. International law has been presented as the heroic fight for human rights but it should not be forgotten that human rights itself is a creature of the state and therefore state institutions can benefit from the current interest in human rights. In fact, the criminal law narrative makes bystanders, colonial history, and others disappear, as trials only focus on select individuals. This approach produces a very limited and skewed form of justice. He advocates more attention to fostering justice outside the courtroom.

In his talk, Stephen Lamony drew on the Ugandan experience to point to common problems at the communal, national, and international levels. While there is a general consensus on the need to account for past human rights violations in the country, the debate currently centers on what

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*Stephen Arthur Lamony is the Africa Outreach Liaison for Africa and Situations Advisor at the Coalition for the International Criminal Court (CICC).*
types of accountability practices best promote sustainable reconciliation of society. Several options include truth commissions, the Ugandan High Court, ad hoc legislation, and the traditional justice system. Yet another bone of contention in this context is the perennial question of whether peace or justice should come first. In line with Gaitán’s argument in the first panel, Lamony presented two compelling reasons for promoting peace before justice: first, international law would be able to penetrate domestic law, providing a solid reference frame and legal foundation in addition to the traditional justice system. Second, peace advocates were concerned that continuing violence would prolong the suffering of populations. Eventually, the peace versus justice discussion subsided, as several justice mechanisms were already in place, such as the national courts, the amnesty commission, and traditional justice systems.

The availability of different forms of justice in Uganda begs the question of whether the assumption holds true that traditional justice is ‘restorative’ and international justice is ‘retributive’. Lamony believes that judicial procedures on the international and the national level appear to diverge very little. He referred to communal expulsion of convicts in a tribal setting, which has a punitive effect, as clan members hope for the offender to be punished by neighboring communities due to their ‘outlaw’ status. Additionally, in the Lugbara tradition spells are cast on the perpetrator, based on a spiritual belief that they eventually lead to fatal consequences for the person.

With respect to evidence collection, however, traditional procedures rely on questionable techniques, which Lamony described briefly. One form of extracting evidence from a culprit is to hang the person over a fire until they confess. Other techniques in-

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“International law penetrates domestic law, providing a solid reference frame and legal foundation in addition to the traditional justice system.”

— Stephen Lamony

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The Lugbara are an ethnic group who live mainly in the West Nile region of Uganda and in the adjoining area of the Democratic Republic of the Congo.
clude intentional termite bites or the consumption of porridge made of soil from the victim’s grave, which again, is based on Lugbara spiritual beliefs. Suspects are also barred from attending social and public activities.

In the last part of his talk, Lamony reflected on major challenges of the Ugandan traditional justice system. In the past, this mechanism was used to handle local crimes; yet, the large scope of atrocities committed in Uganda pose a difficult task for community leaders. Moreover, the new generation of Ugandans is not familiar with these traditional procedures and therefore rejects them. As a result, discussions at the local level have focused on how to codify traditional justice and apply it through the special chamber of the Ugandan High Court. This system relies on voluntary participation, contrary to the coercive measures described earlier. Lamony nonetheless pointed to the difficulties of reconciling traditional and national or international law practices. During the Juba peace talks in 2008, for instance, rebels of the Lord’s Resistance Army were brought to Northern Uganda to meet leading voices of the traditional justice system, who asked them to undergo traditional cleansing rituals. The Lord’s Resistance Army delegation refused, arguing that they were born-again Christians.

Increasingly, victims ask for compensation in traditional justice procedures, which intensifies current debates. While participation in traditional justice was voluntary in the past, such a measure puts important constraints on the parties and establishes monetary obligations. The Ugandan state has already attempted to set up accountability mechanisms in the past to overcome massive crimes. In 1971, then President Idi Amin created a face-saving Commission of Inquiry on the Crimes Committed by the Hisse Déjà Répè. While it was supposed to look into crimes of disappeared persons, it had only limited operational ability. It had no mandate to look into the other crimes, lacked transparency, and its chairman was specifically told not to look into evidence of crimes committed by the army and had to go into exile after being threatened with imprisonment. Yet another commis-

Children of Ekuvukene, a village in Kwazulu (South Africa), where they were forcibly resettled (courtesy United Nations).
Due to the lack of time, Lamony jumped directly to the consequences of accountability regimes in Uganda including the different obstacles facing them. First, he deplored that current crimes are looked at as mere disputes, resolved with some form of compensation rather than being considered human rights abuses or war crimes. In fact, a legal framework to prosecute war crimes or human rights violations is completely missing. Despite bills that have been introduced to the legislative process in both 2004 and 2006, the outlook of passing such a law is uncertain. Moreover, torture investigations are very cumbersome and based on the goodwill and cooperation of security agencies. Lamony then condemned the lack of victim protection in the country, as testifying in a trial may put the individual or group in danger. Vis-à-vis truth narratives to foster reconciliation, the truth commission historical memory project raised an interesting question of what the value-added of yet another truth commission would be, given the precedents set by previous experiences.

Due to this dire situation, the Ugandan government decided in 2003 to request ICC action against the rebels. On July 24, 2004, the ICC intervened in the Ugandan case by starting its investigation. With scarce resources and no executive forces to carry out arrest warrants issued in 2005, and the indicted rebels of the Lord’s Resistance Army still at large—the population is skeptical of the extent to which international support can successfully contribute to the transition. Nonetheless, the government is looking into best practices and sharing experiences (including Canadian experts) in order to promote justice in the country.

As a result of the peace talks in 2008, some were suggesting that the ICC proceedings should be deferred to national jurisdiction. The Pre-Trial Chamber of the ICC decided, however, that for a transfer, proper ICC legislation had to be in place, which was not the case in Uganda.

At the end of his remarks, Lamony briefly touched upon the issue of head of state immunity, wondering whether the current president could be tried while in office under new legislation by the Ugandan parliament.

Drawing on his training in history and law, Graeme Simpson17 delivered a unique interdisciplinary perspective on this panel. He started with a few provocative thoughts on the idea of justice and truth in contemporary society, pointing to the paradox that truth commissions had become politically popular across the globe, at precisely the point that post-modernism was asserting that Truth (with a capital T) was unattainable.

Drawing on his academic, legal and practitioner experience, he contrasted the normative perspective of how societies were supposed to operate under law, with the complexity—and frequent lawlessness—which history teaches us characterizes the way in which societies actually do function. When addressing mass atrocities and seeking to cope with past violence, it is important to acknowledge the significant gap between this “messiness,” of prevailing practices at the local level, and the normative legal framework that has emerged at a global level, if we are to grapple with the complex relationships between justice at the local and global levels. Nonetheless, Simpson asserted that embedded in this local “messiness” of how societies dealt with past human rights violations, was a creative space which has shaped and textured the

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17 Graeme Simpson is the Director of Thematic Programs at the International Center for Transitional Justice where he oversees work in Prosecutions, Reparations, Truth-Seeking, Security System Reform, Memorials, Gender, and a program on Peace & Justice.
trends towards accountability across various regions of the globe. He noted that the Rome Statute of the ICC represented the pinnacle of the normative global legal framework that has evolved over the past twenty years. Yet as a “court of last resort,” acting only when signatory countries are either “unable or unwilling” to prosecute those most responsible, the Statute itself – through its principle of complementarity – encourages local innovation and action in dealing with impunity. The ICC, like any local or national criminal justice system, can only prosecute a handful of human rights violators at best, thus effectively ignoring a massive number of human rights crimes. Therefore, although it is a difficult exercise to fully deal with the impunity gap in societies emerging from massive and systematic violence, it is necessary to draw from a panoply of interconnected mechanisms to do this. The contribution of transitional justice resides in the evolution of a range of such measures – including truth seeking, reparations and institutional reform – that may complement and sequentially add to the impact of national or international criminal trials. None of this should detract from the important acknowledgement that assumptions about complementarity and sequencing of the various transitional justice interventions contain risks of oversimplifying the intricate sociopolitical processes at work in any given context.

After this short conceptual and contextual introduction, Simpson engaged critically with the case of South Africa. For him, this critical reflection is particularly important because of how South Africa is viewed globally as an iconic case for dealing with past atrocities, albeit before the establishment of the ICC. In this respect, Simpson warned against the dangers of uncritically importing the South Africa “model” as if it were applicable to very different transitional contexts in an era where the global legal framework has evolved significantly. He pointed in particular to the controversial amnesty that was built into the very origins of South Africa’s historical negotiated settle-
ment – even though this was only reflected in a last minute inclusion in the post-amble to the negotiated interim constitution. As an indicator of this, Simpson referred to the various indemnity laws passed in the early phases of the negotiation process in order to bring apartheid political and military leaders to the negotiation table, some of whom were living in exile at the time. Indemnity was thus institutionalized during the negotiations, long before the National Unity and Reconciliation Act gave birth to the South African Truth and Reconciliation Commission (TRC).

This historical background is important when looking at the truth commission,

… as it gets a reputation of being treated as the progenitor of an amnesty. Although it was undoubtedly controversial because it had a conditional amnesty built into it, the truth commission was a creative response to a political agreement that had already been forged. It tried to render an amnesty more victim-centric, to ensure that the reconciliation process was not simply in the interest of the perpetrators who had managed to negotiate an amnesty at the front end.

However, the “conditional amnesty processes,” as Simpson continued, were very “messy and uneven” in practice, particularly in their endeavor to clearly distinguish between politically motivated and criminal violence. Simpson ran through some of the dilemmas faced by the Amnesty Committees of the South African TRC, including how the Committees dealt with racially motivated violence, or violence committed in the course of armed robberies, illustrating that the Committees could reach very different conclusions about the character of these crimes depending on whether or not they had been sanctioned or authorized by a “known political organization”. Simpson used these examples to illustrate how the TRC and indeed the fabric of South Africa’s negotiated transition that produced it, was defined by the objectives of party-political accountability as the primary engine of the rhetoric of reconciliation. He argued that this risked producing a sanitized version of the past—a new political orthodoxy—which cleansed protagonists on all sides of the conflict of their particular criminal pathologies and which obfuscated the criminogenic character of the Apartheid state. By contrast, drawing from personal experience, Simpson referred to perpetrators—as well as victims—who continuously crossed the line between criminal and political participation, highlighting the important question of the relationship between ordinary and extraordinary crimes. He also noted the importance of the TRC’s consequent ironic failure to adequately engage with race, gender and class as self-explanatory factors in understanding past patterns of violence in South Africa. He also pointed out the TRC’s obsession with physical violations (death, disappearances and severe ill treatment), at the expense of an adequate engagement with the seismic dislocation wrought by Apartheid’s everyday ‘administrative evil’. He concluded that the South African TRC arguably did more to obfuscate that it did to elucidate the role of race in the South Africa conflict.

He went on to argue that these observations cry out for a critical reflection on the South African experience, because both restorative and retributive justice rely on a homogenized notion of victimhood, which is problematic. While activists and political actors portray a uniform victim identity, victims themselves do not claim to be striving for the same goals, rather they are fractured and fragmented. “Their expectations and needs,” according to Simpson, “change over time, and aspirations of victim communities most affected by the conflict are subtle and fluid.” One of the lessons Simpson learned when working with victims in South Africa was that such activists or political

“[C]onditional amnesty processes [are very] messy and uneven.”

— Graeme Simpson
actors tended to speak for victims, instead of allowing victims to express themselves.

Simpson also suggested that the South African experience illustrated another potential danger in forging solutions to past conflicts by reference to the lens of jurisdictional boundaries, despite the fact that frequently the conflicts being addressed do not themselves “respect the boundaries of nation-states.” The South African case, despite its destabilizing consequences in neighboring countries, had no spillover effect: neither reparations nor truth-telling extended beyond the nation-state borders.

In conclusion, Simpson briefly mentioned recent groundbreaking developments, including the recent legal victories by human rights groups and activists. On May 4, the High Court struck down a government prosecutions policy that effectively provided for an indefinite extension of the truth commission type amnesty where there was a political motivation. This legal victory signals an important rediscovery of a voice for human rights and victim groups in post-apartheid South Africa. Additionally, the High Court has also recently struck down some presidential pardons for Apartheid era crimes, arguing that they did not meet the minimum requirements of victim participation and of disclosure that would apply in cases of parole. Although this latter case is still subject to appeal in the Constitutional Court, these changes could have far-reaching implications, Simpson noted, closing his remarks due to time constraints.

The subsequent questions and discussion focused on the issues of cross-border truth telling and reparations, as well as the difficulties of promoting traditional mechanisms as sustainable tools to promote justice. There were also inquiries about whether humanitarian law would eventually reach a status similar to that of criminal law under the ICC.

Additionally, the question was raised of whether there is a link between the sanitizing mechanism, put forward by Simpson, and the still pervading criminal violence in South African society. A comment by Susan Lawrence, English faculty at George Mason University, is noteworthy in this context, as she believed discourse that helped frame narratives of justice was crucial to understanding the dynamics and capacities of reconciliation processes. From a comparative angle, Susan Hirsch wanted to know whether—reminiscent of the Latin American cases—any clear and symbolic court decisions also existed for the African region. Last but not least, Ruti Teitel picked up Simpson’s final set of remarks on the latest developments in South Africa, asking for further clarification and whether global issues are affecting progress there.

The panelists answered questions in the order in which they presented. Mark Drumbl considered the dichotomy between criminal and humanitarian justice as necessary. He underscored his frustration with this dichotomy, particularly in the Sudanese case, which he referred to as an “unclean hand doctrine.” He noted, “it is because of the government’s willingness to sacrifice humanitarian justice, that it may obtain a bargaining chip against criminal justice.” From a victim’s perspective, criminal indictment could potentially create humanitarian injustice. He urged scholars studying the issue to recognize a lack of symmetry between the two concepts and thus the need for careful case-by-case analysis. However, the type of judgment that international lawyers don’t talk about has symbolic character: acquittal. As a consequence, in the ICTR case, for instance, this has led to politicization and public outcries, as courts have acquitted alleged human rights perpetrators for diverse technical legal reasons.

Stephen Lamony referred to the challenges traditional justice mechanisms
face, including the lack of recognition, especially by the top echelon. If the president does not set the impetus for traditional forms of reconciliation, it is difficult to promote such an agenda within society. Furthermore, he mentioned the entire generation of young Ugandans who were raised in the Northern part of the country in refugee camps, and who did not learn the value of traditional measures. Yet another problem is how to administer these processes. The lack of a paramount chief in the region dims the chances of procedural consensus and turns this goal into a laborious and complicated process.

Graeme Simpson took the opportunity to clarify and complement some of his points on the intersection between law and politics, drawing not only on his own case, but also referring to the morning presentations of panel 1 and 2. In his view, the recent trend—including court trials, political negotiations and truth commissions—“is not about justice as an absolute, this is about the negotiation of what is sufficient justice.” He then continued

“This is an interesting space, which is created by the discourse of complementarity. The ICC should not be assessed merely as an operational Court, which is intervening as a colonial master into African conflict, but as a thumb on the scale of justice and as a cog in the wheel of an international system of justice which increasingly applies pressure for justice to be done by various means and as a conglomerate of different tools in local contexts. This is not a culturally relativist argument, but one which acknowledges that to be effective justice must be culturally relevant.

Currently, there is a danger of polarizing local and international law. Yet, the lack of recognition and patronizing attitudes cannot solve the problem. Justice is being contested politically, and actors, experts, activists and scholars should not deny this.

“The ICC [is not] ... intervening as a colonial master into African conflict, but as a thumb on the scale of justice ... which increasingly applies pressure for justice to be done.”

—Graeme Simpson
Preventing the New American Professionalism: Accountability for Lawyers, Doctors and Psychologists Shaping Torture

Gitanjali Gutierrez\(^\text{18}\) began her speech by introducing briefly the work of the Center for Constitutional Rights (CCR), a human rights litigation and advocacy group established in 1966, which consists of radical lawyers representing marginalized communities that have limited access to justice. She then explained the work of the organization in the context of the 9/11 attacks. Although the legal experts at CCR did not share the perceived political philosophy of the Guantanamo detainees—portrayed suspected terrorists by the U.S. government—they deemed representation of these clients necessary due to the questionable legal standing of the military tribunals developed to prosecute the detainees. When CCR finally gained access to some of the prisoners, it became clear that many of the men were in fact wrongfully imprisoned and thus robbed of their liberties.

Gutierrez presented an outline of other practices that CCR targets, such as:

- Interrogations using torture;
- Disappearances and kidnapping;
- Rendition practices\(^\text{19}\);
- Arbitrary indefinite detention;

CCR intends to expose the perpetrators of the acts listed above, including high-ranking as well as low-level government officials and, increasing-

\(^{18}\) Gitanjali S. Gutierrez is an attorney with the Center for Constitutional Rights, a New York-based human rights organization litigating challenges to the Executive’s post-9/11 anti-terrorism policies.

\(^{19}\) The act of kidnapping individuals by the U.S. government and transferring them to secret prisons outside of any legal process or to third countries where they are interrogated under torture sometimes with the assistance of CIA agents or other U.S. government support.
ly, government contractors. The major forms of legal action that the Center is engaged in are habeas corpus cases, Freedom of Information Act (FOIA) cases, ethics complaints, and civil actions. The latter, if successful, result in an order that the conduct was unlawful and payment of damages to CCR clients. Although the monetary compensations are not direct reparations, they nonetheless allow victims to recover and restore their lives after experiencing human rights violations. Moreover, CCR is also involved at the international level, bringing complaints under the principle of universal jurisdiction, which a number of countries apply. It allows the prosecution of an individual or group for war crimes or human rights violations outside the suspect’s country of origin or residence. Germany, Italy and Spain not only have very strong laws that support this concept but are also willing to use them, with the Pinochet case being the most prominent example.

CCR’s philosophy, based on a multidisciplinary approach, aims at achieving justice for its clients primarily in form of reparations, official apologies, and name clearances. The Center’s work also seeks to strengthen international institutions, e.g. in form of petitions to the Inter-American Court, and the promotion of the application of international human rights standards in local and domestic U.S. cases to prevent future abuses. These efforts are combined with litigation, public campaigning, and political organizing—a specific strategy that CCR is bringing to human rights movements as well as to their clients’ families in order to help them with media coverage, community organizing, and general information dissemination. The objective is to build a stronger grassroots base and network.

“[Universal jurisdiction] allows the prosecution of an individual or group for war crimes or human rights violations outside the suspect’s country of origin or residence.”

—Gitanjali Gutierrez

universal jurisdiction, which a number of countries apply. It allows the prosecution of an individual or group for war crimes or human rights violations outside the suspect’s country of origin or residence. Germany, Italy and Spain not only have very strong

20 CCR helps marginalized organizations or communities seeking access to official records about government activities and/or programs.

21 This includes inter-professional complaints filed with the ethics boards of legal, medical and psychological associations, to disclose and sanction unethical professional practices that occurred during these dubious government activities.

22 Name clearances apply to individuals who have been wrongfully categorized and blacklisted, imprisoned and/or tortured.
After a broader overview of the center’s mandate, Gutierrez provided details on the actors that CCR is targeting. For over a year, she and her colleagues have been looking at the “professionals” who have shaped U.S. torture practices, particularly lawyers in the Office of Legal Council (OLC), which provides direct legal advice to the White House. She asserted:

The release of the OLC memos make crystal clear that lawyers within the White House authorized the use of specific methods of interrogation that included water-boarding, prolonged sleep deprivation, and other techniques that both U.S. domestic courts, foreign courts, and international tribunals have long ago determined constitute torture under both U.S. definitions of the term as well as international definitions of that term.

The authorization for these practices was not sound legal advice yet was clearly given with the knowledge of violating existing law. This issue is currently at the heart of an inquiry into the ethical questions by the Department of Justice, as well as proceedings for an investigation in Spain against six Bush administration lawyers who authorized the program.

The above observation is crucial, as lawyers hold the legal key to open the door to these dubious practices, arguably allowing others, who were involved, a defense to cover their actions. In other words, doctors, psychologists, and other professionals could be viewed as adhering to the law. Paradoxically, lawyers depended on the doctors to define the threshold of violence and pain in order to make the interrogation appear as torture, while doctors rely on the input from lawyers to say that the acts did not meet torture’s legal definition. Undisputedly, the lawyers cleared detainees for further torture in Guantanamo, known U.S. military detention facilities, and secret CIA prisons, monitoring them to make sure that the physical stress the subjects were exposed to would not result in fatal consequences. Recent reports indicate that, to date, approximately one hundred individuals have died in U.S. detention as a consequence of torture interrogation.

Psychologists have also played an important role in these programs as members of interrogation teams. Unlike doctors who could arguably claim they were treating a subject and not participating in the actual act, the members of “Behavioral Sci-
ence Consultation Teams” were an acknowledged part of each interrogation team.

They calibrated methods to exploit individuals phobias, fears, cultural characteristics, individual personalities. The programs were similar to what the CIA engaged in under their KUBARK manual\(^ {23} \), including sleep deprivation and LSD\(^ {24} \) experiments. It’s been chilling to read the deliberate and systematic treatment. Clients report almost uniformly similar experiences of being packed up by rendition teams, transferred to a facility, and exposed to methods that make them utterly dependent on their interrogators for their basic human needs and destroy any sense of self.

Additionally, the memos written by these scientists describe in minute detail the techniques that should be used to create psychological stress that would result in extracting important information from detainees.

In the last part of her speech, Gutierrez addressed the question of why truth commissions are inappropriate in the U.S. case. In her view, prosecutions are more appropriate, as the crimes committed have not affected U.S. society in general but only certain individuals and groups (i.e., detainees). Neither is there a need for efforts to reconcile warring factions after a civil war. Moreover, the information in relation to the victims is considered classified material. As some clients—who have been acquitted or released to their home countries—are still considered national security threat by the United States, the work of a fact-finding and truth-seeking commission would be very difficult if not impossible. In this context, she underscored that the facts for accountability were well known, including an increasing amount of released reports, memos, and other documents, and thus there was no need for additional information to know who was responsible and for what.

The creation of a commission could also undermine efforts of accountability, as the lengthy process might conflict with the statute of limitations, which is the timeframe by which a criminal prosecution must be brought will expire. Put differently, if a commission were to be dragged out long enough, then individuals could not be held accountable anymore. Subpoena, or the authority of a commission to force someone to testify before them, is also very questionable, because it could require a grant of immunity. Additionally, forming a commission that was not tainted by the crime originators, such as Senate committees that knew about the issues, would be very problematic.

Gutierrez then proceeded to make her case in favor of prosecutions, reminding the audience that in times of crises, when the White House had to weigh the moral and legal obligations versus national security priorities, the latter would win and therefore the judiciary needed to serve as an independent balance of power mechanism. Non-prosecution, however, would only open the doors for impunity should this issue arise in the future. The failure of the United States to prosecute also makes former government officials more vulnerable to prosecutions in other countries under the principle of universal jurisdiction. Last but not least, a domestic trial would play an educational role for the broader public by minimizing the issue of classified information and putting pressure on prosecutors to have as public an accounting as possible.

Trials could be complemented by truth finding mechanisms, such as the FOIA. Ongoing document releases under the Obama administration are already a step in the right direction.

\(^ {23} \) KUBARK, a cryptonym for the CIA itself, was the first of seven secret CIA interrogation manuals and dates to 1963.

\(^ {24} \) LSD is an acronym for lysergic acid diethylamide, a psychedelic drug, causing unusual psychological effects such as visuals of colored and crawling geometric patterns, and a sense of time distortion.
to help fill the gaps of practitioners, activists and most importantly, victims. She underlined that these efforts could also include outreach to allies in the media to provide victims and their families more opportunities for achieving accountability.

In her closing remarks, Gutierrez touched upon issues valuable to comparative politics. Firstly, accountability issues do not affect the United States only, but have tremendous consequences for the Muslim and Arab world. Impunity strains diplomatic relations and fuel extremism. Secondly, in the United States, laws used to classify information were exploited and abused to conceal illegal torture practices, thus preventing the use of other tools to provide for public accountability, such as investigative journalism, public exposure, shaming, and even confirmation of victim stories. In this context, she deplored the contentious politics in U.S. society and the lack of civil disobedience and public protest to demand accountability for human rights violations and the prosecution of those who were responsible for them.

In the question and answer period, an immediate set of questions centered on how the issue of circumventing FOIA, based on the grounds of national security, could be overcome and additionally, whether there had been any changes in the treatment of detainees in Guantanamo under the new U.S. administration. Although Gutierrez underlined that the disclosure of OLC memoranda was helpful in the investigation of officials under the Bush administration, it is still difficult to challenge the government’s decision to revoke disclosure of information classified as a threat to national security. The CCR employs a multipronged approach to press for document release, including media campaigns to create a public call for accountability. She then pointed to particular media interaction, using the example of the Abu Ghraib prison torture photographs. An Australian newspaper had a leaked copy of the photos—evidence that should have been released by the court—and published them in order to get the credit and the story. With respect to the Guantanamo case, Obama’s decision to close the military prison facility does not signify the end of detention. It is very likely that, even in the case of closure, current detainees will be transferred to military bases in the United States. Although the treatment of the suspects has improved, in three of the current facilities individuals are still subject to solitary confinement.

An additional set of questions addressed apathy and timing. Mark Drumbl wondered why Americans had been so lethargic about this issue, followed by a participant’s observation that moral indignation has been muted and morality instrumentalized by the defenders of torture. Gutierrez responded that 9/11 created a perfect environment to implement these techniques, but it also created an environment that fostered apathy and also the blaming of Arabs generally, which clearly did not occur with respect to Caucasian Americans after the Oklahoma bombings. Another question concerned an issue widely discussed among transitional justice scholars: is there a preferred timing for an optimal and positive accountability mechanism and is the time right in the United States? According to Gutierrez, the optimal timing is now, because there haven’t been any consequences for responsible officials. She then stressed that, as the risk of terrorist threats remained, the current administration kept the door open for many of these practices. Finally, accountability fifteen years down the road is less effective, and therefore she believed that the time for action is now. For those concerned that prosecutions will be detrimental to the country’s unity, she argued that the Obama administration not only had the duty to guarantee accountability, but that it also had the power to enforce this process.

“[There is a low level of] contentious politics in U.S. society and [a] lack of civil disobedience and public protest to demand accountability for human rights violations and the prosecutions of those who were responsible for them.”

Gitanjali Gutierrez
PANEL 3

Research Notes: Comparative Analysis of Trials and their Impact

The third panel of this symposium brought together scholars whose work reflects comparative quantitative research. Panel moderator Susan Hirsch introduced Leigh Payne who presented findings that she and her colleagues, Tricia D. Olsen and Andrew G. Reiter, will soon publish as a book.

The project, which started at the University of Wisconsin, focuses on gathering data on the five primary transitional justice tools and evaluating whether they are successful in achieving particular goals, such as improving democracy and human rights. To test these hypotheses, Payne’s team created a large database of transitional justice mechanisms covering the period from 1970 to 2008, primarily relying on Keesing’s World News Archive. Rather than describing the bulk of their data, she presented findings on 91 countries that transitioned to democracy and subsequently outlined the Latin American cases in greater detail.

Payne stressed that definitions were key in their work, as scholars tend to employ different interpretations of transitional justice mechanisms. In her presentation, she focused on trials, amnesties, and truth commissions. Although amnesty is problematic—as it is generally not considered a transitional justice mechanism—she argued that it was important to evaluate whether or not it had an effect on the transition process. She identified four theoretical approaches that provide hypotheses regarding the possible effects of transitional justice. The first, called the Maximalist Approach, claims that to improve democracy and human rights, it is necessary to carry out the maximum form of accountability. From this perspective, amnesties applied by the government only perpetuate the culture of impunity and hence work against human rights, rule of law, and democracy. A Minimalist Approach, by contrast, aims at minimizing justice aspect of transitions and emphasizes amnesties for certain spoilers to promote peace,
stability, and democracy. The third, the Moderate Approach, advocates truth commissions as a way to strike a balance between prosecutions and amnesties, not only by treating truth processes as a form of accountability but also by recognizing the political constraints that may be present and that demand amnesty. The Holistic Approach asserts that no single mechanism suffices and that a combination of mechanisms brings about positive effects.

A fifth category that Payne’s team developed as an alternative combines the approaches. Trials are crucial to improve human rights and democracy; yet amnesties also need to be present to achieve success. The research suggests a need for a balance between prosecutions and amnesty. When examining the variables separately—such as amnesty or trials—no statistically significant findings emerge. The study finds that truth commissions alone produce statistically significant results, but they are negative. In other words, countries that adopt only truth commissions are more likely to see negative effects on democracy and human rights. Yet the combination of trials and amnesty (with or without truth commissions) is statistically significant and positive, meaning the combination is likely to foster democratization and human rights. As Payne put it, “When truth commissions alone were negative, what we find is if they are combined with trials and amnesty, then they have a positive effect. This is one of the clustering mechanisms” that produce improvements in democracy and human rights.

Interpreting these findings, Payne argued that the maximalist claim—trials are crucial—was right, but amnesties should accompany them. These findings do not necessarily corroborate the minimalist approach, which exaggerates the threat of trials to human rights and democracy. Additionally, the data cannot support the claim of moderates who assert that truth commissions can bring about positive change toward democracy. Payne and her colleagues have clarified and refined what kinds of clusters work cross-nationally. The model that they generate—called the “Justice Balance”—illustrates the importance of timing and transition type. Trials are more likely in situations of regime collapse than negotiated transitions, due to the fact that the former regime is discredited and has lost legitimacy. In negotiated transitions, however, states are con-
strained and forced to sequence their mechanisms, with amnesties paving the way for trials at a later date. This begs the question: why after a collapse are amnesties necessary at all? According to Payne, this is due to political economic factors:

Poor countries are more likely to adopt cheap amnesties than trials. As argued in Jon Elster’s work of the Eastern European cases, economic constraints may make amnesties more attractive to transitioning countries than we would necessarily like them to be. The practical consideration of needing to amnesty some group of violators, but still trying others may be a way to carry out this transition without overtaxing and overburdening transitional states.

This might be a practical way of coping with structural and institutional constraints, while at the same time striving for accountability. In negotiated transitions, the balance is a sequence with amnesties occurring at first, followed by trials to guarantee stability. The data on timing confirms this outcome, since trials occur approximately four years after the beginning of transition, as compared to amnesties, which are put in place about two and a half years after the start of the transition period.

Applying the findings to the Latin American context, Payne asserted that the Justice Balance model does not fit perfectly, but that the overall argument was confirmed. In the case of Bolivia, for instance, ten years after trials, positive effects on democracy remain questionable. It is important to notice, however, that this country did not have any amnesty and does not fit the “Justice Balance” model. In conclusion, she pointed out that the failure to implement amnesty officially—as was the case in Bolivia—might be key to understanding the dynamics of amnesties in transitions. The next phase of the project will include gathering more nuanced data on specific transitional justice mechanisms, analyzing which forms remain within international law, and what kind of mechanism are driving the findings of the “Justice Balance.” As for policy implications, Payne cautioned against pushing for truth commissions alone. Without the possibility of prosecutions, truth-revealing mechanisms might have a negative effect on democratization processes. Her recommendation therefore recognizes the need to pair truth commissions with trials and amnesties. Nonetheless, she is aware of the policy and moral hazard implications of her team’s project. It may be interpreted as advocating amnesties, which is not its intent. Instead, it advocates selective or exemplary trials coupled with amnesties for other perpetrators. In addition, if perpetrators perceive amnesties as unable to protect them from prosecution, they may prove less likely to use them as a mechanism to withdraw from power or to accept peace accords. This perception could hamper, rather than enhance, democracy and human rights. Finally, Payne touched upon the methodological limitations of the project, highlighting the need for more detailed and qualitative analysis to fill in the gaps of the current model and to get a better picture of dynamics on the ground.

David Backer added to the quantitative picture of transitional justice by focusing on West Africa. His research uses surveys conducted in Ghana, Liberia, Nigeria, Sierra Leone and South Africa to grapple with the question of victims and amnesty laws. For him, there are at least several possible rationales for amnesty. Firstly, those still in power who were complicit in abuses might obstruct the accountability process. Secondly, failing to implement amnesty laws might lead to violent backlashes. And lastly, broader cross-national evidence shows that amnesty helps foster stability in post-conflict situations. Yet, there are also drawbacks. Failure to prosecute reinforces the sense of impunity, which violates in-

“Poor countries are more likely to adopt cheap amnesties than trials.”
—Leigh Payne

David Backer is an Assistant Professor of Government at the College of William & Mary.
ternational obligations and increases the lack of accountability and perceptions of unfairness. Amnesties are regularly challenged by human rights activists, NGOs, and victims, with cases ranging from Africa to Latin America. Backer’s particular interest centers on victims’ attitudes about and responses to amnesty. There are several compelling reasons that justify such a research focus. “Not only do they have a distinct moral standing, but they are also the very reason why transitional justice issues exist. No victims. No violations. No issues to confront.” Moreover, they have a personal stake, as political and judicial decisions are made in reference to their past, present, and future circumstances. Political leaders in transition periods express their respect for and interest in victims, whose voice is frequently muted by conditions that lead to socio-political and economic marginalization.

The speaker then pointed to the flaws of the existing transitional justice literature. Historically, the research is very descriptive (or even prescriptive), based on insufficient empirical data, and lacking rigorous analysis of its impact. Ignoring the importance of data gathering, combined with a primary focus on the macro level, are the main reasons for this shortcoming in current scholarship. While past studies have emphasized the big picture, looking at states, countries, and national institutions, it is pivotal to zoom in closer in order to examine local settings and processes. Moreover, the plethora of single country studies or attempts that combine cases generally lack the rigorous methodological framework to allow for a solid cross-national comparative analysis. Yet another shortcoming, which Backer deplored in this context, was the lack of longitudinal studies in individual research. Hence the need for his research project and design. Originally, his project started as his dissertation research in South Africa, which he chose due to the victim-centered processes that integrated some of their testimonies in public hearings and gave them a role in the conditional amnesty process. While currently finishing his book on this topic, he has already launched a new project that extends his research to West Africa, including Ghana, Liberia, Nigeria, and Sierra Leone. All of these countries followed the South African model to a certain
degree by implementing truth commissions. “By looking at these other countries, we have a chance to study similar institutions with a variation in context, but also variations in measures,” he noted. Although each case differs, there are strong interrelations between the states. Liberia and Sierra Leone, for instance, are linked because of their conflict history, and Ghanaian and Nigerian peacekeepers, who were sent to the crisis region, have been accused of human rights abuses in these countries.

Backer’s data samples range from 500 to 1,100 survey respondents, depending on the country, and is based on representative samples. Pressed for time, he did not dwell on technical details, but instead presented his findings. Conventional wisdom suggests that victims want retributive justice and would therefore oppose amnesty. However, survey results show that in all five countries the majority of the respondents—between fifty and sixty percent depending on the country—approve of amnesty measures. He emphasized that these findings are potentially misleading. When digging deeper into the available data, it becomes clear that respondents’ answers are based on a strategic calculation: they support amnesty as necessary to obtain peace, thus leaning towards a practical solution. Only a very small number of victims reject amnesty completely. Instead, respondents indicate specific conditions under which they would consider it as a fair option. Yet, approval does not signify that they morally agree with the concept. The disapproval of amnesty increases when looking at longitudinal data from South Africa over a period of five years, during which the government leaned toward absolving additional perpetrators. Support for amnesty among the survey respondents fell from sixty percent to twenty percent. Yet another stark decline can be found for answers to the question whether amnesty was necessary to avoid another civil conflict—although originally, respondents almost universally embraced the concept. Additional parts of the survey attempted to evaluate the attitudes of respondents toward other accountability options, such as the support for trials—particularly international trials—lustration, measures of traditional justice, banishment, and exile. Interestingly, the relative high level of support for prosecutions coincides with support for amnesty. There was also an extremely high response rate in support of lustration and excluding perpetrators from any political activity. Except for Nigeria, all other countries indicated very low levels favoring traditional justice mechanisms, even though the level of confidence in traditional leaders was high.

In concluding, Backer referred briefly to a few lessons. Victims are not necessarily opposed to amnesty and there is great variation in attitudes, as Graeme Simpson pointed out in his talk. Although respondents accept amnesty, they remain interested in accountability. Preferences are complex and change over time, depending on circumstances. From a policy point of view, Backer concluded, the evidence offers substantial support for conditional or limited forms of amnesty, rather than blanket amnesty. Methodologically, he suggested that for anyone who will employ survey research in the future, instead of focusing on a single question, it is important to examine different layers and nuances of the issues at stake.

While some questions to the panel specifically dealt with methodological issues such as sampling, others probed into the effectiveness of transitional tools, particularly whether different clusters existed, depending on the period—recent vs. remote past—, regional differences, timing of implementation, and the quality of truth commission efforts. The last set of comments addressed the issue of scarce resources that new democracies face, especially in light

“Although [victims] accept amnesty, they remain interested in accountability. Preferences are complex and change over time, depending on circumstances.”

—David Backer
of the costs of Western judicial institutions in developing countries that could very well rely on traditional and indigenous justice mechanisms, therefore localizing the response pattern to account for past atrocities. In this context, some participants were also wondering whether a particular dynamic could be observed between national and international trials, especially in Payne’s analysis.

Payne pointed out that most of the variables in question had been tested but were not addressed in this short presentation. Although more research is needed on variation of truth commissions, she mentioned the work of Eric Brahm and his colleagues as a good start, shedding a more positive light on truth-revealing mechanisms. A really interesting observation about timing concerns the period since the height of repression: the more time that has passed since atrocities were committed, the greater the likelihood of amnesty. Looking at abrogation of amnesty laws and delayed justice—both rising trends—she underscored that more cases for the study were needed to produce viable results. Responding to the inquiry about the cost of transitional justice, Payne wondered whether foreign aid tools could be adjusted to cover the high costs and financial burdens of putting judicial structures in place that would make justice affordable for developing countries. This question remains to be answered, as there are not sufficient cases or data to generate statistically meaningful results. Nonetheless, Payne pointed to an international factor, such as the presence of international NGOs and the Genocide Convention, which, if signed and ratified by a country, increases the likelihood of promoting justice and trials.

**PANEL 4**

**Roundtable Discussion: Prosecutions as Mechanisms of Accountability**

After a short coffee break that followed the brief excursion into the world of quantitative analysis, panel moderator Jo-Marie Burt announced the speakers of the last part of the symposium. The purpose of this panel—consisting of distinguished scholars who formed the vanguard in early transitional justice studies—was to not only offer a meta-analysis of the various topics and issues addressed earlier that day, but also to complement the discussion on accountability in various contexts by referring to historical trends and current developments.

The first panelist, Ruti Teitel⁷—among the scholars who coined the phrase transitional justice with her work—began her speech with a reference to the fall of the Berlin Wall and the collapse of the former Soviet Union. Thereby, she underscored the origins of her use of the phrase and its association with radical political change following oppressive rule. Subsequently, there has been a proliferation of interest in the field and an expansion of the use of the phrase, including, for instance, references to peace. Current scholarship not only includes legal pundits, but also humanists, activists, and practitioners. Her talk, entitled “Transitional Justice Globalized,” sketched the evolution over the past two decades and presented a paradigm of transitional justice in this century, based on an article she published for the *International Journal of Transitional Justice*. The paradigmatic framework that cen-

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⁷ Ruti G. Teitel is Ernst C. Stiefel Professor of Comparative Law at New York Law School, and an internationally recognized authority on international human rights, transitional justice, and comparative constitutional law.

tented on punishment and impunity—dichotomous in nature—was due to the role of the state that loomed large in all of these questions. The debates largely referred to state actors, institutions, and purposes. Today, however, these issues are thought of differently, and she called it a “global phase of transitional justice.” This phase bears three significant dimensions. The first part, steady-state justice, refers to moving away from the perception that this was an exceptional situation. Globally, societies are facing a threat of pervasive use of violence and a rise in instances of ethnic and civil strife, which has lead to shifting and adapting the research on the relationship between violence and law. The next dimension pertains to the change from state-centric obligations to a broader array of interests and non-state actors—both in the role of perpetrators and victims. This is associated with globalization, the rise of the private sector, and the weak state phenomenon, which is a result of the fragmentation and the unfolding of decolonization over the past two decades. The third one is an expansion of the role of the law. The purposes of transitional justice become more complex—not solely punitive in nature—and go beyond the general array of questions, including issues of human peace and human security. These changes do not work in a linear way but rather are typified chaos, clashes, and multiple rules of law—as well as other values involved in the protection of a variety of interests of state, persons, and peoples.

These observations might explain the conflicting data, depending on the unit of analysis, as she notes:

Looking at the historical punishment and impunity debate, one becomes aware that at the global level there is a greater awareness of accountability and a tolerance for judicialization and tribunalization, which are enmeshed in politics. Additionally, there is a call for more complex forms of accountability with the rise of private actors in conflict, such as military contractors, and there is a much greater emphasis on victims, as illustrated by the greater toll borne by civilians in current conflict. A myriad of responses to these phenomenon are possible and can engage global, regional, and local levels at the same time. Hybrid tribunals are supposed to reflect the best of both worlds: global and local; ad hoc tribunals, set up by the United Nations following the genocide in Rwanda and the Balkans, demonstrate a strong connection between judicialization and the restoration of peace.

These observations, however, raise questions about the more general

“[T]here is a call for more complex forms of accountability with the rise of private actors in conflict, such as military contractors, and there is a much greater emphasis on victims, as illustrated by the greater toll borne by civilians in current conflict.”

—Ruti Teitel
purposes that transitional justice is supposed to serve. The ICTY and ICC charters carry far-reaching goals that go beyond those traditionally associated with criminal justice. What does this broader impact translate into? Drawing on the ICTY Balkan case, Teitel underlined that part of the tribunal’s exit strategy was to delegate its tasks to local institutions such as in Serbia, Croatia, and Bosnia and Herzegovina. Yet, there is a broader normativity across politics in Europe that refers to the ICTY, including for instance the Turkish accession debates, in which symbols of compliance become a benchmark of greater European cooperation. The normativity of transitional justice is thought to represent a path to legitimacy and is, for the United Nations, part of the toolbox of rule of law. This explains, in part, the higher tolerance levels for judicialization.

One of the other major illustrations of this trend is the ICC, which Teitel focused on for the remainder of her talk. The court’s mission is to individuate responsibility for grave war crimes, crimes against humankind, genocide, and others that remain undefined; this also applies to recently created regional and local courts such as in Cambodia, Sierra Leone, and Lebanon. The charters of these tribunals refer not only to traditional values in the name of justice, but also to more progressive concepts of reconciliation and peace. Many sociological and political science studies suggest that the latter approach may further divide the communities at a local level. Nevertheless, the expectation now—given the many conflict-ridden regions in the world—is to improve the commitment to human security, using the above tools. As Teitel candidly pointed out, “rarely is justice thought to be associated primarily with backward-looking retribution, nor even with more traditional justice goals, such as deterrence.”

What are the mechanisms to implement these ideals? Looking at the ICTY, for instance, the UN Charter Chapter 7 provided the foundation and empowered the institution to promote peace in the region by staving off cycles of vengeance. Chief prosecutor Richard Goldstone—who served at the ICTY between 1994 and 1996—thought this would be pos-
sible by breaking the nexus between the individual and the group. While this concept is considered to be one set of theories, outlining how these transitional justice processes are to work, practice is more complex and goes beyond the institutional functions. Notwithstanding the nonlinear and non-chronological way in which steady-state justice moves forward, there is an entrenchment of transitional justice in human rights and humanitarian law and many of these responses have been ratified in treaties, human rights conventions, and particular bodies of certain countries dealing with past atrocities.

Yet another crucial point that Teitel addressed was the greater role of law and judicialization in politics, particularly in the midst of conflict. Using the ICC as an example, she illustrated how the organization was thought to be the symbol of the normalization of transitional justice mechanisms, which have been previously considered as exceptional, and how the international focus of transitional justice had shifted in order to include local and national issues as well. This development, however, fueled critique not only by developing countries or threshold states, but also the United States, which revoked its status as a signatory party to the Rome Statute, citing concerns about sovereignty. Paradoxically, sovereignty is the driving force to implement sanctions and therefore the target group of the ICC consists of weaker states that violate international law and human rights.

“The paradoxically, sovereignty is the driving force to implement sanctions and therefore the target group of the ICC consists of weaker states that violate international law and human rights.”

—Ruti Teitel

mentarity regime? How does it affect the balance of local and international justice? What is the impact on the balance of traditional and modern? How does it affect the concepts of punitive and reconciliatory justice? In all of this, the private sector is playing an increasingly important role, as the ICC could not only be seen as a product of state consent, but a consequence of wider politics that include non-state actors, such as transnational NGOs and global civil society.

In conclusion, Teitel observed that the current research paradigm of global transitional justice has begun to reflect on a much wider net of issues and therefore required a broad and diverse approach, including different lenses to evaluate and cope with the issues at hand. The wide normative reach of the paradigm not only affects the discourse, but also the structure of international affairs.

The second panelist, Diane Orentlicher, rounded off Teitel’s picture of the field by focusing on the role of the United Nations and on her experience working with the ICTY. She began by citing current developments that highlighted the dynamic character of transitional justice and which were also inconceivable twenty years ago.

Although certain U.N. experts, such as peace negotiators, have in the past emphasized peace over justice, the United Nations—for which she has done many advising projects on legal developments—has increasingly seen itself playing a normative role: Even while undertaking peace negotiations, its representatives seek to act within a framework of international human rights law, including through their opposition to certain kinds of amnesties. The UN itself has helped develop international law in this area, which allows some forms of amnesty

21 Diane F. Orentlicher is Professor of International Law and co-director of the Center for Human Rights and Humanitarian Law at the Washington College of Law, American University in Washington, D.C.
but circumscribes the permissible use of others. While this law has ruled out certain amnesties, the U.N. rejects one-size-fits-all approaches to transitional justices. In her own work for the UN, Orentlicher has recognized the importance of making space for local actors’ participation in shaping responses to mass atrocity rather than applying cookie cutter measures. Hence, a paradoxical development has emerged: there is increasing normative pressure to comply with international standards, while at the same time international institutions have realized the significance of local efforts to combat impunity.

How can these two trajectories be reconciled? While there are strong norms in opposition to certain types of amnesty, there remains considerable scope for adjustment to different contexts. As a case in point, the U.N. has strongly opposed amnesties for certain offenses, such as genocide, war crimes, crimes against humanity, and gross violations of human rights. Looking more closely at statements of U.N. leaders, Orentlicher noted that they became more refined. Generally, blanket amnesties were singled out for special criticism, and prosecutions were urged in respect of persons who bore primary responsibility for widespread violations.

The U.N. is acutely aware of leaving room for traditional mechanisms of justice, but this area needs a lot more studying by the U.N. and other international actors to understand how these mechanisms work and how and when international processes can complement them.... The norm, while strong, has a lot of room for adjustment to different situations.

Furthermore, she argued that strategies to achieve accountability for mass atrocities do not fall into neat categories but rather are complex, diverse and interconnected. Single mechanisms are bound to fail, and trials alone, for instance, cannot be a panacea for conflict-ridden societies, especially if the goal is to establish functioning sociopolitical structures and institutions. Experts in her field never advocated for a single lens approach.

Still evolving international norms,
such as those which draw fixed limits on permissible amnesties, may sometimes seem rigid. Orentlicher suggested that, to the extent those norms are generated by the UN, this is due in part to the Organization’s recognition of its own normative role relative to that of other actors. When the UN opposes certain amnesties, for example, it can exert a magnetic pull toward norms of accountability even when states do not fully satisfy those norms. Consequently, the U.N. has recognized its role as a safeguard designed to create more space for justice and to preserve a space for justice in the future.

Although there are many successes, or “by-products”, as Orentlicher called the results of this U.N. strategy, the most important one was that it provides tools for activists and countries to enable justice to operate in different contexts. In the subsequent part of her presentation, Orentlicher drew on the ICTY case to illustrate the inspiring process of local accountability for war crimes in the Balkans. Her current research focus is on Bosnia, as she had already done extensive fieldwork in Serbia, from which she drew to explain some of the dynamics that she would not have been able to forecast five years ago. One of the impacts of the ICTY on Serbian institutions was to encourage the creation of impressive, yet imperfect, local mechanisms to cope with the past. Interestingly, the ICTY did not deliberately set out such a strategy, but it evolved once the court had to develop its exit strategy. While in Bosnia the international community collaborated intensively with local authorities to establish domestic judicial structures (i.e., the Bosnian War Crime Chamber), no such support was visible in Serbia, which makes the current dynamics all the more interesting. She pointed out that at the beginning “the ICTY’s creation was seen as a harsh judgment of local courts.” After the fall of Slobodan Milošević, former president of Serbia, local actors seized the political opportunity and wanted to show the international community that local accountability procedures were in fact possible. While she would not have predicted such a dynamic, it is one of the more intriguing effects of the ICTY’s operation. Yet another contribution of the ICTY consists of the normative impact of the tribunal. Leaders of the court, such as the president, established the idea that certain crimes are so grave that they need to be punished, thus normalizing the notion that war criminals should be prosecuted.

At the end of her presentation, Orentlicher commented on the experience of victims. An important point that is hard to capture and that will be one of the theoretical and methodological challenges when she pursued further research in the summer 2009 in Bosnia relates to what the ICTY has meant to victims. Two key concepts need to be distinguished: victims’ frustration with imperfect justice versus how they would feel if they received no justice at all. Bosnian victims, according to her, are deeply
frustrated with the ICTY for a variety of reasons, including because some perpetrators have been at large for fifteen years. In spite of these shortcomings, her interviewees emphasized that justice was crucial; yet they also would like to see improved accountability mechanisms to deal with past atrocities. Another important research question that should be pursued concerned the institutional identity of courts: How does hostility to a tribunal affect societies’ receptiveness to its normative message? This issue is highly relevant to her work in Serbia, where much of the population has very negative image of the ICTY and sees it as a politicized instrument of Western power. What we do not yet understand well is precisely how such opposition affects a society’s ability to absorb the ICTY’s normative message.

Picking up where Orentlicher left off, Susan Benesch began the last presentation of the symposium by asking whether victims could ever be satisfied with tribunals or any one of the various transitional justice measures? She made these remarks in the light of the fifteenth anniversary of the Rwandan genocide and the rising frustration of victims with the gacaca courts. She emphasized that the same held true for truth and reconciliation commissions. Her talk focused on a conceptual discussion of accountability and its purposes, which other participants had talked about implicitly in earlier panels, but which had not been addressed directly.

According to Benesch, there was only one fundamental purpose of accountability: to prevent future atrocities. This was often also more narrowly understood as deterrence, meaning to prevent past as well as other perpetrators from committing the same or similar crimes in the future. Benesch invited the audience to look at a different framework, in which prevention took on a broader sense of the creation of mechanisms that would inoculate society and thus preclude any opportunities for future human rights violators to commit such crimes. Disagreeing with David Backer’s argument presented earlier, she expressed her view that, with all due respect to victims and their families, transitional justice mechanisms were not only designed to bring justice to the victims but rather they serve an entire society, including its institutions.

In this context, she referred to her piece, The Danger of Caution, which critically looked at the torture and prosecution issues in the United States. Interestingly, victims in the United States are generally non-citizens; however, this does not diminish the importance of the problems. Despite the differences between the United States and societies in transitioning countries, the damage done by the crimes is not only done to the victims but also to society at large.

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30 Susan Benesch is Dean’s Visiting Scholar at Georgetown University Law School, and senior legal advisor to the Center for Justice and Accountability in San Francisco.
and to its institutions. Returning to the standard goals of accountability, she mentioned retribution with skepticism, underscoring that prosecution could only do justice to a tiny percentage of the perpetrators, particularly in cases of mass atrocities. Additionally, satisfaction for victims will always be imperfect, because of the severe limits of holding individuals accountable. Studies have shown that victims are longing for things other than retribution and, for those who wanted retribution, many find that it is not as satisfying as they might have hoped.

She continued, arguing that,

Deterrence doesn’t work evidently against individual perpetrators not even in the domestic criminal context, hence it seems unreasonable to expect it in the international, war crimes, or mass atrocities context. However, accountability might be able to prevent the next atrocities in a different systemic way. Among other steps necessary in this process is describing the process that led up to atrocity. This is the narrative or expressive function that is critically important for a population in order to understand and then to start taking responsibility for it collectively.

The term transitional justice begs the question: transition to what? There is no need for a transition to a particular type of government, such as liberal democracy, which is hard to define, despite the patronizing promotion of democracy by the powerful actors in the international community. Instead, a critical mass of people needs to come to the conclusion that the crimes committed are grave enough as to not let it happen again. Drawing on the human security concept put forward in an earlier panel, she went on to say that “a collective conviction that some terrible collective danger has passed was a measure of security in and of itself, and it becomes self-perpetuating.”

—Susan Benesch

“In this context, Benesch observed a progression from simplicity to “messiness” — a term, which she borrowed from Graeme Simpson’s talk earlier — which took place over time. As an example, she referred to Ronald Gamarra in the Latin America panel, who described the singling out and prosecution of one villain, Alberto Fujimori. Although transitional justice procedures tended to initiate prosecutions with one or very few emblematic cases, eventually they would lay the ground for broader measures of accountability. As she...
put it, “there has to be an iconic crime that comes to stand in for all of what went wrong and all of the atrocities.” In Rwanda, for instance, the role of the radio station RTML—also known as “Radio Hate” during the mid-1990s—took on enormous importance in the jurisprudence of the tribunal of the ICTR.

Recapitulating this important concept, Benesch noted that

“The popular imagination gets captured by a simplification or a symbol for the entire atrocity… that allows a first step in which the collectivity recognizes that something terribly important has happened. From there the process can proceed to become messier more diffuse, more complicated and to include more responsibility on the part of a larger amount of people.”

— Susan Benesch

The discussion following the last panel of the day was marked by a few longer comments from the audience and some questions to the panelists. While some believe that trials cannot re-establish the past and remain skeptical about their healing power, others emphasized that traditional mechanisms in Africa—which may not always have led to the expected results for victims—could nonetheless be applied and used within the criminal justice system. In this context, yet another participant outlined the complex case of Darfur, stressing that selecting peace over justice, a preference chosen in the past, only deteriorates the situation of Sudanese society. If al-Bashir were to push for immunity the conflict would likely be sustained, resulting in a dangerous North African powder keg.

David Backer also commented on the weighty issue of victim dissatisfaction, wondering what was at stake if the results did not match their expectations. Would people still take on the norms, if they were dissatisfied with the institutions?

Responding to some of these reactions and reflections, Teitel asserted that victims were part of the global transitional justice paradigm, and they can help to legitimize any of the responses by the new governments to face their past. This trend is a shift from previously held perceptions in the field. Condemning the horrors in Darfur, and deploring its messiness, she highlighted that it was also the tragedy of the global paradigm: geopolitics illustrate the different levels of judicialization (e.g., U.S. lack of support for the ICC). However, the outlook might be more optimistic, as the actions of the court were differed from a normative point of view and might bring about change. Interaction of political processes and judicialization could therefore lead, for instance, to stigmatizing al-Bashir in the future.

Orentlicher answered directly Backer’s question about victim satisfaction, asserting that it is important not to look at this problem from one perspective. Instead, further analysis...
is needed to determine what might be improved or what could have been done differently. Using the Balkans as an example, she explained that some of the improvements were very obvious, such as follow-ups with the victims, who had been blatantly ignored in the past. With regards to his second question about normalization, she emphasized that this was an open question, depending on the many variables in the context. Nonetheless, she referred to Serbia to illustrate how the cooperation with the ICTY was based on pragmatic reasons, such as the prospects of joining the European Union. The support, however, was motivated more by the short-term objectives, rather than based on the conviction that the acts committed were wrong and required justice. Her observations were tentative and applied to one country only, hence her call for further research to get to the heart of this question. She also reminded the audience that the way local leaders mediate the message of the tribunals was absolutely critical.

In the last set of remarks, Benesch stressed that with respect to victims in the domestic context, we had moved from an “old-testament” notion to a criminal law system; however, on the international level, we had not moved very far in many ways from the former. Despite this somber observation, she said that some progress had been made within the past few decades, thanks notably to the victims who pushed for accountability. Frustrated and appalled by the situation in Darfur, she underscored that transitional justice could not deal with the panoply of questions that are at the root of a conflict and urged the audience to be aware of this. With respect to a research agenda, she continued that it was important not only to focus on victims, but also on perpetrators, including for instance the question of confessions. In this context, she referred to the Argentine case, where a naval officer suddenly came forward and confessed publicly the atrocities he helped to commit. The study of guilty pleas made to tribunals is yet another topic that has not gotten enough attention and needs to be looked at further.
Biographies

David Backer is an Assistant Professor of Government at the College of William & Mary. His research includes multiple comparative studies and data compilations with transitional justice themes, including ongoing projects in South Africa, West Africa, and Latin America. He specializes in the assessment of the responses of victims of past violations to post-conflict measures, using both quantitative and qualitative methods. Other written work has focused on topics such as ethnic conflict, civil society, closed regimes, liberalization, elections and refugees. Dr. Backer spent the 2005-06 academic year as a Post-Doctoral Scholar at Stanford University’s Center on Democracy, Development and the Rule of Law and will be a Visiting Fellow at the University of Notre Dame’s Kroc Institute for International Peace Studies in 2009-10. He was educated at the University of Michigan (MA/PhD), the University of Cape Town (Fulbright Scholar) and Amherst College (BA summa cum laude).

Susan Benesch is Dean’s Visiting Scholar at Georgetown University Law School, and senior legal advisor to the Center for Justice and Accountability in San Francisco. She has taught human rights and refugee law at Georgetown and American University among others, and has lectured at universities including Virginia, Duke, Princeton, and Yale. She has also worked at Amnesty International, at the Lawyers Committee for Human Rights (now Human Rights First), and at the war crimes tribunal for the former Yugoslavia (ICTY). Her recent publications include ‘Vile Crime or Inalienable Right: A Model to Distinguish Hate Speech from Incitement to Genocide’, 48 Virginia Journal of International Law 485 (2008) and ‘Inciting Genocide, Pleading Free Speech’, World Policy Journal, Summer 2004. Professor Benesch’s knowledge of Latin America and interest in human rights date back to her first career as a journalist. Before attending law school at Yale, she was chief staff writer for the Miami Herald in Haiti. She also covered wars in El Salvador, Nicaragua, and Guatemala, and reported from many countries for the New Republic, the Columbia Journalism Review, and the Crimes of War website, among other publications.

Jo-Marie Burt teaches political science at George Mason University. She is author of Silencing Civil Society: Political Violence and the Authoritarian State in Peru (Palgrave Macmillan, 2007), which will be published by the Institute of Peruvian Studies in Spanish in December 2008, and co-editor of Politics in the Andes: Identity, Conflict, Reform (University of Pittsburgh Press, 2004). She has attended over 20 sessions of the Fujimori trial as an accredited observer for the Washington Office on Latin America (WOLA) and is writing a book about human rights trials in Latin America. Dr. Burt has been a visiting lecturer and researcher at the Catholic University of Peru, and she was a researcher for the Peruvian Truth and Reconciliation Commission. She has published widely on urban social movements and the Shining Path insurgency; on state violence, human rights, and impunity; and on democracy and civil society in Latin America. She has received grants and fellowships from Open Society Institute, Fulbright, U.S. Institute of Peace, the Aspen Institute, the MacArthur Foundation, and the Thomas J. Watson Foundation, among others. She obtained her Ph.D. in political science from Columbia University.

Mark A. Drumbl is the Alumni Professor at Washington & Lee University, School of Law, and Director of the Transnational Law Institute. He has held visiting appointments on several law faculties, including Oxford and Paris, and his research and teaching interests include public international law, international criminal law, and transitional justice. His book, Atrocity, Punishment, and International Law (Cambridge University Press, 2007), won the 2007 Book of the Year Award of the International Association of Criminal Law. His article ‘Collective Violence and Individual Punishment: The Criminality of Mass Atrocity’, 99 Nw. U. L. Rev. 539 (2005) won the Association of American Law Schools Outstanding Scholarly Papers Prize. His work on Rwanda has been reviewed as “exemplary” in its treatment of “the possibilities of the coexistence of victims and survivors within the same society after the event” by the Times Literary Supplement in its Learned Journals review. Professor Drumbl has worked in criminal defense in Rwanda and has served as an expert in U.S. courts. In addition, he has instructed lawyers in many jurisdictions, including Uganda and Pakistan.

Pilar Gaitán Pavia is a member of Historical Memory, the Colombian National Commission on Reparation and Reconciliation. In the past she held professorships at Universidad Nacional de Colombia (1987-1994), Universidad Externado de Colombia (1983-1987) and Universidad de los Andes in Bogotá. She has published several journal articles and is co-author of Poder local: Realidad y utopía de la decentralización en Colombia (Tercer Mundo Editores-IEPR, Bogotá, 1992). She has held various key advisor positions and including the Ministry of Defense of Columbia to reform the Penal Military Code (1995), the Ministry of Foreign Affairs as part of the Special Commission to investigate

**Ronald Gamarra Herrera** is Executive Secretary of Coordinadora Nacional de Derechos Humanos, Peru’s human rights umbrella organization, and one of the lawyers representing the civil parties in the proceedings against former President Alberto Fujimori for grave violations of human rights. He has a master’s degree in criminal law, specializing in legal advocacy for victims of human rights violations, and worked as the Director of the Justice Program at the Institute of Legal Defense from 1988-2000. He also served as Ad Hoc Deputy Attorney General for corruption cases and human rights violations attributed to former president Alberto Fujimori and his principal adviser Vladimiro Montesinos and all those who were part of his criminal organization between February 2001 and December 2004. He is a member of the Human Rights Commission of the Lima Bar Association. Dr. Gamarra writes a weekly column in the Lima daily La República.

**Gitanjali S. Gutierrez** is an attorney with the Center for Constitutional Rights, a New York-based human rights organization litigating challenges to the Executive’s post-9/11 anti-terrorism policies. The Center’s current work includes domestic and international efforts to hold U.S. government officials accountable for violations of the prohibitions against torture, kidnapping, disappearances, and secret detention. Ms. Gutierrez also conducted the first habeas attorney-client meeting at Guantánamo in September 2004. Among her current clients is Mohammed al Qahtani, a Saudi citizen detained in Guantánamo, who was subjected to the “first special interrogation plan,” a regime of torture authorized by the Secretary of Defense. Ms. Gutierrez graduated magna cum laude from Cornell Law School and then clerked for the Honorable Guido Calabresi, United States Court of Appeals, Second Circuit, taught International Human Rights Law and Terrorism at Cornell Law School, and served as a Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C.

**Stephen Arthur Lamony** is the Africa Outreach Liaison for Africa and Situations Advisor at the Coalition for the International Criminal Court (CICC). Before coming to International Secretariat of the CICC in New York, he was the National Coordinator of the Ugandan Coalition for the International Criminal Court (UCICC) and the Co-Founder and interim Co-Coordinator of the Uganda Victims Rights Working Group now the Uganda Victims Foundation. Mr. Lamony worked for Human Rights Focus (HURIFO) as a Human Rights Monitor and a Programme Officer for information and documentation in the Gulu district, a conflict region in northern Uganda. Mr. Lamony is also a reviewer on the Oxford International Journal of Transitional Justice and the minority rights working group reports of State of the World’s Minorities. He holds an LLM in Human Rights and Criminal Justice (The Queens University Belfast), a Master’s Degree in International Relations and Diplomatic Studies, Bachelor of Laws (LLB) and a Bachelor’s in Political Science (Makerere University).

**Diane F. Orentlicher** is Professor of International Law and co-director of the Center for Human Rights and Humanitarian Law at the Washington College of Law, American University in Washington, D.C. From 1995 to 2004, she served as faculty director of the law school’s War Crimes Research Office, which has provided legal assistance to international criminal tribunals since 1995. Described by the Washington Diplomat as “one of the world’s leading authorities on . . . war crimes tribunals,” Professor Orentlicher has lectured and written extensively on the scope of states’ obligations to address mass atrocities and on the law and policy issues relating to international criminal tribunals and universal jurisdiction. She has served as an Independent Expert and consultant to the United Nations in various capacities relating to the UN’s efforts to combat impunity. In September 2004 Professor Orentlicher was appointed by the United Nations Secretary-General as Independent Expert to update the UN’s Set of Principles for the protection and promotion of human rights through action to combat impunity. In April 2005, the UN Commission on Human Rights endorsed the Updated Principles in CHR Resolution 2005/81.

**Leigh A. Payne** is professor at Oxford University (Sociology and Latin American Studies) and University of Wisconsin-Madison (Political Science). She is also a visiting professor at the University of Minnesota. Her recent book is Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence (Duke University Press, 2008). She has a forthcoming edited with Ksenija Bilbija on Accounting for Violence: The Memory Market in Latin America (Durham, NC: Duke

Graeme Simpson has an LLB and a history Masters degree from the University of the Witwatersrand, South Africa. He has worked extensively on issues related to transitional justice, including work with the South African Truth and Reconciliation Commission, and on the transformation of criminal justice institutions in South Africa. Mr. Simpson was a founder and, from 1995-2005, executive director of the Centre for the Study of Violence and Reconciliation, in Johannesburg. He was one of the drafters of the National Crime Prevention Strategy as well as a member of the drafting team for the South African White Paper on Safety and Security. Currently, Mr. Simpson is the Director of Thematic Programs at the International Center for Transitional Justice where he oversees work in Prosecutions, Reparations, Truth-Seeking, Security System Reform, Memorials, Gender, and a program on Peace & Justice. He is also a Lecturer at Columbia University Law School.

Ruti G. Teitel is Ernst C. Stiefel Professor of Comparative Law at New York Law School, and an internationally recognized authority on international human rights, transitional justice, and comparative constitutional law. Her path-breaking book, Transitional Justice (Oxford University Press, 2000), examines the 20th century transitions to democracy in many countries and her extensive body of scholarly writing has been published in leading law reviews, including Michigan Journal of International Law, Cornell International Law Journal, and Harvard Law Review. Additionally, she has contributed dozens of book chapters to published volumes and frequently writes on human rights issues for a broader audience, such as in The New York Times and Legal Affairs. She has taught at Yale, Fordham and Tel Aviv Law Schools, as well as at Columbia University’s School of International and Public Affairs, and in its Politics Department. She is a member of the Council on Foreign Relations, and serves on the Steering Committees of Human Rights Watch Europe/Central Asia. Most recently, she is a co-recipient of a Mott Foundation grant for a project on transitional justice and civil society convened at the London School of Economics.

Moderators

Susan F. Hirsch is Associate Professor in the Institute for Conflict Analysis and Resolution (ICAR) at George Mason University and Director of CAR, ICAR’s undergraduate program. Her training in legal anthropology led to research on conflict and culture, Islam, gender relations, and the legal systems of East Africa. She has conducted extensive fieldwork in Kenya and Tanzania since 1985, receiving many fellowships from organizations such as Fulbright, the National Science Foundation, the National Humanities Center, the Kluge Center at the Library of Congress, and the American Bar Foundation. Her latest academic publication, In the Moment of Greatest Calamity: Terrorism, Grief and a Victim’s Quest for Justice (2006, Princeton University Press), is a reflexive ethnography of her experiences of 1998 East African Embassy bombings and the subsequent trial of four defendants. She has published numerous articles on law reform, gender and conflict, reflexive and participatory research, language in the disputing process, and transitional justice in edited volumes and journals, such as Law and Social Inquiry and Africa Today. Her current research focuses on responses to mass atrocity, with special attention to the shifting role that victims have played in the constitution of international initiatives.

Terrence Lyons is Co-Director of the Center for Global Studies and an Associate Professor in the Institute for Conflict Analysis and Resolution at George Mason University. He served as senior program adviser to the Carter Center’s project on post-conflict elections in Ethiopia (2005) and Liberia (1997), and worked as a consultant for the U.S. government, the World Bank, and several non-governmental organizations on issues relating to democracy and conflict in Africa. Among his publications are: Avoiding Conflict in the Horn of Africa: U.S. Policy toward Ethiopia and Eritrea (Council on Foreign Relations, 2006), Demilitarizing Politics: Elections on the Uncertain Road to Peace (Lynne Rienner, 2005), as well as numerous articles in a range of journals and policy oriented publications. He received his doctorate in international relations from the Johns Hopkins University School for Advanced International Studies and served as a Fellow at the Brookings Institution and as Senior Researcher at the International Peace Research Institute, Oslo.
About the Organizations

Founded in 1972, George Mason University is one of the largest universities in Virginia, with campuses in Arlington, Fairfax, Prince William and Loudoun counties. Mason has become a major educational force and earned a reputation as an innovative, entrepreneurial institution that has gained national distinction in a range of academic fields. In its annual report of U.S. colleges, U.S. News & World Report ranks George Mason University first in its new list of 70 “up and coming schools.”

The Center for Global Studies (CGS) at George Mason University was founded to promote multidisciplinary research on globalization and international affairs. CGS is a research center comprising more than 100 associate faculty members whose collective expertise spans the full range of the humanities, the social and natural sciences, and information technology and engineering, as well as practice-oriented fields, such as conflict resolution, public policy, law, management, and health.

At the Institute for Conflict Analysis and Resolution (ICAR), faculty and students are committed to the development of theory, research, and practice that interrupt cycles of violence. ICAR is an innovative academic resource for people and institutions worldwide. It comprises a community of scholars, graduate and undergraduate students, alumni, practitioners, and organizations in the field of peace making and conflict resolution. ICAR is a Commonwealth Center for Excellence, recognized for its leadership in the field and its world-renowned faculty.
United Nations Declaration of Human Rights

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.