

Transitional Justice and Reconciliation: Theory and Practice

Martina Fischer

1. Introduction	406
2. Transitional Justice: The Emergence of a Paradigm	407
2.1 Focus on Accountability: International Criminal Justice and Truth Commissions	407
2.2 The Call for a Holistic Interpretation: Focusing on Different Levels and Dimensions and Addressing Gender Justice	411
2.3 Research Gaps and Open Questions	413
3. Reconciliation and Conflict Transformation	415
3.1 Reconciliation and Conflict Transformation as Multi-Level Processes	415
3.2 Selective Remembrance, Denial and Victimisation as Obstacles for Conflict Transformation	418
3.3 Research Gaps and Open Questions	420
4. Next Steps for Research and Practice: Studying the Interplay of Different Actors and Levels	422
5. References	424

1. Introduction

In the past two decades, scholars and practitioners have focused increasing attention on the question of how countries and societies can come to terms with a history of violence and war, oppression and human rights violations. The concept of transitional justice (TJ) has come to play a prominent role in academic debates on democratisation, nation-building and state reconstruction,¹ and has gained widespread support from international organisations. Judicial proceedings and prosecution of individuals suspected to have committed gross violations of human rights, truth commissions designed to establish a record of wrongdoing, reparations to the victims and vetting or dismissals of persons from certain positions have become “central ingredients in the ‘menu’ of reforms recommended by international organisations, donor agencies and outside experts for societies in transition from war or authoritarianism” (Thoms et al. 2008, 9).² The concept of reconciliation has gained similar popularity. In the past decade “reconciliation” has become one of the four main categories of initiatives that receive donors’ support, along with political development, socio-economic assistance and security (Smith 2004). Many researchers and practitioners see reconciliation as a necessary requirement for lasting peace, assuming that once a top-down political settlement has been reached, a bottom-up process should take place, in which unresolved issues of the conflict will be handled in order to prevent questioning of the settlement and a return to violence. In this context, coming to terms with the past is considered a precondition for building peace and future relationships.

This chapter reviews the debates on transitional justice and reconciliation in order to assess the practical approaches that stem from these concepts in terms of their relevance for conflict transformation and peacebuilding.³ The *next section* reflects the state of research on international criminal justice and truth commissions and highlights the strengths and limits of these approaches. *Section 3* reveals that the debates on transitional justice and reconciliation, although they overlap, are not identical, and outlines the need to see reconciliation as a multi-level process alongside conflict transformation. The discourses on all these concepts are marked by significant research gaps and many open questions, which are summarised at the end of both sections. The *fourth and final section* spells out diverse challenges for research and practice. These include a need to focus on the interaction of different actors, levels and mechanisms and to listen to the voices of affected populations.

1 The United States Institute of Peace (Kritz 1995, 2009), the International Center for Transitional Justice, the South African Centre for the Study of Violence and Reconciliation, Swisspeace and the Center for Justice and Reconciliation in The Hague have conducted research and extensively published on TJ issues. The International Peace Research Institute in Oslo and the University of Wisconsin-Madison have set up TJ databases.

2 The UN Office for the Coordination of Humanitarian Affairs has compiled profiles of transitional justice measures in more than 40 countries and the United Nations High Commission for Human Rights has published a series of Rule of Law Tools for Post-Conflict States in 2006, online at www.irinnews.org/InDepthMain.aspx?InDepthId=7&ReportId=62746 and www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx.

3 I thank Ljubinka Petrovic-Ziemer and Beatrix Austin for comments on previous drafts and Amy Hunter for language editing.

2. Transitional Justice: The Emergence of a Paradigm

The concept of transitional justice stems from the international human rights movement. At first, it referred to the judicial process of addressing human rights violations committed by dictatorial or repressive regimes in the course of democratic transition. Later on, the term also came to be used for processing war crimes and massive human rights abuses committed in violent conflicts (Kritz 1995; Minow 1998, 2002; Teitel 2000). The concept has increasingly gained in importance, and has been widely discussed by peacebuilding agencies engaged in war-torn societies during the past two decades.⁴ Along the way, it has gradually extended its meaning.⁵ Today it covers the establishment of tribunals, truth commissions, lustration of state administrations, settlement on reparations, and also political and societal initiatives devoted to fact-finding, reconciliation and cultures of remembrance.

2.1

Focus on Accountability: International Criminal Justice and Truth Commissions

For a long time, the TJ literature has principally been the province of legal scholars, human rights activists and individuals who have served as judges, prosecutors or policy-makers in official capacities. Most attention has been given to the moral-philosophical and jurisprudential aspects, and in particular to the institutional design and implementation of tribunals. International law experts have extensively published on the development, capacities and legal procedures of international, hybrid or domestic courts dealing with gross human rights violations. Many studies focus on the international courts that have been established to prosecute war crimes, such as the Tribunals for the former Yugoslavia, Rwanda, Sierra Leone and Lebanon, including the International Criminal Court (ICC).

As the International Criminal Tribunal for the former Yugoslavia (ICTY) represents the first court implemented under the auspices of the UN, much research has been focused on its relevance for international law and legal procedures.⁶ Many authors consider the ICTY to be an innovative tool in the context of civilising international relations. Analysis of its impact on the societies in question is not so abundant and very few empirical studies exist on these issues (Meernik 2005; Nettelfield 2006; Orentlicher 2008). The question of whether the ICTY has contributed to the “restoration of peace and reconciliation”, as was stated in UN Resolution 1534 and promoted by high-ranking representatives of the Tribunal,⁷ is still the subject of controversy

⁴ For an overview of the state of research see van der Merwe et al. 2009; Thoms et al. 2008; Backer 2009.

⁵ For discussions of the paradigm from a historical perspective see Roht-Arriaza/Mairezcurrena 2006; Elster 2004; Fletcher et al. 2009.

⁶ For an overview see Bassiouni/Manikas 1996; Clark/Sann 2002; Olusanya 2005; Schabas 2006.

⁷ See, for instance, the statements by former ICTY president Antonio Cassese at www.icty.org/sid/3, and by its current president, Patrick Robinson, at www.icty.org/sid/142.

(Meernik 2003; Mertus 2004; Hazan 2006). This example illustrates both the variety of opinions on the potential and limits of prosecution by international criminal courts and the difficulty of assessing the impact of tribunals on war-torn societies (see *Box 1*).

Box 1

Ambivalent Assessments – The International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY, established in The Hague in 1993, has taken the lead in prosecuting war crimes and crimes against humanity and in documenting facts surrounding the recent wars in the Western Balkans. It has indicted 161 persons for serious violations of international humanitarian law committed in the territory of former Yugoslavia: 83 cases (117 accusations) have been concluded. To date, proceedings are ongoing against 44 accused and two suspects are still at large. Several cases have been referred to war crimes chambers at domestic courts (mostly to Bosnia-Herzegovina), and the ICTY and international donors have also set up capacity-building programmes for domestic judiciaries in the countries of former Yugoslavia.⁸ In order to establish closer cooperation with the societies in the region, the ICTY has set up regional offices in Sarajevo, Belgrade and Zagreb. However, the legitimacy of the Hague Tribunal is seen as controversial in the region itself.

In particular, parts of the population in Serbia and the Bosnian Republika Srpska have regarded the ICTY from its outset as being biased – a kind of “justice of the victors” (although there is no evidence to support this view, as Meernik 2003 concludes), or at least as a distant mechanism imposed from the outside (Arzt 2006; Spoerri/Freyberg-Inan 2008; McMahon/Forsythe 2008). There are controversial assessments of the reasons for the lack of acceptance and legitimacy granted to the ICTY. Distorted media reporting was an important factor for this dynamic (Sajkas 2007; Allcock 2009). However, other problems seem to be related to the Tribunal’s own procedures, a lack of clarity regarding its purposes and the issue of communication between the ICTY and its local publics (Hodzic 2007; Mertus 2007). Trials and public declarations were published exclusively in English during the first years of the ICTY’s existence. It was also argued that the ICTY lacked credibility, as NATO forces had not managed to detain some of the most high-profile accused (Kerr 2005, 325).

The Hague Tribunal has been accused by human rights and women’s organisations of focusing too strongly or exclusively on the perpetrators and protecting their personal rights, thereby neglecting the needs of the victims. The lack of formal procedural law for victims and groups of victims came in for heavy criticism, as did the fact that those affected could only be heard as witnesses. The main problem highlighted was the use of Anglo-American legal traditions, such as the practice of cross-examination (Franke 2006, 818). There has also been criticism that the work of the Hague Tribunal is not complemented by mechanisms that would provide compensation for the victims. This deficit was

8 A Section for War Crimes of the Court of Bosnia-Herzegovina was inaugurated in 2005 as a permanent state-level organ. In Croatia, War Crimes Chambers were formed in 2003, within the County Courts in Zagreb, Osijek, Rijeka and Split. In Serbia, a specialised War Crimes Chamber of the Belgrade District Court and a War Crimes Prosecutor’s Office were established in 2003. Some studies illustrate the courts’ procedures (Freeman 2004a, 2004b), but the scope of their effectiveness has not been extensively investigated.

raised in October 2009 by the president of the ICTY, Patrick Robinson, who suggested establishing a “claims commission”, through which victims would be able to lodge compensation claims.⁹

Scholars’ assessments of the Hague Tribunal’s impact on the respective societies are equally ambivalent. It has been argued that the Tribunal is an important motor for public discussions in the Western Balkans. Nevertheless, there are also clear indicators that it has fuelled nationalist discourses about the war (Allcock 2009, 367) and hostilities in local communities. James Meernik has analysed the dynamics of conflict and cooperation among the principal ethnic groups in Bosnia-Herzegovina based on aggregated, statistical data from 1996-2003 and found little evidence to support the notion that the ICTY was having a positive impact on societal peace in Bosnia: “In fact, in more instances the effect was the opposite of that intended [...]. More often than not, ethnic groups responded with increased hostility towards one another after an arrest or judgement” (Meernik 2005, 287). At the same time, it is also widely acknowledged that the ICTY has helped to set up important archives of facts about the massacres and atrocities.

Some scholars argue that the idea that the ICTY would contribute to reconciliation between former warring groups has proved unrealistic, and that expanding expectations beyond its legal mandate might “undermine the important contributions that international trials can make to post-conflict societies” (Fletcher/Weinstein 2004, 30). Moreover, it has become obvious that a final and comprehensive assessment can only be determined in the long run. As Pierre Hazan has outlined, the Nuremberg trials after World War II were regarded as victors’ justice by part of the German population, and did not have an immediate effect in terms of initiating debates in the 1950s. But their archives became an important point of reference for the following generations 25 years later, and thus contributed to informing German society once initiatives for facing the past had begun to develop on a larger scale (Hazan 2007, 11).

A relevant part of the TJ literature has centred on the dichotomy of peace vs. justice and truth vs. justice (Thoms et al. 2008, 18-19; Biggar 2001). In the *peace vs. justice debate*, advocates of the legalist approach have emphasised criminal justice as a means to deter future human rights violations and to support peacebuilding. Another argument is that criminal justice will stigmatise the elites who perpetuate conflict, and help separate individual from collective guilt, breaking the cycle of violence (Minow 1998; Bell 2000). Sceptics doubt that criminal justice can achieve all of this. Some have criticised international criminal justice in particular and argued for domestic prosecutions based on the conviction that justice should follow rather than precede the consolidation of peace.¹⁰ In earlier debates bargains and amnesties, rather than prosecutions, were often seen as the best ways to achieve peace because of the need to contain ‘spoilers’ in many post-conflict regions. Since then, most advocates of transitional justice have come to reject the idea of impunity and emphasise that amnesties, if applied at all, should be introduced as partial and conditional (Hayner 2009).

⁹ See www.icty.org/sid/10244.

¹⁰ For a critical discussion of the adverse consequences of putting “justice” before “peace” with special reference to the war in Bosnia-Herzegovina, see Anonymous 1996; for further discussions of this dichotomy see Biggar 2001.

The *truth vs. justice debate* has balanced the merits of trials against other accountability mechanisms. The 1990s in particular were marked by this dichotomy, due to the almost simultaneous creation of the South African Truth and Reconciliation Commission (TRC) and the ICTY, which became emblematic of this discussion (Hazan 2006, 20). Truth commissions have been promoted as alternatives to prosecutions and as important mechanisms for counteracting cultures of denial. It has been argued that public and official exposure of truth provides redress for victims and may contribute to individual and social healing and reconciliation (Hayner 1994, 2001). Divided societies in particular need truth-seeking and truth-telling mechanisms. Given that nationalist myth-making, based on historical distortion, has fuelled both interstate and intrastate wars, efforts to prevent the instrumentalisation of facts and history are needed to prevent a return to violent conflict (Mendeloff 2004, 356-357). Especially after violent conflicts between ethnic and religious groups, who remain living next to each other while maintaining their distinct identities, extremists are eager to tie responsibility for past crimes and human rights violations to their ethnic or religious adversaries. In order to counteract such tendencies, a truth commission is considered as a means “to engage and confront all of society in a painful national dialogue, with serious soul-searching, and attempt to look at the ills within society that make abuses possible”; furthermore “civil society produces a sense of public ownership in this process, so that this dialogue actually leads to something. Otherwise, a country has merely a nice history lesson, destined for the bookshelf” (Kritz 2009, 18). An important policy recommendation stems from these reflections, arguing that truth and reconciliation commissions should be established “only where [...] a robust civil society remains intact. Where such conditions do not exist, the commission’s mandate should be narrowly focused on documenting the truth along the lines of some earlier commissions rather than on the broader reconciliation goals established more recently. In a context that lacks a civil society altogether, a more top-down approach may be appropriate” (ibid.). However, research on truth commissions has also revealed enormous shortcomings and it has become clear that – apart from a strong civil society – there is a need for reliable alliance partners in parliaments, governments and administrations who are willing to engage in institutional reforms and establish the rule of law.

In the 1990s, overly high expectations were raised regarding the potential that truth commissions may have. Having seen the early truth commissions in Latin America as major advances in terms of accountability, the human rights community has meanwhile come to view these instruments much more sceptically. An important aspect of this disillusionment was the “enormous chasm” between the commissions’ mandates to develop detailed recommendations on societal reforms and the non-implementation of these proposals by the governments that received them. It has therefore been recommended that international donors might think about strategies of tying aid to the implementation of truth commission recommendations (Kritz 2009, 17; Laplante 2008).

Clear warnings have also been expressed that establishing truth commissions has become an almost routine and standard practice without analysing the context. It seems that many countries in transition decide to have truth commissions without any clear understanding of what such endeavours are about, and these policy decisions are “usually based not on research but on instinct” (Kritz 2009, 17). Disillusionment about truth commissions has contributed to broadening

the discourse and to overcoming the fixation on dichotomies between “truth vs. justice” or “justice vs. peace” [see also Michelle Parlevliet in this volume].

2.2

The Call for a Holistic Interpretation: Focusing on Different Levels and Dimensions and Addressing Gender Justice

As the discourse has moved on, many more authors agree that societies recovering from oppression or violent conflict need both legal and restorative approaches, addressing different levels and dimensions of truth and justice. Alexander Boraine (former member of the South African TRC and founder of the International Center for Transitional Justice, ICTJ) has made an important contribution to this discussion by suggesting that retributive justice should be complemented with restorative justice. He strongly advocates a holistic interpretation based on five key pillars, including accountability, truth recovery, reparations, institutional reform and reconciliation (Boraine 2006, 19-25).

Accountability derives from the fact that no society can claim to be free or democratic without strict adherence to the rule of law; there are mass atrocities and crimes that have been so devastating that civilisation cannot tolerate their being ignored. Yet in cases of large-scale human rights violations such as in the former Yugoslavia, Rwanda or Sierra Leone, it is impossible to prosecute everyone. Given the limits to the law and prosecution, and although criminal justice is important, additional activities are needed that focus on documenting the truth about the past. Within *truth recovery*, four different notions are covered: objective or forensic truth (evidence and facts about human rights violations and missing persons), narrative truth (storytelling by victims and perpetrators and communicating personal truths and multi-layered experiences to a wider public), social or dialogical truth (truth of experience that is established by interaction, discussion and debate) and healing or restorative truth (documentation of facts and acknowledgement to give dignity to the victims and survivors). *Reparations* play an important role, as they belong to the few efforts undertaken directly on behalf of the victims. Nevertheless, reparations need to be closely connected to other processes aiming at documenting and acknowledging truth; otherwise they could be interpreted as being insincere.¹¹ *Institutional reforms* form a prerequisite for truth and reconciliation. There has been criticism that in many cases truth commissions have chosen to focus almost entirely on individual hearings. Instead, Boraine argues, they need to focus on institutional settings in order to call to account those institutions directly responsible for the breakdown of a state, repression or human rights violations.

Reconciliation must be accompanied by acknowledgement of the past, the acceptance of responsibility and steps towards (re-)building trust. It is a long-term process and identifying suitable starting points depends on the specific situation in a society. Although the concept is ambivalent (and regarded with scepticism, due to its Christian connotation), Boraine sees a need to achieve “at least a measure of reconciliation” in a deeply divided society by creating a

11 The issue of reparations has been explored in detail by de Greiff 2006 and Magarell et al. 2007.

“common memory that can be acknowledged by those who created and implemented an unjust system, those who fought against it, and the many more who were in the middle and claimed not to know what was happening in their country” (Boraine 2006, 22).

Combining retributive and restorative elements sounds convincing, however, developing a holistic approach requires us furthermore to apply a “gender lens”. The ICTJ has, therefore, added gender justice to its agenda, alongside criminal prosecutions, truth commissions, reparations programmes, security system reform and memorialisation efforts.

Given the experience of the systematic rape of women as part of warfare in the Balkans and other regions, researchers and women’s rights activists have documented gender-specific violence and pushed forward the debate on gender-specific war crimes (Allen 1996; Kohn 1995; Korac 1994; Stiglmyer 1992). Researchers, human rights and peace activists have argued that a better understanding of gender, culture and power structures is needed to appropriately analyse the causes, dynamics and consequences of conflict and violence (Jalusic 2004; Slapsak 2000, 2004; Zarkov 1995; Djuric-Kuzmanovic et al. 2008; see also Cilja Harders in this volume).

Feminist research has also increasingly focused on transitional justice (Pankhurst 2008) and revealed that, as a consequence of campaigns to end impunity for violence against women, legal standards have been modified. Gender-based violence in armed conflict has been recognised as a war crime in international law¹² and prosecutions have been secured. Furthermore, courtroom procedures have been reformed in order to ensure that victims of sexual violence are not re-traumatised by adversarial legal processes. The ICTY, for instance, has introduced changes to the procedures of investigation and to the rules regarding evidence, limiting the extent to which consent can be presented as a defence for sexual assault and prohibiting the use of evidence of a victim’s past sexual conduct (Bell/O’Rourke 2007, 27). Following criticism of gaps in ICTY practice, women’s organisations’ appeals to respect the rights, needs and inclusion of victims were taken into account when the International Tribunal for Lebanon and the International Criminal Court were set up, and these courts have introduced procedural law for victims.¹³ There is now also greater representation of women on the staff of the international tribunals.

However, in feminist debates several scholars have questioned whether punitive justice in the form of tribunals is an appropriate means of dealing with gender-based violence at all, due to the negative experiences of adversarial processes (Mertus 2004; Campbell 2004; O’Connell 2005). The feminist discourse has argued that truth commissions offer space “to move beyond the rather masculine discourse of crime and punishment towards a notion of repairing relationships” (Bell/O’Rourke 2007, 40). Truth commissions might also be a better alternative to trials as they give space to individual narratives, can address needs for public acknowledgement and seem to be more accessible to women due to the greater flexibility of their processes (Ni Aolain/Turner 2007).

12 The tribunals for Yugoslavia, Rwanda and Sierra Leone have recognised sexual violence as grave breach of the Geneva Convention and a crime against humanity; the Rome Statute of the ICC has recognised rape, sexual slavery, enforced prostitution, pregnancy and sterilisation as crimes against humanity and as war crimes.

13 See Women’s Initiative for Gender Justice: Gender Integration in the Statute of the ICC, online at: www.iccwomen.org/publications/resources/docs/Gender_Integration_in_the_Rome_Statute.doc; Women’s Initiative for Gender Justice, Gender Report Card 2008 of the International Criminal Court, The Hague 2008.

Some commissions, indeed, have also responded to the need to find appropriate ways of addressing gender-based violence. In Haiti, Sierra Leone and East Timor, gender or sexual violence was explicitly incorporated into the mandates; other commissions have held gender hearings (South Africa) or established gender units (Peru). However, it has also been argued that placing emphasis on post-conflict restoration or calls for reconciliation without challenging uneven gender power relations can contribute to women losing equality gains that they made through the war and subordinating them in unjust relationships. Christine Bell and Catherine O'Rourke have therefore suggested analysing the gender implications of TJ mechanisms and discussing these in terms of their value for a larger political project of securing substantial material gains for women in transitional processes (2007, 44). The International Center for Transitional Justice (ICTJ) calls for increased consultation of women in the design of TJ mechanisms, in order to make sure that these mechanisms strengthen women in independent roles and to enable them to participate in the political transformation process. It makes a strong case for structuring post-war societal programmes, especially programmes of compensation, in a gender-sensitive way.¹⁴ The British NGO International Alert has also adopted the term gender justice in its “Women Building Peace” campaign, begun in 2004.¹⁵ Some international peace and human rights organisations insist that development cooperation measures must recognise gender justice as being an integral part of social justice (Barth et al. 2004). They argue that reconstruction programmes should be geared more towards the specific needs of women, and that demobilisation and reintegration initiatives for former combatants require particular attention to gender perspectives. Measures must be implemented together with local communities, including women, to avoid injustices and prevent those guilty of war crimes from going unpunished or otherwise benefiting from the situation (Farr 2003). For this not only runs counter to the principle of justice, but is also making processes of reconciliation more difficult.

2.3

Research Gaps and Open Questions

In the past decade a huge number of studies have been published on transitional justice. David Backer (2009) has reviewed 58 cross-national comparative studies dealing with mechanisms applied in Latin America, Europe, Africa and Asia. The research methods range from discourse analysis, case studies, interviews and legal studies to large-scale statistical analysis. Many of these focus on legal mechanisms, their implementation and compliance with international law and human rights. A great deal of analysis is focused on the underlying policy-making process, regime stability or democratisation. Only a few studies are devoted to examining the nature of micro-level engagement in TJ and of societal responses. It seems that the preoccupation with institutional design and system-level effects has resulted in “too little concern for assessing the

¹⁴ See www.genderjustice.org.

¹⁵ According to International Alert, gender justice means “the protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for promoting and protecting them” (Spees 2004, 9).

extent to which these processes affect people” (Backer 2009, 66). Very few authors have dealt with cultural phenomena such as social discourses and national narratives. To date, the knowledge on how different models of transitional justice influence the attitudes and behaviour of individuals and communities is based primarily on “assumptions and anecdotal evidence”, which leads to “an excess of written material that is subjective and ideological”, as authors advocate particular policies “without ever justifying their stances based on sound empirical findings” (ibid., 67).

In the academic literature, as well as in legal practice, it is widely assumed that TJ mechanisms contribute to post-war peacebuilding and democratisation. However, given the lack of long-term analysis or systematic empirical research, in fact there is not much knowledge concerning the effects of tribunals and trials on the respective societies. There is not much evidence either on what impact truth commissions actually have on victims, perpetrators and society as a whole. Having reviewed comparative studies that were conducted in more than 100 countries, Oskar Thoms, James Ron and Roland Paris (2008) conclude that there is still little empirical basis for reaching strong conclusions about the systematic effects of TJ mechanisms, either positive or negative. Few rigorous cross-national analyses have been completed to date, and most of them mention the difficulty of reaching any strong conclusions due to the limitations of existing data. Thus, there is “insufficient evidence to support proponents’ claims that TJ contributes to reconciliation or psychological healing, fosters respect for human rights and the rule of law, or helps establish conditions for a peaceful and democratically governed country” (Thoms et al. 2008, 4); but, as the research team admits, there is also no evidence to support sceptics’ claims that TJ undermines progress towards these goals.

A review of the existing studies also reveals a lack of convincing criteria and of knowledge about preconditions for the failure or success of accountability mechanisms. Case studies indicate that in settings where civil society is strong and where governments respond to the contributions made by CSOs, greater movement towards peace and stabilisation can be expected (Backer 2003, 311); and it has also been demonstrated that CSOs have the power to support institutional reforms and the improvement of legal mechanisms (see *section 2.2*). However, the question remains whether CSOs can effectively push for institutionalised forms of transitional justice while decision-makers in parliaments, governments and administrations are adverse to accountability and sustain cultures of denial. Another open question is how truth recovery relates to legal mechanisms, prosecution, compensation, institutional reforms and initiatives for reconciliation. Although scholars and activists seem to agree that societies recovering from violent conflict need mechanisms that aim at both, i.e. truth *and* justice, and that reconciliation should be achieved, it is still unclear how to get from retributive to restorative approaches. It also remains unclear how they should be sequenced or balanced.

3.

Reconciliation and Conflict Transformation

It has become apparent from the discussion above that the debates on transitional justice and reconciliation show certain overlaps. However, they are not identical, as will be demonstrated in this section.

3.1

Reconciliation and Conflict Transformation as Multi-Level Processes

Together with transitional justice, the concept of reconciliation has gained importance among those who engage in post-war regeneration. Peace activists in particular see reconciliation as a necessary requirement for lasting peace. The concept is also extensively discussed in the academic literature on peacebuilding and conflict transformation. It has been argued that reconciliation needs both the orchestration of top-down and bottom-up processes (Bar-On 2007, 81), and although the process may begin either with the leaders or at the grass-roots, to be effective it must always proceed in both dimensions simultaneously (Bar-Tal/Bennink 2004, 27). Civil society actors have a special role to play in this regard (Assefa 2005; Kritz 2009; Kriesberg 2007).

Most authors agree that reconciliation describes a process rather than an end state or outcome, aiming at building relationships between individuals, groups and societies. Reconciliation has also been defined as a process “through which a society moves from a divided past to a shared future”; looking at the past in a way that allows people to see it in terms of “shared suffering and collective responsibility” may help to restore confidence (Bloomfield et al. 2003, 12-21). The need for reconciliation is emphasised in particular for societies that have gone through a process of ethno-political conflict, as these are marked by a loss of trust, inter-generational transmission of trauma and grievances, negative interdependence (as the assertion of each group’s identity is seen as requiring the negation of the other group’s identity) and polarisation. Given that antagonists live in close proximity, not addressing these legacies means risking that they will form the causes of new spirals of violence. Reconciliation is regarded as being necessary to prevent the desire for revenge.

The concept has also been discussed in the context of acknowledgement, contrition, mercy and forgiveness. The Truth and Reconciliation Commission of South Africa (1998) and some scholars have placed great emphasis on this nexus (Lederach 1995, 20; Rigby 2001, 2002). Others have argued that reconciliation processes will not necessarily lead to forgiveness, as this is considered to be a power held only by those victimised and cannot be claimed by others (Minow 1998, 17). Linking both concepts puts any reconciliation process in danger of failing: “the right not to reconcile is a key issue in understanding some of the resistance victims feel to reconciliation, and one often forgotten by international actors as they blithely design post-conflict reconciliation

processes in the abstract” (Bloomfield 2006, 24). Some hence argue for more modest approaches such as “coexistence” (Bar-Tal 2004) or “social reconstruction” (Stover/Weinstein 2004, 13-15).

Others have warned against overemphasising the “religious emotive concept” inherent in the term reconciliation and suggested focusing instead on trust-building on different levels of society (see *Box 2*).

Box 2

Reconciliation – A Christian Notion or a Step Towards Conflict Transformation?

The Israeli psychologist Dan Bar-On (2007, 67) has argued that the religious concept inherent to reconciliation in its Christian origin differs from approaches offered by Judaism and Islam. According to Judaism, only the perpetrators themselves can approach the victims, take official responsibility for what they have done and apologise or ask for forgiveness; after the victim accepts this plea, reconciliation can take place. The Islamic tradition and practices are closer to the Jewish concept than they are to the Christian tradition. Furthermore, Bar-On has suggested bringing the “religious, somewhat idealized, discourse down to earth” (ibid.), undertaking empirical verification and conceptualising the issue in the context of conflict transformation. For this purpose, it is worth looking at related concepts such as “dialogue” and “working through”, which have been tested empirically in communication and psychological studies.

Bar-On pointed out that reconciliatory processes have a psycho-social component as well as a legal one, as within a reconciliatory process several issues have to be addressed simultaneously: specifically, the unresolved issues regarding perpetrators and victims. Storytelling may take an important role in this, but must be accompanied by punishment of the perpetrators, compensation of victims, formal agreements between the parties and economic and educational initiatives to change the status quo in asymmetric contexts (ibid., 72, with reference to Maoz 2004). He also warned against having overly high expectations:

“The concept of reconciliation suggests that the enemies of yesterday will give up and let go of their hatred, animosity or wish for revenge, as well as their identity that had been constructed around the conflict. One expects that a new identity construction will develop together with a new relationship between former enemies that will address the roots of the conflict, not only its unfortunate outcomes. But how can we create such a deep process of change in people who have been committed to the conflict, in some places for generations, in others for a substantial part of their lives? Are these expectations realistic or is it wishful thinking and talking that has little substance in intractable conflicts?” (ibid., 67)

He makes a strong point that in societies affected by ethnopolitical violence, healing and relationship-building need to take place both on the interpersonal and on the intergroup level, as violent conflicts “destroy the confidence in a social contract that a society achieved earlier on [...]. In Bosnia, this meant that even within the same families [...] family bonds were destroyed due to the conflict [...]. Therefore, the process of reconciliation has to address and try to rebuild trust and confidence” (ibid., 71).

Like Bar-On, Louis Kriesberg emphasises the need to overcome power asymmetries. Apart from this he also sees a need to address imbalances in suffering: often both sides have suffered injuries at the hand of the other, although not in equal measure, and reconciliatory actions often are ineffective because they fail to reflect the given symmetries and asymmetries (2007, 254). Moreover, reconciliation can only take place if it entails significant complementary reciprocity. If members of one side assert truths that are ignored or denigrated by the other, their assertion is hardly a mark of reconciliation, as the truths need to be shared or at least acknowledged to indicate some degree of reconciliation on that dimension. Expressions of regret or apology and acts of contrition must be recognised and in a sense accepted by the other side, if reconciliation is to progress. Similarly, terms that only one side deems just and the other regards as unjust do not indicate a significant level of reconciliation.

Kriesberg therefore identifies four dimensions of reconciliation as being essential for conflict transformation and peacebuilding in post-war societies: shared truth, justice, regard and security (2007, 252-256 and 2004; see also Louis Kriesberg in this volume). *Truth* is important as societies divided after mass crime tend to deny what members of the other side have experienced and thus need to openly recognise that they have different views of reality. At a higher level, they might develop a shared truth, supported by official investigations, judicial proceedings and literary and mass media reporting in order to acknowledge abuses. *Justice* is needed as those who have suffered oppression or atrocities seek redress, which may take the form of restitution or compensation, but also punishment of those who committed injustices; justice may furthermore be exhibited in politics that offer protection against future harm and discrimination. Expression of *regard* by members of each community towards the other entails recognising the humanity of the others and their human rights. *Security*, in the sense of personal or collective safety and well-being, is a constitutive part of reconciliation. Security exists as the adversaries feel a minimum of trust and “have reason to believe they can look forward to living together without one side threatening the other” (Kriesberg 2007, 253). All these different dimensions of reconciliation, according to Kriesberg, cannot be fully realised simultaneously, but are often contradictory at a given time: while leaders, small groups or even general practice demonstrate steps of reconciliation, many other people on one or both sides may remain un-reconciled, and some of the latter may passively resist the new relationship or even seek to subvert it. Still others may reject this and try to continue the fight or undermine the implementation of peace agreements.

Conflict transformation theory has outlined that overcoming ethno-political conflicts in particular requires more than the reframing of positions. It is necessary to alter the various manifestations of conflict by addressing the root causes, and to focus on structural, behavioural and attitudinal aspects. According to Johan Galtung (1996, 70-126) it is necessary to transform the relationships, interests, discourses and the very constitution of society. Hugh Miall (2004, 75-77) believes that the meaning of a conflict depends largely on the context from which it arises, and that the attitudes the parties have towards one another are shaped by previous relationships: their behaviour is based on their memory of what has happened in the past and expectations of what may happen in the future. The *context* includes the divided society with

its culture, governance arrangements, institutions, social roles, norms, the rules and codes in place and the society's own path of development. In conflicts involving ethnicity, minorities or challenges to state structures, the very existence of the state is at issue. In addition to this, most conflicts are influenced by wider economic and political developments on the regional and international level. *Relationships* involve “the whole fabric of interaction” (Miall 2004, 76) within the divided society as well as beyond, i.e. with other societies. Poor relationships between groups are all too often a trigger for conflict, and remain a critical hindrance to peacebuilding efforts in post-war settings. *Memories* are part of each party's socially constructed understanding of the situation, shaped by culture and learning, discourse and belief. The way groups remember and construct their past is often central to the mobilisation for conflict, and, thus, a crucial matter to address in reconciliation and cultural traditions work.

In many societies affected by ethno-political violence, relationships and memories are also marked by selective remembrance, which – together with denial and the tendency to remain locked in a notion of victimhood (Enns 2007) – may form a serious obstacle to conflict transformation.

3.2 Selective Remembrance, Denial and Victimisation as Obstacles for Conflict Transformation

The term “victimisation” is used when the role of victim – the victim of war, violence, abuse or discrimination – is ascribed to individuals or groups by dominant societal discourses, groups or institutions. Attributing this role externally, or adopting it as part of one's self-image, can even turn the experience of being a victim into one of collective and mythologised victimhood. The term evolved in social sciences and psychology and has also been used in research on dealing with the Holocaust, describing the self-attribution by perpetrators who cast themselves as victims as a way of denying or relativising crimes. Victimisation can be found in many societies that have been through violent conflict, on all sides, as it affects those who have suffered as well as those who have committed violence. It is often combined with cultures of denial and selective remembrance. Victimisation seems to play a particular role in ethno-political settings. The complexity of this phenomenon can be illustrated once more by experiences from the Western Balkans, where societies face strong cultures of silencing, denial and discourses marked by diverse notions of victimhood (see *Box 3*).

Box 3

Selective Remembrance and Victimisation: Experiences from the Western Balkans

Although moderate politicians from Bosnia-Herzegovina, Serbia, Croatia and Montenegro have made official apologies for war crimes and human rights violations committed during the wars of the 1990s, these views are still not widely shared and remain highly contested. They continue to come up against discourses marked by deception or distortion of facts and historical myths. The politics of remembrance in the region of the former Yugoslavia has mainly been focused on the

selective commemoration of war victims, each generally characterising their own ‘constituency’ as the victims. Bosnia-Herzegovina in particular is marked by such polarisations, mixed with greatly differing interpretations of the past that constantly fuel disputes and (frozen) conflicts. Civil society too is marked by these frictions.

The Centre for Nonviolent Action – based in Belgrade and Sarajevo and engaged in cross-border initiatives for conflict transformation [see also Nenad Vukosavljevic in this volume] – has observed various notions of victimhood that shape political and social life in this region:

“One of the big obstacles in building sustainable peace in the societies of former Yugoslavia is the overall victimisation of these societies. The victimisation is multiple and it exists on three different levels: people feel like victims of ‘the others’ whom they were once in war against, (the others are often blamed not only for the war, but for all the consequences of the war, too: difficult economic situation, many refugees and displaced persons, ruined economy, increased crime and violence rates, etc.). Then, there is the feeling of being a victim, of helplessness and dependence on ‘one’s own’ politicians (one can often hear the following ‘What can we do about it, we know who’s deciding our fate’) and also on world powers (‘We are just guinea pigs in their experiments’). [The] role of the victim is one of the most comfortable ones, because it frees us from any kind of responsibility whatsoever: for our own destiny (because all of the levels stated above affect us), but also for the society we live in, too (because ‘we know who’s deciding our fate’). [...] There will be no substantial change in this region as long as we stay buried in the role of the victim.”

Source: Centre for Nonviolent Action 2007. For an overview on victimisation in the countries of former Yugoslavia see Nikolic-Ristanovic 2008; Popovic 2003; Zizek 1991.

In order to overcome victimisation, war-torn societies need multi-level approaches aiming at questioning and reshaping discourses on the political and societal level, and in particular in the fields of media and education. Change depends on long-term processes that combine factual truth, narrative and dialogical truth in order to overcome polarised, one-sided and selective views on the past. As in any particular instance of a violent conflict, there will be a number of stakeholders, all with their own experiences and perspectives. Many versions of the “truth” and contrasting interpretations of history are likely to be expressed. Memory politics, e.g. commemoration efforts or initiatives for schoolbook revision, face the question: which particular version should be taken as the “official” truth? And another question arises: does the search for a generally agreed and acceptable version of history actually lead to reconciliation? Several authors doubt this (Brouneus 2008; Gibson 2006), or see no evidence to either confirm or deny this relationship (Alidu et al. 2009).

Selective memory can obviously not be challenged by a simple call for a “shared truth” in a situation where many different truths exist. In certain contexts and stages of war-torn societies it may be more important to make people accept the existence of these contrasting truths and to develop empathy and understand the other’s views. This approach can be illustrated by a schoolbook initiative in Israel/Palestine (see *Box 4 overleaf*).

Box 4

Learning Each Other's Historical Narrative – An Israeli/Palestinian Initiative

The Peace Research Institute in the Middle-East (PRIME) has created an unusual textbook for schools, titled “Learning each other’s historical narrative”, which describes Palestinian and Israeli 20th century history from the opposing perspectives of both conflict parties. One column gives an Israeli view of events, with a Palestinian version alongside it. The major incidents covered include the Balfour Declaration of 1917, which promised the Jewish people a state of their own; the events leading to Israel’s independence in 1948 and the first intifada (the Palestinian uprising against Israeli occupation). The same facts are viewed in very different ways. 1948, for example, is remembered by Israelis as marking the foundation of Israel and the war of independence, whereas for Palestinians it is the year of the catastrophe (“al-Naqbah”) and expulsion from their homeland.

The project was inspired by PRIME’s two directors, the Israeli psychologist Dan Bar-On (1938-2008) and the Palestinian academic Sami Adwan. While reviewing Palestinian and Israeli history textbooks they had observed that the experiences and suffering of the respective other sides were never mentioned. While the Holocaust receives no mention in Palestinian textbooks, Israeli teaching materials ignore the traumatic expulsion of the Palestinian people. The respective history and culture are not covered. Maps used in schools omit towns and villages belonging to the other side. History lessons are often one-sided and basically serve to justify each side’s own actions, while obscuring the image of the other side.

Dan Bar-On, Sami Adwan and their team came to the conclusion that overcoming hatred is something that must begin in the mind and that the foundations for reaching understanding should be built in schools. They did not set out to try to change the respective narratives, nor were they trying to establish one single, joint interpretation of events. Quite simply, the aim of the booklet is to enable Israeli and Palestinian schoolchildren to understand each other’s points of view.

PRIME’s book was developed by six Jewish and six Palestinian history teachers, working together with academic experts. Written in Hebrew and Arabic, it is aimed mainly at secondary school pupils. A number of teachers are now using this material at selected schools in Israel and the West Bank. As yet the book has not been accepted as part of any official curriculum, but the respective ministries have approved its use in optional extra-curricular classes.

Source: The booklet can be downloaded at www.vispo.com/PRIME/leohn1.pdf.

3.3

Research Gaps and Open Questions

A lot of research has been conducted on the question of how former war enemies may reconcile after war, in particular with respect to World Wars I and II, and also with respect to the question of how victims and perpetrators could come to terms with the past after the experience of the Holocaust (Bar-On 1999). But to date, not much research has been conducted on the precon-

ditions and obstacles of reconciliation in deeply divided societies after civil war or ethnopolitical violence, where the identification of victims and perpetrators is ambivalent and responsibility remains contested. Questions that arise from such settings are: who is expected to reconcile with whom? Is it a process among victims and perpetrators, individuals and/or collectives? What exactly are the specifics and differences of reconciliation processes on an interpersonal or intergroup level, and how do they relate to a broader national or international political level?

Research on reconciliation processes has raised dilemmas about inclusion and exclusion of stakeholders. It seems that on the one hand, reconciliation initiatives need all stakeholders to be involved in order to avoid being ‘spoiled’ by actors that feel excluded (for instance non-state armed groups), on the other hand many scholars and activists from the human rights movement doubt that war criminals should be involved. The question remains whether there are any limits to be set to the principle of inclusivity.

According to the literature, reconciliation needs to be based on justice in terms of accountability and compensation, and also on different notions of truth, acknowledgement and recognition. On the one hand most scholars would agree that after armed conflict and gross human rights violations, initiatives aiming at forensic or factual truth (finding of missing persons, sustained knowledge of numbers of victims of atrocities – including the context and circumstances in which these were committed – and knowledge of the wider political context and circumstances) are necessary to counteract the relativisation of responsibility and the construction of historical myths. On the other hand, scholars have warned that establishing painful truths in divided societies may also generate resentment, or provide new grievances and conflict (Gibson 2006). Again, a question remains: what kind of truth is needed at which stage of post-war development?

Another open question is how factual truth relates to narrative and dialogical truth, and what restorative truth could look like. We still do not know much about how and when societies get ready to establish a broader discourse that leads to a necessary degree of consent on facts and their interpretation. How collectives come to establish dialogical truth in a way that supports healing and contributes to the broader project of conflict transformation has yet to be extensively explored. It is still an open question how deeply divided societies can manage to create a common memory that can be acknowledged by those who created war or unjust systems, those who opposed and those who were bystanders.

Moreover, the question of what reconciliation processes could look like in societies marked by huge power asymmetries has not been substantially investigated. The same applies for the question of how reconciliation can proceed in situations where conflicts are frozen, where the political status is unclear or entire state structures contested by relevant parts of a population (as is the case, for instance, in Bosnia-Herzegovina 15 years after the Dayton Accords). Furthermore, the question remains how much and what kind of security is needed to start a reconciliation process (this question is currently being debated controversially with respect to the prospects of an “Action Plan for Peace, Reconciliation and Justice” to be implemented in Afghanistan).

Finally, there are many open questions with respect to the scope and outreach of the different actors involved. On the one hand, scholars insist that reconciliation after mass crimes in many

cases needs support by international actors, as they can make suggestions that members of antagonistic sides can listen to and consider seriously, and help ensure that agreements will be implemented (Kriesberg 2007, 254). On the other hand it is argued that there is a primary need to foster capacities of groups within the society in conflict and some suggest building on the people and cultural resources within a given setting, instead of seeing primarily the setting and the people in it as the ‘problem’ and the outsider as the ‘answer’ (Lederach 1995). It is widely agreed that insiders and outsiders have complementary roles to play, but it is not so clear how effective partnerships are to be shaped and how synergies might develop.

The literature finally also reveals a lack of expertise on the phenomenon of victimisation. So far it has mainly been analysed by experts in criminal science and psychology. But how notions of victimhood impact on entire societies in post-war settings, what the underlying dynamics are, and how to address victimisation in a constructive way, has not been investigated extensively. Another open question is how discourses on victimhood are influenced by accountability mechanisms and how they are affected by interventions from external actors. There have been indicators that under certain conditions, legal prosecution itself may exacerbate conflicting discourses about who is the victim and who is the perpetrator (Debiel et al. 2010, 100). There is a particular lack of knowledge on how notions of victimhood are connected with individual or collective identities in ethnopolitically divided contexts. Investigation of these aspects would probably need multi-disciplinary approaches, combining social-psychology, social science, pedagogical science and anthropology.

4.

Next Steps for Research and Practice: Studying the Interplay of Different Actors and Levels

There is consent among scholars and practitioners that societies that have gone through violent conflict need to deal with the legacies of the past in order to prevent a relapse into violence or repression. At the same time it has become clear that mechanisms aiming at accountability do not automatically pave the road to reconciliation, conflict transformation and a stable peace. Doubts have also been raised with respect to the idea of reconciliation, and warnings expressed against unrealistic expectations and emotive interpretations. According to the current state of debate, post-war societies need a combination of approaches aiming at legal justice/accountability, truth recovery (in its manifold forensic, narrative, dialogical and restorative aspects), compensation for victims, institutional reform, which includes fostering the rule of law and security, and restoration of trust in order to support relationship-building and healing. Activities need to be undertaken from various levels (bottom-up and top-down) and have to address

structural, behavioural and attitudinal aspects as well as the context, memory and relationships. Furthermore, asymmetries in power structures, gender relations and gender-specific experiences of violence need to be considered. However, given the poor empirical basis, the effects of TJ mechanisms are still hard to predict. One policy recommendation that results from this is that they should be applied with caution, and proponents should move from “faith-based” to “fact-based” discussions of the issue, to more sustained comparative analysis and, above all, to more interdisciplinary and “mixed methods research” (Thoms et al. 2008, 5-6).

Analysis, first of all, needs a sustained focus on the underlying causes of conflict, so that trials and truth commissions “do not become a fetish but an invitation for on-going attention to address societal fissures” (Fletcher et al. 2009, 220). More research is also needed on the societal impacts of accountability mechanisms. It has been said that substantial assessments can only be made over the long term, at four different stages: 1) the phase of violence or oppression, 2) the first five years after the conflict, where warlords may still hold strong power over media and political networks, 3) 5-20 years after the conflict, the period of social and political reconstruction and 4) the long-term phase after 20 years, which is marked by new political and societal generations (Hazan 2007). It is, therefore, important to repeatedly analyse TJ mechanisms with respect to their outcome, context and legitimacy, in order to develop realistic expectations towards their potential and limits.

Furthermore, policies need to be based on sound knowledge of the interdependence of different mechanisms, levels and actors. This refers, first of all, to the interaction of state institutions and CSOs and in particular to the question of how top-down policies and bottom-up initiatives relate to each other and can be better connected. Secondly, it refers to the cooperation between local and international actors. It has been illustrated that joint activities by international governmental organisations and NGOs together with local actors offer important potential for processes of dealing with the past. However, external activities can also produce unintended side-effects, end up in failure or hamper processes of reconciliation. There is always a danger that external actors do not fully understand what has happened to the people in a locality where mass crimes have occurred, and might introduce inappropriate concepts (Kriesberg 2007, 244). All too often internal and external actors on the various tracks are at cross purposes due to a “clash between paradigms” (Kriesberg 2004, 83). Hence it is crucial to analyse how activities on different tracks relate to each other, and to be aware that actions on one track can sometimes wreck efforts on another. Another challenge, closely related to this issue, is to reflect constantly on the non-simultaneous nature of reconciliation. Therefore, special attention should be paid to the sequencing and timing of mechanisms.

Research needs to be practice-orientated and should generate policy recommendations. At the same time it must not aim to design blueprints in order to satisfy “policymakers’ search for a ‘winning formula’ for broad application” (Thoms et al. 2008, 17). Templatisation should be avoided, since what is helpful in one context may be irrelevant or even harmful in another. Researchers unanimously agree that processes of facing the past cannot simply be transferred from one historical or regional situation to another but must develop out of specific contexts and in accordance with given cultures and societal dynamics. However, case studies – based on

qualitative and multi-disciplinary approaches – can provide important insights by helping to systematise the complex demands and can help to prevent peacebuilders from rushing headlong into action based on unrealistic expectations.

In order to achieve more reliable results, research has to involve, as much as possible, partners and actors from the countries in question. It has been recommended that views of the affected populations have to play a major role in decisions on how societies should deal with the past and that there is a need to listen to the people (Thoms et al. 2008, 7). Action research can prepare the ground for this.¹⁶ Moreover, it offers strong potential for analysis on the effects of transitional justice and reconciliation, as it allows for monitoring ongoing processes on the micro-level of society. Apart from increasing knowledge, it may enhance self-reflection among peace and human rights activists, motivating them to ask themselves whether their activities are rooted in broader society, and to take a systemic view in order to achieve integration with other actors who have different theories of action.¹⁷ Action research can contribute to making core assumptions explicit and evaluate to what extent they are consistent with theory and evidence.

Engaging local partners in analysis is crucial, for a simple reason: although external initiatives can support and provide positive framework conditions for reconciliation and conflict transformation, these processes have to be agreed and shaped by the stakeholders themselves. Ultimately, it is they who will decide how to come to terms with the past and build relationships for the future.

5. References

- Abu-Nimer, Mohammed (ed.) 2001. *Reconciliation, Justice and Coexistence. Theory and Practice*. Lanham, MD: Lexington Books.
- Alidu, Seidu, David Webb and Gavin F. Fairbairn 2009. “Truths” and “Re-imagining” in the Reconciliation Process, in: *Peace Review* 21, 2, 136-143.
- Allcock, John B. 2009. The International Criminal Tribunal for the Former Yugoslavia, in: Charles Ingrao and Thomas A. Emmert (eds.). *Confronting the Yugoslav Controversies. A Scholars’ Initiative*. West Lafayette, IN: Purdue University Press, 347-389.
- Allen, Beverly 1996. *Rape Warfare. The Hidden Genocide in Bosnia-Herzegovina and Croatia*. Minneapolis: University of Minnesota Press.
- Anonymous 1996. Human Rights in Peace Negotiations, in: *Human Rights Quarterly* 18, 2, 249-258.

¹⁶ For overviews see Newman 2000; Ross 2000; Reason/Bradbury 2006. See also www.aepro.org, the website of the Action Evaluation Research Institute.

¹⁷ Strategies of peacebuilding actors are often driven by many alternative norms, concepts and assumptions. Each organisation develops a set of assumptions on how peace and social change comes about. Theories of action rarely contradict each other directly, but often emphasise quite different processes and sequences of activities (Ross 2000, 2). Practice is grounded in beliefs about the nature of social and psychological reality that often are not explicitly stated [see also Reina C. Neufeldt in this volume].

- Arzt, Donna E. 2006. Views on the Ground. The Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone, in: *Annals, American Academy of Political and Social Science*, 603, 226-239.
- Assefa, Hizkias 2005. Reconciliation. Challenges, Responses and the Role of Civil Society, in: Paul van Tongeren et al. (eds.). *People Building Peace 2, Successful Stories of Civil Society*. London: Lynne Rienner, 637-645.
- Aucoin, Louis and Eileen Babbitt 2006. *Transitional Justice. Assessment Survey of Conditions in the Former Yugoslavia*. Belgrade: UN Development Programme.
- Backer, David 2009. Cross-National Comparative Analysis, in: Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman (eds.). *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*. Washington DC: USIP, 23-89.
- Backer, David 2003. Civil Society and Transitional Justice. Possibilities, Patterns and Prospects, in: *Journal of Human Rights* 2, 3, 297-313.
- Bar-On, Dan 2007. Reconciliation Revisited for More Conceptual and Empirical Clarity, in: Janja Bec-Neumann (ed.). *Darkness at Noon. War Crimes, Genocide and Memories*. Sarajevo: Centre for Interdisciplinary Postgraduate Studies, 62-84.
- Bar-On, Dan 1999. *The Indescribable and the Undiscussable. Reconstructing Human Discourse after Trauma*. Budapest: Central European University Press.
- Bar-Tal, Daniel 2004. Nature, Rationale, and Effectiveness of Education for Coexistence, in: *Journal of Social Issues* 60, 2, 253-271.
- Bar-Tal, Daniel and Gemma H. Bennink 2004. The Nature of Reconciliation as an Outcome and a Process, in: Yaacov Bar-Siman-Tov (ed.). *From Conflict Resolution to Reconciliation*. Oxford: Oxford University Press, 11-38.
- Barth, Elise Fredrikke, Karen Hostens and Inger Skjelsbæk 2004. *Gender Aspects of Conflict Interventions: Intended and Unintended Consequences*. Report to the Ministry of Foreign Affairs, Oslo.
- Bassiouni, M. Cherif and P. Manikas 1996. *The Law of the International Criminal Tribunal for the Former Yugoslavia*. New York: Transnational Publishers Inc.
- Bell, Christine 2000. *Peace Agreements and Human Rights*. Oxford: Oxford University Press.
- Bell, Christine and Catherine O'Rourke 2007. Does Feminism Need a Theory of Transitional Justice?, in: *International Journal of Transitional Justice* 1, 1, 23-44.
- Biggar, Nigel (ed.) 2001. *Burying the Past. Making Peace and Doing Justice after Civil Conflict*. Washington DC: Georgetown University Press.
- Bloomfield, David 2006. *On Good Terms. Clarifying Reconciliation*. Berghof Report No 14. Berlin: Berghof Research Center. Available at www.berghof-conflictresearch.org.
- Bloomfield, David, Teresa Barnes and Luc Huyse 2003. *Reconciliation after Violent Conflict. A Handbook*. Stockholm: International IDEA.
- Boraine, Alexander 2006. Transitional Justice. A Holistic Interpretation, in: *Journal of International Affairs* 60, 1, 17-27.
- Brouneus, Karen 2008. Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts, in: *Security Dialogue* 39, 1, 55-76.

- Campbell, Kirsten 2004. The Trauma of Justice. Sexual Violence, Crimes against Humanity and the International Criminal Tribunal for the Former Yugoslavia, in: *Social and Legal Studies* 13, 3, 329-350.
- Centre for Nonviolent Action 2007. Challenges for Sustainable Peacebuilding, in: Martina Fischer (ed.). *Peacebuilding and Civil Society in Bosnia-Herzegovina – Ten Years After Dayton*. 2nd edition. Münster: Lit-Verlag, 438-440.
- Clark, Roger S. and Madeleine Sann (eds.) 2002. *The Prosecution of International Crimes. A Critical Study of the International Tribunal for the Former Yugoslavia*. New Brunswick, NJ / London: Transaction Publishers.
- Debiel, Tobias, Daniel Lambach, Nicolas Schwank and Julia Viebach 2010. Gewaltkonflikte und Friedensstabilisierung, in: Stiftung Entwicklung und Frieden/Institut für Entwicklung und Frieden (eds.). *Globale Trends 2010*. Frankfurt a.M.: Fischer, 81-104.
- de Greiff, Pablo (ed.) 2006. *The Handbook of Reparations*. Oxford: Oxford University Press.
- Djuric-Kuzmanovic, Tanja, Rada Drezgic and Dubravka Zarkov 2008. Gendered War, Gendered Peace. Violent Conflicts in the Balkans and Their Consequences, in: Donna Pankhurst (ed.). *Gendered Peace. Women's Struggles for Post-War Justice and Reconciliation*. New York/London: Routledge, 265-291.
- Elster, Jon 2004. *Closing the Books. Transitional Justice in Historical Perspective*. Cambridge/New York: Cambridge University Press.
- Enns, Diane 2007. *Identity and Victimhood: Questions for Conflict Management Practice*. Berghof Occasional Paper No 28. Berlin: Berghof Research Center.
- Farr, Vanessa 2003. The Importance of a Gender Perspective to Successful Disarmament, Demobilization and Reintegration Processes, in: *Disarmament Forum*, 4/2003, 25-36.
- Fletcher, Laurel E. and Harvey M. Weinstein 2004. A World unto Itself? The Application of International Justice in Former Yugoslavia, in: Eric Stover and Harvey M. Weinstein (eds.). *My Neighbour, My Enemy. Justice and Community in the Aftermath of Mass Atrocity*. Cambridge, UK: Cambridge University Press, 29-48.
- Fletcher, Laurel E., Harvey M. Weinstein and Jamie Rowen. 2009. Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective, in: *Human Rights Quarterly* 31, 1, 163-220.
- Franke, Katherine M. 2006. Gendered Subjects of Transitional Justice, in: *Columbia Journal of Gender and Law* 15, 3, 813-828.
- Freeman 2004a. *Bosnia and Herzegovina: Selected Developments in Transitional Justice*. ICTJ Case Studies Series. New York: International Center for Transitional Justice.
- Freeman, Mark 2004b. *Serbia and Montenegro. Selected Developments in Transitional Justice*. ICTJ Case Studies Series. New York: International Center for Transitional Justice.
- Galtung, Johan 1996. *Peace by Peaceful Means*. London: Sage.
- Gibson, James L. 2006. *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York: Russell Sage Foundation Publications.
- Hayner, Priscilla 2009. *Negotiating Justice: Guidance for Mediators*. Geneva: Humanitarian Dialogue Centre. Available at www.hdcentre.org/files/negotiating%20justice%20report.pdf.
- Hayner, Priscilla 2001. *Unspeakable Truths. Confronting State Terror and Atrocity*. New York/London: Routledge.

- Hayner, Priscilla 1994. Fifteen Truth Commissions – 1974-1994: A Comparative Study, in: *Human Rights Quarterly* 16, 4, 597-655.
- Hazan, Pierre 2007. Das neue Mantra der Gerechtigkeit. Vom beschränkten Erfolg international verordneter Vergangenheitsbewältigung, in: *Der Überblick* 43, 1-2, 10-22.
- Hazan, Pierre 2006. Measuring the Impact of Punishment and Forgiveness. A Framework for Evaluating Transitional Justice, in: *International Review of the Red Cross* 88, 861, 19-47.
- Hodzic, Refik 2007. *Bosnia and Herzegovina – Legitimacy in Transition*. Paper presented at the conference Building a Future on Peace and Justice, Nuremberg, 25-27 June 2007. Available at www.peace-justice-conference.info/download/Hodzic_Expert%20Paper.pdf.
- Jalusic, Vlasta 2004. Gender and Victimization of the Nation as Pre- and Post-War Identity Discourse, in: Ruth Seifert (ed.). *Gender, Identität und kriegerischer Konflikt. Das Beispiel des ehemaligen Jugoslawien*. Münster: Lit-Verlag, 40-67.
- Kerr, Rachel 2005. The Road from Dayton to Brussels? The ICTY and the Politics of War Crimes in Bosnia, in: *European Security* 14, 3, 319-337.
- Kohn, Elizabeth 1995. Rape as a Weapon for War. Women's Human Rights during the Dissolution of Yugoslavia, in: *Golden Gate University Law Review* 25, 1, 199-221.
- Korac, Maja 1994. Representation of Mass Rape in Ethnic Conflicts in What Was Yugoslavia, in: *Sociologija* 6, 4, 495-514.
- Kriesberg, Louis 2007. External Contributions to Post-Mass-Crime Rehabilitation, in: Beatrice Pouligny, Simon Chesterman and Albrecht Schnabel (eds.). *After Mass Crime. Rebuilding States and Communities*. New York: United Nations University, 243-271.
- Kriesberg, Louis 2004. From Conflict Resolution to Reconciliation, in: Yaacov Bar-Siman-Tov (ed.). *From Conflict Resolution to Reconciliation*. Oxford: Oxford University Press, 81-110.
- Kritz, Neil J. 2009. Policy Implications of Empirical Research on Transitional Justice, in: Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman (eds.). *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*. Washington DC: USIP, 13-22.
- Kritz, Neil J. (ed.) 1995. *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*. 3 volumes. Washington DC: USIP.
- Laplante, Lisa J. 2008. Transitional Justice and Peace Building: Diagnosing and Addressing Socioeconomic Roots of Violence through a Human Rights Framework, in: *International Journal of Transitional Justice* 2, 3, 331-355.
- Lederach, John Paul 1995. *Preparing for Peace. Conflict Transformation Across Cultures*. Syracuse, NY: Syracuse University Press.
- Magarrell, Lisa, Ruben Carranza, Cristian Correa and Virginie Ladisch 2007. *Reparations in Theory and Practice*. New York: International Center for Transitional Justice. Available at www.ictj.org/static/Reparations/0710.Reparations.pdf.
- Maoz, Ifat 2004. Coexistence is in the Eye of the Beholder. Evaluating Intergroup Encounter Interventions between Jews and Arabs in Israel, in: *Journal of Social Issues* 60, 2, 403-418.
- McMahon, Patrice C. and David P. Forsythe 2008. The ICTY's Impact on Serbia. Judicial Romanticism Meets Network Politics, in: *Human Rights Quarterly* 30, 2, 412-435.

- Meernik, James 2005. Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia, in: *Journal of Peace Research* 43, 3, 271-287.
- Meernik, James 2003. Victor's Justice or the Law? Judging and Punishing at the ICTY, in: *Journal of Conflict Resolution* 47, 2, 140-162.
- Mendeloff, David 2004. Truth-Seeking, Truth-Telling, and Post-Conflict Peacebuilding. Curb the Enthusiasm?, in: *International Studies Review* 6, 3, 355-380.
- Mertus, Julie 2007. Findings from Focus Group Research on Public Perceptions of the ICTY, in: *Südosteuropa* 55, 1, 107-117.
- Mertus, Julie 2004. *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY). Transitional Justice for Bosnia and Herzegovina*. Cambridge, MA: Women Waging Peace Policy Commission.
- Miall, Hugh 2004. Conflict Transformation: A Multi-Dimensional Task, in: Alex Austin, Martina Fischer and Norbert Ropers (eds.). *Transforming Ethnopolitical Conflict. The Berghof Handbook*. Wiesbaden: VS Verlag, 67-90. Available at www.berghof-handbook.net.
- Minow, Martha (ed.) 2002. *Breaking the Cycles of Hatred. Memory, Law and Repair*. Princeton, NJ: Princeton University Press.
- Minow, Martha 1998. *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*. Boston: Beacon Press.
- Nettelfield, Lara J. 2006. *Courting Democracy. The Hague Tribunal's Impact in Bosnia-Herzegovina*. Columbia University, New York. [PhD dissertation.]
- Newman, Judith M. 2000. Action Research. A Brief Overview, 14 Paragraphs, in: *Forum Qualitative Sozialforschung & Forum Qualitative Social Research* (Online Journal) 1, 1. Available at www.qualitative-research.net/FQS-texte/1-00.
- Ni Aolain, Fionnuala and Catherine Turner 2007. Gender, Truth and Transition, in: *UCLA Women's Law Journal* 16, 229-279.
- Nikolic-Ristanovic, Vesna 2008. Local Conflicts and International Interventions: Victimisation of Civilians and Possibilities for Restorative Global Responses, in: *Contemporary Justice Review* 11, 2, 101-115.
- O'Connell, Jamie 2005. Gambling with the Psyche. Does Prosecuting Human Rights Violators Console their Victims?, in: *Harvard International Law Journal* 46, 2, 295-345.
- Olusanya, Olaoluwa 2005. *Sentencing War Crimes and Crimes Against Humanity under the ICTY*. Groningen: Europa Law Publishers.
- Orentlicher, Diane 2008. *Shrinking the Space for Denial: The Impact of the ICTY in Serbia*. New York: Open Society Institute.
- Pankhurst, Donna (ed.) 2008. *Gendered Peace. Women's Struggles for Post-War Justice and Reconciliation*. New York/London: Routledge.
- Popovic, Tanja 2003. *Die Mythologisierung des Alltags. Kollektive Erinnerungen, Geschichtsbilder und Vergangenheitskultur in Serbien und Montenegro*. Zürich: Pano.
- Reason, Peter and Hillary Bradbury (eds.) 2006. *Handbook of Action Research*. London/New Delhi: Sage Publications.

- Rigby, Andrew 2002. Three Contrasting Approaches for Dealing with the Past: Collective Amnesia, Retributive Justice and Prioritising Truth, in: *Committee for Conflict Transformation Support Newsletter* 18. Available at www.c-r.org/ccts/ccts18/3apprch.htm.
- Rigby, Andrew 2001. *Justice and Reconciliation. After the Violence*. Boulder, CO: Lynne Rienner.
- Roht-Arriaza, Naomi and Javier Maireszcurrena (eds.) 2006. *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*. Cambridge/New York: Cambridge University Press.
- Ross, Marc Howard 2000. *Action Evaluation in the Theory and Practice of Conflict Resolution*. Bryn Mawr, PA: Bryn Mawr College Press.
- Sajkas, Marija 2007. *Transitional Justice and the Role of the Media in the Balkans*. Discussion paper. New York: ICTJ. Available at www.ictj.org/images/content/8/3/833.pdf.
- Schabas, William A. 2006. *The UN International Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*. Cambridge/New York: Cambridge University Press.
- Slapsak, Svetlana 2004. Gender and War in the Post-Socialist World, in: Ruth Seifert (ed.). *Gender, Identität und kriegerischer Konflikt. Das Beispiel des ehemaligen Jugoslawien*. Münster: Lit-Verlag, 26-39.
- Slapsak, Svetlana 2000. *Women's Discourse / War Discourse. Essays and Case Studies from Yugoslavia and Russia*. Ljubljana: Topas & Graduate School of Humanities Ljubljana.
- Smith, Dan 2004. *Towards a Strategic Framework for Peacebuilding: Getting Their Act Together*. Overview Report of the Joint Utstein Study of Peacebuilding. Oslo: Ministry of Foreign Affairs.
- Spees, Pam 2004. *Gender Justice and Accountability in Peace Support Operations*. London: International Alert. Available at www.international-alert.org/pdfs/gender_justice_accountability_peace_operations.pdf.
- Spoerri, Marlene and Annette Freyberg-Inan 2008. From Prosecution to Persecution. Perceptions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Serbian Domestic Politics, in: *Journal of International Relations and Development* 11, 4, 350-384.
- Stigmayer, Alexandra (ed.) 1992. *Mass Rape. The War Against Women in Bosnia-Herzegovina*. Lincoln: University of Nebraska Press.
- Stover, Eric and Harvey M. Weinstein (eds.) 2004. *My Neighbour, My Enemy. Justice and Community in the Aftermath of Mass Atrocity*. Cambridge, UK: Cambridge University Press.
- Stubbs, Paul 2003. *Dealing with the Past in Bosnia-Herzegovina, Croatia, and Serbia & Montenegro*. Quaker Peace & Social Witness, Regional Synthesis Report, Zagreb.
- Teitel, Ruti G. 2000. *Transitional Justice*. New York: Oxford University Press.
- Thoms, Oskar N. T., James Ron and Roland Paris 2008. *The Effects of Transitional Justice Mechanisms. A Summary of Empirical Research Findings and Implications for Analysts and Practitioners*. Working paper. Centre for International Policy Studies, University of Ottawa.
- Truth and Reconciliation Commission of South Africa 1998. *Report*. 5 volumes. Capetown.
- van der Merwe, Hugo, Victoria Baxter and Audrey R. Chapman (eds.) 2009. *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*. Washington DC: USIP.
- Zarkov, Dubravka 1995. Gender, Orientalism and Ethnic Hatred in Former Yugoslavia, in: Helma Lutz, Ann Phoenix and Nira Yuval-Davis (eds.). *Crossfires: Nationalism, Racism and Gender in Europe*. London: Pluto, 105-120.
- Zizek, Slavoj 1991. *Liebe Dein Symptom wie Dich selbst!* Frankfurt a.M.: Institut für neue Medien.

Useful Links

International Center for Transitional Justice, New York: www.ictj.org

South African Centre for the Study of Violence and Reconciliation: www.csvr.org.za

Center for Justice and Reconciliation, The Hague: www.cjr.nl

United States Institute for Peace, Washington: www.usip.org/issue-areas/transitional-justice

University of Wisconsin-Madison: <http://sites.google.com/site/transitionaljusticedatabase/>

Center for Conflict Studies, University of Marburg: www.uni-marburg.de/konfliktforschung/startseite-englisch?set_language=en

Working Group on Peace and Development (FRIENT), Bonn: www.frient.de/en/

Peace Research Institute Oslo: www.prio.no/Search?q=transitional+justice

Swisspeace, Berne: www.swisspeace.ch/typo3/en/peacebuilding-activities/koff/topics/dealing-with-the-past/index.html

[All weblinks accessed 6 August 2010.]