Is Transitional Justice Really Just?

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One of the most dramatic transformations of global politics in recent years is the emergence of a new field known as "transitional justice." In its broadest sense, transitional justice refers to how societies "transitioning" from repressive rule or armed conflict deal with past atrocities, how they overcome social divisions or seek "reconciliation," and how they create justice systems so as to prevent future human rights atrocities.[1] Transitional justice has captured much of the attention in recent thinking about human rights, partly because so many countries have in recent years become "transitional societies" and partly because such societies offer unusual opportunities to capture and punish perpetrators.

Yet transitional justice holds broader significance for two reasons. First, transitional societies have given birth to an array of innovative and evolving instruments to expose and punish human rights abusers. The past decade has witnessed the creation of international tribunals for the former Yugoslavia and for Rwanda, a powerful International Criminal Court (ICC), dozens of truth commissions, national/international "hybrid" courts recently erected to prosecute top human rights abusers, and the application of universal jurisdiction to try former heads of state outside of their home countries. Moreover, international and national actors have deliberately and carefully applied lessons across successive transitions, innovating in a cumulative manner at a surprising pace. The experience of South Africa, for instance, has already been critiqued and improved upon in places like Sierra Leone and East Timor.

Second, the instruments of transitional justice have had an unexpected influence on state sovereignty and on hopes for global justice. Two decades ago, heads of state

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enjoyed a virtual license to commit mass murder and torture within their own borders. Now, however, powerful heads of state such as Saddam Hussein, General Augusto Pinochet, and Slobodan Milosevic face criminal trials and humiliation. Former top officials of Afghanistan, South Africa, Mexico, and Israel, and beyond are aware that they may be arrested, either at home or abroad, and face incarceration. Globalization and new norms have converged to create a robust international sub-regime that can topple governments, jail once-powerful presidents, and cause tyrants to pause before committing war crimes.[2] Not even the activists who played such an important role in bringing about these innovations could have imagined such dramatic change.[3]

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Furthermore, these developments have sparked hopes that the global order may become rooted in justice rather than anarchy, economic gain, or politico-military power. International tribunals are held up as having introduced "accountability into the culture of international relations."[4] Truth commissions are deemed to heal social wounds among former enemies or divided ethnic groups. In short, transitional justice has not only brought satisfaction to some victims, but also transformed world politics and notions of righteousness.

Unfortunately, when examined carefully, transitional justice exhibits serious flaws. The problems of the increasingly robust "transitional justice sub-regime," linked to the decades-old international human rights regime, are not simple surface defects. New international tribunals, truth-telling mechanisms, and post-transition hybrid courts have recurrent, structural problems. These problems range from a lack of resources to politicization to virtual impunity for rich countries. Sadly, in the name of advancing human rights, these defects have generally been glossed over by international organizations, academics, and journalistic observers. Some policymakers, including those in the Bush administration, believe that these flawed transitional justice mechanisms, the new darlings of the international community, should be ignored or eliminated in favor of traditional state-level justice mechanisms. Others view them solely as tools of Western power or "victors' justice."

These deficiencies require us to ask: Is transitional justice just? Do international tribunals or improved "hybrid courts" or "truth with justice" innovations represent the building blocks of a new, just world order? This article seeks to answer these questions.

It lays out the deficiencies of these instruments and argues that ignoring or combating them will not help. Instead, human rights advocates and those who care about international justice must (1) be more honest in acknowledging the unfairness and flaws of current transitional justice tools, and (2) work more aggressively at ending their unequal application and their misuse as "victors' justice."

UNJUST TRANSITIONAL JUSTICE?

The field of transitional justice draws on the decades-long development of international humanitarian law and prior efforts to prosecute war criminals, most famously at Nuremberg and Tokyo after World War II.[5] The current experience of transitional justice, however, emerged in response to the "third wave" of democratization over the past thirty years and to the end of the Cold War, largely sparked by the advocacy of human rights organizations. Over the past two decades, several new institutions emerged as mechanisms reflecting different political and philosophical approaches to transitional justice.

Truth Commissions. Over two-dozen countries have established truth commissions since 1990.[6] Dedicated to establishing a historical record of human rights abuses over a defined time period, these bodies have contributed to creating shared accounts of disputed and hidden events, clarifying who committed abuses and how, eliciting acknowledgement of state misconduct, and restoring some degree of social reconciliation and moral order.[7] Truth commissions offer unique contributions that judicial trials cannot.[8] Such commissions respond to public need for official acknowledgement of past societal wrongs, addressing patterns of abuse rather than individual cases. They focus on public accounting rather than secret proceedings, and victims play a central role.[9] Truth commissions have therefore helped redress the inherent individualist bias of human rights laws and instruments, bringing social processes and consequences to the fore.

Yet truth commissions have exhibited serious flaws. They have served, and occasionally continue to serve, as second-best alternatives to judicial punishment for perpetrators. These commissions emerged largely in Latin America, where powerful military regimes grudgingly yielded to degrees of liberalization, demanding amnesties for torture, massacres, and extrajudicial executions.[10] After helping create his country's Truth and Reconciliation Commission, one of Chile's foremost human rights figures noted that such commissions by necessity pursue what is possible rather than the unattainable but righteous path.[11] The South African Truth and Reconciliation Commission contributed to the idea of "restorative justice," emphasizing social reconciliation, largely

because common notions of "legal" or "retributive" justice were unattainable.[12]

Exposing and shaming perpetrators is certainly better than letting them rewrite history, especially if some social healing and recognition of victims' experiences can be achieved. Furthermore, recent legal developments render amnesties both less politically acceptable and less legally relevant. Truth commissions thus operate increasingly as complements to criminal trials. Yet the very availability of truth commissions offers an alternative to those who oppose war crimes trials. The possibility remains for truth-telling bodies to be misused and deflect trials for lesser suspects and crimes.[13]

Other problems plague the processes and outcomes of truth commissions. Notwithstanding the experience of South Africa, where conditional amnesty was granted for suspects who fully confessed, most truth commissions are unable to obtain detailed accounts from perpetrators of their policies and actions. East Timor's Commission for Reception, Truth, and Reconciliation (CAVR), for instance, had taken seven thousand testimonies by January 2004, but none of them from a perpetrator.[14] Victims' accounts of course merit recording, but partial accounts do not achieve the aim of establishing a widely agreed-upon account of the past, especially when one faction is defeated and delegitimized in war.

Many recent truth commissions have not received sufficient funding to complete their work adequately. Most have failed to generate public interest and awareness, crucial to the function of society-wide education and reconciliation. In some cases like Haiti and Uganda, truth commission reports went uncompleted or uncirculated. These defects can be remedied. The main point here is that truth commissions, unless they can influence punishment (like the community-level reconciliation process overseen by East Timor's CAVR), are not mechanisms of retributive justice. Instead they are instruments of social peace and harmony, and are at best complements to retributive justice.

International Criminal Tribunals in the Former Yugoslavia and Rwanda. The best-known new human rights institutions of the past decade are international tribunals. In the early 1990s the United Nations created ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR). In 2002, a treaty creating an International Criminal Court, designed to obviate the need to erect ad hoc tribunals, came into force. Drawing on the antecedents set in Nuremberg and Tokyo after World War II, the ICTY and the ICTR gave new hope that war criminals would be brought to justice. During the Cold War, top government officials were virtually never tried for human rights violations. The ICTY and the ICTR, created in response to the two largest-scale instances of genocide of the 1990s, showed that the world's greatest powers, aware of their own inadequate response to reports of genocide, were serious about

punishing the topmost government officials responsible.[15]

After slow and dubious starts, both tribunals have successfully collared top-level officials, and created an expectation within their respective societies that those responsible for overseeing massacres and ethnic cleansing will face incarceration. Slobodan Milosevic was handed over to The Hague, as were several top Serb officials and Croat and Bosniak military officers, for their role in warfare in Bosnia and in Kosovo. The ICTY's successful conviction of local killers in some areas of Bosnia helped clear the way for the return of refugees who had fled ethnic cleansing.[16] Over time the ICTY drew attention to past atrocities and punished those responsible for them. The court even affected the region's political fortunes, as its actions alternately boosted and helped bring down reformist governments in Serbia and Croatia.[17] In Rwanda, the ICTR obtained the first-ever successful conviction of a former prime minister, the first conviction for genocide in history, and the first conviction of rape as a crime against humanity, helping cement that crime in the laws of war.[18] These developments are truly historic in light of centuries-old norms of sovereignty protecting former and sitting heads of state.

Yet these heralded new international instruments also have serious defects. Trials in transitional societies can be politicized, and members of some ethnic groups of the former Yugoslavia and Rwanda view the tribunals as tools for ethnic persecution rather than prosecution.[19] As Aleksa Djilas, one leading Serbian commentator put it, the ICTY "is a conspiracy, basically to…punish the main enemy of NATO, the United States, and the West."[20] A poll conducted in 2002 found that seventy-four percent of respondents in Republica Srpska disagreed with the statement, "All citizens who are indicted of war crimes should be tried in The Hague."[21] Few believe that domestic courts in the former Yugoslavia would dispense fair justice, and NATO's war over Kosovo and the West's idle response to Rwanda's genocide combine to call into question the higher purpose that is generally attributed to the tribunals.

Rwanda's tribunal, set up in Tanzania by the UN months after genocide claimed over half a million lives, showed slim accomplishments at extraordinary cost. By June 2003, in its ninth year, the ICTR had handed down only twelve convictions and one acquittal.[22] With an eight-year budget of five hundred and sixty-eight million U.S. dollars, or six percent of Rwanda's annual GDP, the cost of the ICTR's work totaled over forty-three million per case adjudicated.[23] Furthermore, the Rwanda tribunal was located outside Rwanda; only a tiny percentage of the hundred thousand perpetrators would be tried, and almost no public education or publicity surrounded the court's work. These factors undermined the meaningfulness of the endeavor. As one Rwandan stated, "What is the Arusha tribunal? Come on, it is useless!"[24] Such local perceptions of these novel tribunals—that they are expensive, biased against groups not allied with

the West, and remote from the people—all undermine the notion that these lauded instruments are effective, efficient, or fair.

The International Criminal Court. Long sought by human rights advocates, the International Criminal Court entered into force in 2002, and ninety-two countries had ratified its statute as of January 2004. It holds jurisdiction over crimes against humanity, genocide, and war crimes.[25] The court is now appointed and preparing its institutions to receive cases. The ICC is likely to address important deficiencies of at least four other mechanisms of transitional justice: ad hoc tribunals, domestic trials, amnesties, and third-country exercise of universal jurisdiction. The ICC will avoid the need to create ad hoc tribunals like the ICTY and the ICTR, erecting procedures that apply more uniformly and thus fairly, to states rather than leave tribunal-creation entirely in the hands of an unrepresentative UN Security Council. By acting only after domestic remedies have been deemed insufficient, the ICC will both strengthen domestic juridical institutions, and create a backstop for those institutions when they are too weak or flawed. The jurisdiction of the ICC will also make it irrelevant for signatories to grant blanket amnesty to the worst war criminals, eliminating this mechanism of impunity. Finally, the ICC obviates the need for third countries to exercise universal jurisdiction in trying war crimes suspects, a practice that has been criticized as capricious and favorable to powerful countries that can leverage extraditions.[26]

However, the ICC is not yet operational, and how swiftly and fairly it will dispense justice remains to be seen. More important, the failure of some countries, notably the United States, to participate in the ICC raises one of the most fundamental questions about transitional justice: Do individuals from wealthy and powerful countries enjoy impunity even as these countries "apply" justice to the rest of the world? In 2002, the Bush administration "withdrew" the United States' signature from the Rome Statute creating the ICC, and the Congress passed a law prohibiting all US cooperation with the court.[27] As a result, the ICC and most instruments of transitional justice apply to even the most powerful individuals of the world's middle powers and poor countries, but not to the lowest-ranking soldier of the United States, Russia, or China.

Hybrid Courts. Among the most recent and celebrated developments in transitional justice are "hybrid" international/national courts.[28] These courts seem to redress the deficiencies, when operating alone, of international tribunals on the one hand, and domestic courts on the other. They incorporate national-level laws and national judges and prosecutors, contributing to the capacity building of the justice sector, while also including international personnel, who confer legitimacy, resources, experience, and technical knowledge. In cases like Sierra Leone and East Timor, where hybrid courts

are created in tandem with truth commissions and judicial reforms, transitional justice seems to conjoin all the separate strands of justice, integrating the past and the future, the individual level and the social level, the local and the international.

Hybrid courts, especially when undertaken in conjunction with truth-telling processes and carefully designed justice sector reform programs, represent a sincere and laudable attempt to improve upon past transitional justice experiences. In particular, hybrid courts help overcome a "dual legitimacy problem": situations where domestic transitional justice processes are not accepted either because they represent "victors' justice" or because they fail to meet minimal international standards; and where international tribunals are rejected by locals skeptical of their motives. Hybrid courts help overcome the capacity building problem.[29] In addition, the collaboration of national and international legal personnel helps bring international laws and norms to bear in ways that can be internalized and institutionalized.[30] In this way, problems of "misinterpretation" or misapplication of international standards, such as that which occurred in Kosovo, may be averted.

Yet even here, in this most optimal of tools for transitional justice, initial experiments gives cause for pause. A closer look at the hybrid court of East Timor illustrates the challenges of the model and the persistent reliance upon great powers for justice. The hybrid tribunal included a UN-overseen Special Panel of international and Timorese judges and staff, a Serious Crimes Unit of international prosecutors and investigators, and a Public Defenders Office funded and staffed mainly by East Timorese with some internationals.[31] These hybrid institutions operated alongside the truth commission (CAVR) and its community reconciliation program, permitting lower-level suspects to confess their crimes, be queried by their neighbors, and receive community punishment and acceptance. The Special Panels have processed cases much more quickly than the ICTY or the ICTR, at less than one-tenth the cost. In four years, the Special Panels completed forty-one cases, almost matching the forty-nine processed by the ICTY in its eleven years of operation, and double the total processed by the ICTR in its nine years.[32] Overall the panels have administered its cases expeditiously and smoothly. The prompt establishment of these bodies represents a singular achievement, given the country's poverty, the extensive control of physical infrastructure by Indonesian-backed militias in 1999, and the very few educated and experienced legal professionals available among the Timorese.

Unfortunately, East Timor's hybrid courts have also been beset by problems of fairness. For the Panels' first year and a half, poor management crippled the court and the unit charged with investigating and prosecuting cases, the Serious Crimes Unit (SCU).[33] The panels only took up common murders and rapes committed in 1999, failing to address similar crimes committed from the 1974 Indonesian takeover until

1998.[34] In addition, many questioned whether the accused had received adequate defense. The nine public defenders appointed were fewer in number than the prosecutors, were overburdened with a broader array of crimes, and were generally less competent. One international adviser to the defenders described the selection process overseen by the UN Transitional Administration: "The best and most qualified lawyers became judges, the next best became prosecutors, and those that were left became public defenders."[35] During the Special Panels' first fourteen trials, public defenders failed to call a single defense witness to the stand.[36] The addition of international mentors for public defenders has helped improve the right to defense, but the fairness of previous trials remained dubious.

Most importantly, those with the most responsibility for human rights abuses live freely in Indonesia. The top Indonesian military officers who ordered and oversaw the abuses directed against the occupied Timorese population from 1974 to 1999 enjoy status and security at home, with little likelihood of punishment, while their lower-level charges spend years in jail. Of the three hundred and sixty-five persons indicted by the SCU, some two hundred and eighty were circulating freely in Indonesia as of December 2003, including General Wiranto, a former Defense Minister currently seeking the Indonesian presidency.[37] The Panels have indicted over forty current or former Indonesian officials, but issued very few arrest warrants, largely because of political fears and pressures. An extradition agreement negotiated between the UN transitional administration and Indonesia proved meaningless, and no such accord is expected to be reached between East Timor's government and Indonesia, which remains dismissive of the Special Panels. Whereas powerful states conditioned aid to Serbia on cooperation with the ICTY, no such conditionality has been applied to Indonesia's cooperation with East Timor's Special Panels. Western powers seem more interested in supporting an allied government useful in the war on terrorism.

The hybrid court and the truth commission created in Sierra Leone echo many of the same problems plaguing East Timor's efforts at justice. The Special Court of Sierra Leone (SCSL), created in 2000 to prosecute those "most responsible" for committing war crimes and breaking that country's laws, moved quickly to begin prosecutions, and indicted top rebel commanders for their horrific atrocities. However, by early 2004, familiar problems arose. The court had difficulty meeting its budget; high-ranking suspects either died (or in Charles Taylor's case, fled to the regional power); and public education about the Special Court was ineffective as only fifty-nine percent of the population supported its work.[38]

The broader point here is that, when examined closely, especially from the viewpoint of the populations of their respective societies, transitional justice mechanisms have serious flaws. Certainly tribunals, truth commissions, and hybrid courts have put

some of our era's worst mass murderers behind bars, and helped solidify international humanitarian law. But the contribution to human rights law and regimes that international legal scholars proclaim are not matched by the perceptions and everyday experience of most Rwandans, Serbs, Liberians, or Chileans. The novel developments in conceptualizing "justice" that philosophers and theologians celebrate involve a good deal of incompetence and unfairness. Persistent problems with these tools appear across different societies: lack of resources, excessive personnel and expense for the gains achieved, underqualified personnel, lack of public education and awareness, abbreviated time frames, and seeming arbitrariness in the selection of which crimes, which time periods, which victims, and which perpetrators.

Two structural problems merit emphasis. First, where wars end through victory—as in Rwanda, Kosovo, Haiti, Afghanistan and Iraq—a perception prevails that trials reflect "victors' justice." With the exception of some local reconciliation initiatives, transitional justice mechanisms generally fail to convince transition "losers" of a genuine desire among the "winners" for either fairness or reconciliation. In Iraq, for instance, U.S. support for trying Saddam Hussein in a domestic court process led by the nephew of a leading regime opponent and favorite son of the U.S. Defense Department, Ahmed Chalabi, shows remarkable comfort with a blatant appearance of victors' justice.

A second structural problem of the transitional justice "sub-regime" is its disparities. Individuals from powerful or wealthy countries, especially the United States, enjoy significantly more immunity from international criminal prosecution. While enforcing the norms of global justice, peacekeeping troops also generally enjoy the diplomatic immunity apportioned to intergovernmental bodies. Disparity also arises based on where international organizations and donor governments decide to dedicate resources to dispense transitional justice. In Bosnia, for example, the ICTY's indictments remained without effect until cooperative governments came to power or major powers decided to risk their troops in order to arrest war criminal suspects. By contrast, in Indonesia no major power has committed serious diplomatic leverage to take custody of those indicted by the Special Panels.

Poor countries are patently at the mercy of donors, be they bilateral aid agencies, private foundations, the World Bank, or Scandinavian churches. Many current transitions—such as Sierra Leone, Cambodia, Afghanistan—occur in societies with so few resources that justice efforts depend almost entirely on external funding. Consequently, the West ensured that the ICTY received significantly more resources than its Rwandan counterpart, and truth commissions have encountered difficulty raising their budgets. Is transitional justice really just if it occurs only to the extent wealthy countries decide to support the creation of justice mechanisms, help capture the suspects, and adequately

fund the functioning of those mechanisms? When do justice mechanisms then become tools of Western interests? Although the ICC is designed to preclude these dilemmas, it will likely encounter similar issues once it begins hearing cases.

Whither Transitional Justice?

What can be done in the face of these deficiencies? Even constant improvements seem to have had little effect on the accumulated competence and resources of these courts and commissions, which continue to be underfunded and mismanaged. Moreover, innovation cannot overcome the impact of powerful countries in deciding where transitional justice occurs, who dispenses it, and which perpetrators are left to go free and which are held accountable. How should activists and international organizations respond to this situation where the new institutions of justice and accountability display so many faults, inequities, even injustices?

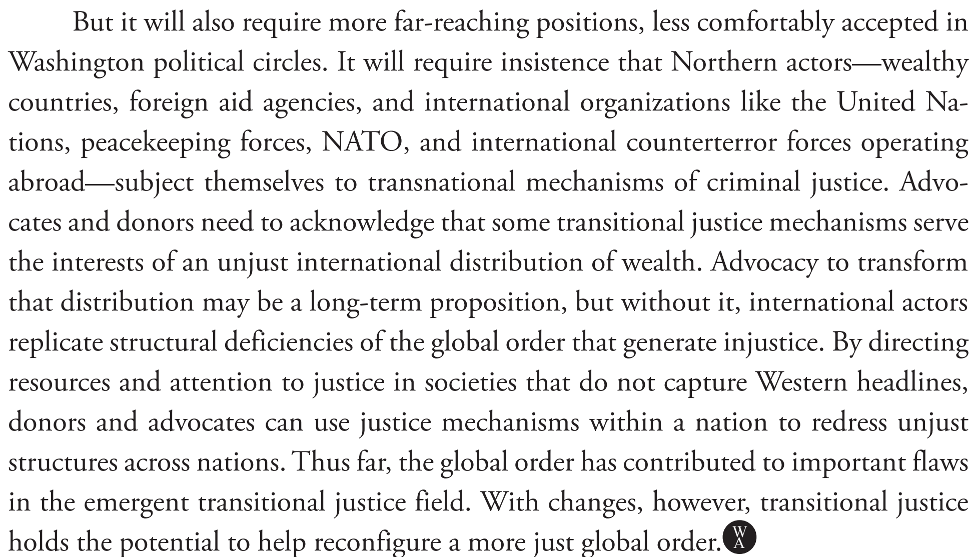
One option, pursued by the Bush administration, is to combat these instruments by undermining their legitimacy and support. The administration is more concerned with the threat to sovereignty, or more specifically with the potential constraining effect on U.S. action, than to the deficiencies described above. In the end, the Bush administration has fought transitional justice mechanisms selectively, supporting national-level efforts and injecting international support where realpolitik dictates, but starving transitional justice elsewhere.

Another option is for governments, NGOs, and international organizations to suspend their advocacy around truth commissions and trials for past perpetrators. Should they wait until the machinery of global governance evolves to permit equality rather than support piecemeal application of transitional justice? Unfortunately, to adhere to a laissez-faire policy on transitional justice would be disingenuous. In this globalized world, and especially on the globalized issue of human rights, international actors of all stripes will inevitably choose selectively to play a role in any particular transition. And victims' cries for justice cannot be ignored. Someone will respond, be it donors, groups of exiles with financial resources, or political actors seeing opportunity for advantage. In the end, trying to ignore instruments of transitional justice in the name of greater equality only deepens the arbitrariness, inequality, and piecemeal evolution of those instruments.

The only path left for those who seek enhanced effectiveness and fairness of transitional justice is to try harder to redeem them. This first requires greater acknowledgement of their defects, rather than lofty praise for global rights and norms. The accomplishments of transitional justice mechanisms should be lauded, especially their concrete impact on survivors. But the structural inequalities of these mechanisms

must be denounced vociferously, including the hypocrisy of states and organizations that proclaim support for international justice but apply it cynically or seek exemption from it.

Second, it requires advocacy strategies, public education, and further innovative thinking about mechanisms to hold powerful transnational actors accountable, be they states, corporations, international organizations, or non-governmental actors. Creating laws is much easier than creating effective institutions to enforce those laws, especially across borders. This will require a series of classic liberal positions on foreign assistance more generally, like increasing funding for these instruments and enhancing their stature, their capacity, and their international juridical status. It will require commitment to avoid processes that resemble victors' justice, possibly a difficult abdication of control by international actors.



But it will also require more far-reaching positions, less comfortably accepted in Washington political circles. It will require insistence that Northern actors—wealthy countries, foreign aid agencies, and international organizations like the United Nations, peacekeeping forces, NATO, and international counterterror forces operating abroad—subject themselves to transnational mechanisms of criminal justice. Advocates and donors need to acknowledge that some transitional justice mechanisms serve the interests of an unjust international distribution of wealth. Advocacy to transform that distribution may be a long-term proposition, but without it, international actors replicate structural deficiencies of the global order that generate injustice. By directing resources and attention to justice in societies that do not capture Western headlines, donors and advocates can use justice mechanisms within a nation to redress unjust structures across nations. Thus far, the global order has contributed to important flaws in the emergent transitional justice field. With changes, however, transitional justice holds the potential to help reconfigure a more just global order.

Notes

1. See Neil Kritz, *Transitional Justice* Volumes I-III (Washington, DC: US Institute of Peace Press, 1995).

2. Although the human rights regime formally applies to all states, that regime is actually enforced to a much higher degree on transitional regimes, rather than stable regimes. This disparity in enforcement makes "transitional" justice all the more significant, though "unfair" to stable repressive regimes like China, Cuba, Saudi Arabia, and Equatorial Guinea.

3. Kathryn Sikkink and Margaret Keck, *Activists Across Borders: Advocacy Networks in International Politics* (New York: Cornell University Press, 1998); and Sanjeev Khagram, James Riker, and Kathryn Sikkink eds. *Restructuring World Politics* (Minneapolis: Univ. of Minnesota Press, 2002).

4. Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities," *American Journal of Internationa Law* 95 no. 1 (2001): 7-31. A surprising number of today's young human rights activists see prosecuting war criminals as a particularly virtuous calling.

5. See Jonathan Bass, *Stay the Hand of Vengeance* (Princeton: Princeton University Press, 2001) for a history of international trials against top officials accused of human rights atrocities.

6. Priscilla B. Hayner, in her comprehensive analysis of truth commissions, defines them as officially sanctioned temporary bodies that produce a report focusing exclusively on past atrocities and investigating patterns of abuse. *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 14.

7. See, for example, Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints," in Robert I. Rotberg and Dennis Thompson, *Truth vs. Justice* (Princeton: Princeton University Press, 2000), 68-98.

8. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston : Beacon Press, 1998).

9. In South Africa, commissioners stood when victims entered chambers to offer testimony, the reverse of global courtroom norms.

10. Amnesties, an important option in transitional justice, are generally not instruments of justice, but rather the sacrifice of justice for the perceived benefit of ending warfare or authoritarian rule. On the evolution of truth commissions, see Hayner, *op cit.*; and Neil Kritz, *Transitional Justice* (Washington DC: USIP Press, 1997).

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12. Jose Zalaquett, a Chilean advocate who was also consulted by South Africa's truth commission planners, offers a concise justification of truth-telling exercises in the absence of attainable justice. See his "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," in Neil Kritz *Transitional Justice,* Volume I (Washington DC: USIP Press, 1995), 203-206.

13. See Rotberg and Thompson, *op cit.,* and Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Oxford: Polity Press, 2002).

14. ICTY Prosecutor Carla del Ponte, for instance, helped stop formation of a truth commission for Bosnia because she feared it would undermine her judicial cases.

15. Interview by A. Chanda with Hugo Fernandes, the head of the CAVR Truth-Seeking Division, January 2004, cited in Ateesh S. Chanda, "Transitional Justice: The Case of East Timor," Undergraduate Thesis in International Relations, Brown University, (May 2004); See also Paulo Gorjo. "The East Timorese Commission for Reception, Truth and Reconciliation: Chronicle of a Foretold Failure?" *Civil Wars* 4 no.2 (2001).

16. This political will by some major powers partly derived from their failure to risk troops or resources in responding to reports of genocide in both cases. On Rwanda see Peter Uvin and Charles Mironko, "Justice in Rwanda: International Aims and Local Perceptions," *Global Governance* 9 no. 2 (April-June 2003). In general, Samantha Power, *A Problem from Hell: America and the age of genocide* (New York: Basic Books, 2002).

17. Tim Judah, "The Fog of Justice," *New York Review of Books,* 15 January 2004.

18. The dean of Belgrade's Diplomatic Academy, P. Simic, said the indictment of four Serb generals was a "dagger in the back" to the presidential hopes of reformist candidate Zoran Zivkovic in 2003. Judah, *ibid.*

19. Peter Uvin and Charles Mironko, "Justice in Rwanda: International Aims and Local Perceptions," *Global Governance* 9, no. 2 (April-June 2003).

20. Martha Minow, *op cit*.

21. Quoted in Judah, *op cit.*

22. Cited in Michael Doyle, "Security and Justice Reforms in Bosnia and Hercegovina: Too Little, Too Late," in Charles T. Call, *Constructing Justice and Security after War* forthcoming., fn. 44.

23. "Eighth Annual Report" of the ICTR to the UN Secretary General, 11 July 2003, S/2003/707, para. 1.

24. Even if we include all anticipated adjudications (fifty-two persons) by 2005, plus persons investigated and referred to other jurisdictions (forty), the total cost by 2005 will be over eight million dollars per person judged (The anticipated budget for 2004 and 2005 is over two hundred and thirty million dollars).
25. Quoted in Charles Mironko and Ephrem Rurangwa, "Police and Justice Reform in Post-Genocide Rwanda," in Charles T. Call, *Constructing Justice and Security after War* forthcoming.
26. Once it is typified, the crime of aggression will be added. On the ICC, Mahnoush H. Arsanjani, "The Rome Statute of the International Criminal Court," *American Journal of International Law* 93 no.1 (1999): 22-43. On the Clinton administration's objections to the Rome statute, see David J. Scheffer. "The United States and the International Criminal Court," *American Journal of International Law*, 93 no. 1, (1999); See also Jane E. Stromseth, *Accountability for Atrocities: National and International Responses* (Ardsley, NY: Transnational Publishers, 2003).
27 For a critical view of universal jurisdiction, see Henry Kissinger, "The Pitfalls of Universal Jurisdiction," *Foreign Affairs* (July/August 2001).
28 See website of Human Rights Watch, www.hrw.org.
29. Laura A. Dickinson, "The Promise of Hybrid Courts," *American Journal of International Law* 97, no. 2 (2003): 295-310.
30. *Ibid.,* 303.
31. Anne-Marie Slaughter, "Judicial Globalization," *Virginia Journal of International Law* 40 (2000), 1103.
32. Suzanne Katzenstein, "Hybrid Tribunals: Searching for Justice in East Timor," *Harvard Human Rights Journal* 16 (Spring 2003): 245-278.
33. Statistics are as of 31 March 2004, from Chanda, *op cit.,*73.
34. This paragraph and the next are drawn from Ateesh Chanda, *op cit.;* See also David Cohen, "Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?" *AsiaPacific Issues* 61 (August 2002).
35. Apart from these "serious" domestic crimes, the Panels addressed cases of war crimes, genocide and crimes against humanity.
36. Quoted in Chanda, 83.
37. Cohen, *ibid.,* cited in Chanda, 84.
38. Shawn Donnan, "Justice fails to net big fish for crimes in East Timor," *Financial Times* 10 December 2003.
39. Poll conducted by PRIDE and the International Center on Transitional Justice, September 2002, cited by Elizabeth Goodfriend, "Lessons from Sierra Leone," unpublished seminar paper, Brown University IR 180-65, (December 2003), 11.