

INTERNATIONAL RECONCILIATION MODELS

EDITED BY DAVID L. PHILLIPS

JUNE 2010

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About

About this Publication

The papers in this publication were presented at the Conference on International Reconciliation Models organized by the Istanbul Policy Center at Sabanci University on May 8, 2010. The conference was not about Turkey. In fact, Turkey was not even mentioned. Yet it was for Turkey that we assembled. The conference was designed as forum to learn from the travails of others and apply their lessons to Turkey's bold journey of reconciliation with its own citizens and neighbors. The conference organizers stand ready to provide additional expertise. They are also prepared to institutionalize the consultation by making the international experts available as Turkey consolidates its "Democratic Opening" and "zero-problems with neighbors" policy.

About the Istanbul Policy Center

Istanbul Policy Center (IPC), located at Sabanci University, aims to bring in acceleration and activity to applied social science studies; constituting a communication and cooperation network nationwide, involving distinguished figures and institutions on social science, government and public policy.

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Foreword

The Istanbul Policy Center at Sabanci University (IPC) convened a Conference on International Reconciliation Models in Istanbul on May 8, 2010. The format was designed as a dialogue between international experts and Turkish scholars/practitioners. Topics included truth and reconciliation, historical memory as a tool for conflict resolution, justice and amnesty options, and international experience with disarmament and demobilization.

Presentations by the international panel were deliberately non-prescriptive. By focusing on international models, however, IPC believes that the topics can constructively inform Turkey's approach to both domestic and regional issues.

Conference participants discussed truth-telling as a way to acknowledge the past and reframe the present in order to envision a better future. We explored how working together to confront the pain, loss and suffering that constitute historical memory can be a tool for transforming enmity. To harmonize the need for forgiveness and accountability, participants emphasized that each country must find the right balance between amnesty and justice based on its culture and history. A strategy to disarm, demobilize and – as appropriate – reintegrate former combatants, including state-sponsored paramilitaries, is essential to break the cycle of violence.

The conference is not envisioned as a stand-alone event. Members of the international panel of experts are prepared to continue a dialogue with Turkish civil society, opinion leaders, and policy-makers. This publication by IPC of papers presented at the conference is offered in both Turkish and English. IPC believes that the information on these pages is useful, not only to readers in Turkey, but to parties worldwide that are struggling to move beyond conflict towards sustainable peace.

IPC is grateful to Turkish co-sponsors of the conference – Sabanci University's Conflict Resolution Program and Bosphorus University Peace Center, as well its international partners – American University's Center for Global Peace, Columbia University's Institute for the Study of Human Rights, and the Netherlands Institute for Higher Education. It also acknowledges the government of Norway for providing financial assistance.

Sincerely,

Üstün Ergüder
Director
Istanbul, 1 June 2010

Introduction

Confronting Extremism: What is the Right Balance Between Confrontation, Coercion and Co-optation?

By David L. Phillips

Introduction

Turkey is not the first country to seek the right balance between confrontation, coercion and co-optation in responding to sensational violence. The contributions to this edited volume are non-prescriptive. However, Turks can learn important lessons from how extremism and politically motivated violence have been addressed in other settings.

Context

U.S. experience in Iraq and Afghanistan demonstrates that military action alone is ineffective in meeting the challenge of shadowy groups with no territory or nation to defend. While it is important to be steely-eyed, draining the swamp of popular support for extremism must be based on a deeper understanding of the disenfranchisement that gives rise to despair and the conditions that delude individuals into believing that violence serves their cause. For extremists to transition from violence to politics, they must come to understand that their interests are better served through a political process rather than via violence and terror.

Terror organizations must be confronted, their leaders captured or killed. There is no possibility for dialogue or rapprochement with Al-Qaeda and its like. However, liberation, self-determination and national liberation movements are in a different category. Suffering tyrannical rule and lacking the political space to express their democratic aspirations, these groups typically target security forces and symbols of the regime. A multi-faceted approach is more effective in response to such organizations.

Confrontation

Every political leader has the responsibility to root out terrorist groups operating on its territory and use all necessary means to stop an attack against

the homeland. The top priority of an elected official is the security of those who elected him/her to serve. Preemptive action is justified when there is an immediate threat. Effective preemption requires integrated intelligence operations, a rapid response capability, and close coordination with allies and other stakeholders. It is important, however, to proceed deliberately and always weigh the consequences while ensuring that the security response is proportional to the threat.

Ambiguities exist in international law. While the UN Charter establishes the inherent right to self-defense of States, it also stipulates that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence of any State.” President George W. Bush’s 2002 National Security Doctrine pledged to strike terror groups before they could attack the United States or its assets. The Doctrine also pledged action against States that harbor Foreign Terrorist Organizations (FTOs).

The Bush administration penchant for unilateral action worried even America’s staunchest allies. So did its tendency to conflate preemptive action with preventive war. Preemption is undertaken in response to an actual and imminent threat. Preventive war is launched in response to gathering threats that pose no immediate risk. The U.S. attack against Iraq is an example of preventive war based on flawed intelligence and faulty assumptions.

Preemption does not always occur on the macro level. What is the appropriate response when an armed combatant dons a suicide vest to attack a civilian target?

Targeted killings are different from political assassination or extrajudicial execution. Targeted killings are necessary when lives are at risk and arrest or other forms of law enforcement are impossible. The Fourth Geneva Convention and the 1977 First Additional Protocol allow targeted killings when all reasonable alternatives have been exhausted. In addition, the Laws of War permit targeted killings when there is no chance to prevent an attack by, for example, arresting the attacker.

Though a necessary option, targeted killings must never become the norm. Eliminating an individual before an attack does not neutralize the cause that the individual championed. To the contrary, it often leads to intensified zealotry, fervor and commitment. Others almost always stand ready to replace those who have fallen. Targeted killing may also result in collateral damage, thereby fueling a cycle of violence and revenge.

Coercion

Short of military action or other security responses, a range of coercive measures can be employed to deter violence. Sanctions are an option. Smart sanc-

tions are more effective than comprehensive sanctions, which are a blunt instrument that punish an entire population and can be manipulated to rally support by political leaders.

Smart sanctions typically target an individual or organization. They include a travel ban, as well as freezing of assets in overseas banks. They are most effective when the individual’s family, business partners and inner circle also sanctioned similarly. Smart sanctions can also drive a wedge between factions promoting a divide between generations, or between ideologues and pragmatists.

A multilateral approach is always more effective when it comes to sanctions or when monitoring the movements, contacts, and financial activities of a suspect individual or group. Multilateral organizations such as Interpol, Europol, the International Organization for Migration, the World Customs Organization, and the International Civil Aviation Organization are indispensable to monitoring and law enforcement.

Choking off financial flows is also an effective coercive practice. This requires financial intelligence and link analysis on terrorist financing. Rather than casting a wide net, which risks violators’ privacy, data-mining should be based on credible information. To this end, the Counter-Terrorism Committee set-up un UNSC 1373 in 2001 can play a key role assisting States striving to fulfill their obligations but lacking the capacity to meet international best practices, codes and standards when it comes to the collection and sharing of financial intelligence.

While it is necessary to uphold the principle of freedom of expression, a dilemma arises when the instruments of free speech – such as the Web – are used to inspire or coordinate violence. The Web is often used to incite hatred, raise funds, and recruit fighters. Encrypted messages may also be embedded in Web sites to facilitate the command and control of operations.

In such nefarious cases, it is appropriate to block access, subvert or disable Web sites. Viruses, computer worms and other rogue programs can be unleashed. Tactics include bombarding a site in a “Denial of Service Attack,” taking over remote computers using “Trojan horse” software, or tampering with the domain name server to “force redirect traffic.” Regarding traditional media, countries should impede broadcast of television or radio that demonstrably incite, recruit, or raises funds for violence.

Co-optation

Confrontation and coercion are necessary options. However, it is simply not possible to kill all of one’s adversaries. Based on its experience in Iraq and Afghanistan, U.S. formulated a Counter-Insurgency Doctrine that is based on the practice of “clear, hold, and build.” Democratization and develop-

ment complement security strategies. These and other tools aimed at human development represent “soft power.”

Democracy

Groups will transition “from bullets to ballots” if they believe that their goals can be advanced through the political process. This will occur only if they are convinced that political participation can enable their aspirations and that effective institutions exist to safeguard their interests.

The rule of law is a shorthand term used to characterize constitutional and statutory measures that ensure social, political and economic rights. It ensures freedom of expression, belief and association, independent media, as well as individuals and group rights. Its cornerstone is an independent judiciary operating without political interference or ideological influence.

Regarding individual rights, the two over-riding issues under international law are equality and non-discrimination. In cases where conflict has an ethnic or religious dimension, both protection and promotion of groups are critical. So are measures guaranteeing cultural rights, such as use of minority language in public education and other public services. The right to participate in cultural events and holidays also has important symbolic value. Decentralization to local government empowers groups actually enhancing territorial integrity and national sovereignty. Despite fears of fragmentation, decentralization measures include provisions for self-government, raising and spending taxes, and local control of natural resources.

Elections are a pivotal benchmark in the democratization process. Elections are deemed free and fair in a representative democracy when both voters and candidates enjoy universal suffrage. The legal framework for elections includes an electoral law and a law on political party formation. Legally constituted, the Electoral Management Body commands respect commensurate with its integrity and impartiality. The participation of domestic and international election observers can help bolster confidence of the electorate by increasing transparency.

To afford national opportunities for regional parties who often perform well in local elections, democracy in a parliamentary system can be strengthened by reducing the threshold requirement for smaller political parties so they can assume seats in the national parliament. Proportional representation, as opposed to a system of party lists, is desirable as it allows smaller or regional parties to have a greater voice in the political process.

Extremists often use violence to disrupt elections, dissuade voters from going to the polls and thus discredit the electoral process. In response, a state of emergency or martial law may be declared. Such measures must be a last resort. When necessary, they should be temporary. Moreover, no country

should give short-shrift to due process in service of its security goals.

Constitutional measures or anti-terror laws can be misused to curtail freedom of expression and should be abolished. Provisions in the penal code should accord with international standards and those of regional bodies such as the Council of Europe or the requirements of EU candidate countries. Use of state security courts, torture, and officially sanctioned rogue operations are incompatible with the fundamental tenets of democracy. Security forces must comply with universal legal principles and international human rights principles. Autocrats may believe that repressive measures enhance stability. They are wrong. Stability is ill-served by repression.

Moreover, sacrificing rights in service of security fuels resentment in the society and encourages a new generation of antagonists prone to violence. Rights and security are not mutually exclusive. In fact, they are complementary.

Development

Poverty causes more than human suffering. It is also a source of instability creating potential breeding grounds for violent political expression, extremism and terrorism. Want is most pervasive among populations displaced by conflict.

People who have been traumatized by displacement need humanitarian action. Assistance does not occur in a vacuum. Viewing humanitarian assistance through a conflict prevention lens fulfills the dual purpose of addressing basic needs and promoting political goals such as stabilization, which is a necessary condition for breaking the cycle of violence and countering extremism.

Return and resettlement are key components of humanitarian assistance for persons displaced by conflict. When refugees cross an international frontier, international law stipulates that the host country is responsible for their care and protection. When persons are internally displaced, however, the State bears responsibility. A conundrum exists when the State itself is responsible for their displacement.

So that beneficiaries can restore normalcy and dignity to their lives, resettlement strategies should incorporate plans for job creation and strategies for transitioning from relief to development. Subsidies are needed to encourage return and create conditions for sustainable peace. This may involve compensation in the event that livelihoods have been destroyed, property damaged, or homes rendered uninhabitable.

Preventive development is a strategy focusing investments on activities that serve the dual purpose of bettering material conditions and advancing the goal of conflict prevention. Instead of a top-down approach, projects should be undertaken at the grass-roots with directly affected communities involved

at every stage – from project development, to implementation, and evaluation. Investments should be linked to social action plans that are designed in consultation with the local population. Engaging communities is a tool for fostering conflict mitigation by contact, communication and cooperation.

Other development strategies may involve land reform and linking production with distribution strategies. Creating jobs is paramount especially via small-scale quick-impact projects, which generate immediate benefits.

Women can play a leading role in peacebuilding. To this end, they should be included in employment generating schemes. Rural credit has been shown to generate small scale industries, especially benefiting women. Gender equity starts with expanding educational opportunities for girls and providing a social safety by emphasizing women's health. Focusing activities through a gender lens empowers women economically, socially and politically with the added benefit of breaking down feudal and clan structures.

More than aid, trade is critical to development. Regional trade and economic integration is advanced by investments in transportation, utility and water systems. While the national government is responsible for infrastructure development, national and local governments should cooperate on natural resource exploitation projects. Local benefit can be maximized by incorporating revenue sharing, as well as via local hiring preferences. Channeling humanitarian and development assistance through local government and NGOs is part of an overall decentralization strategy aimed at building local capacity and equipping civil society with the tools to demand good governance and encourage stakeholder participation.

Conclusion

Extremist violence represents an immediate threat that must be confronted, especially when civilians are at-risk. However, sustainable peace requires more than a security and intelligence response. Other measures are needed to drain the swamp by addressing the root causes of conflict that include despair arising from disenfranchisement and poverty.

To achieve sustainable peace, society is often confronted with a difficult legacy following a period of violence or state-orchestrated repression. "Strategic patience" is an option. But typically, anger arising from injustice does not disappear without a proactive institutional and societal commitment. Moving forward requires a multifaceted strategy including, but not limited to (i) truth and reconciliation, (ii) historical memory and conflict resolution, (iii) amnesty and justice options, and, (iv) disarmament and demobilization.

Just as it takes two parties to make war, unilateralism is not the path to peace. Interaction, even among the most bitter of enemies, is a fundamental part of the reconciliation process. This is a bitter pill to swallow. South

Africa's President F.W. DeKlerk engaged the ANC's Nelson Mandela; Israel's Premier Menachem Begin shook hands with PLO Chairman Yasser Arafat; Ian Paisley of the Ulster Unionists negotiated the Good Friday Agreement with his arch-rivals in the IRA, including Gerry Adams. The United States has a long-standing policy that it will not negotiate with terrorists. But as part of America's end-game strategy in Afghanistan, a debate is underway about "talking to the Taliban."

Reconciliation is hard work. It is a process not an event. There are many tools in the tool box that must be used sometimes in sequence and other times in tandem. While approaches differ, there is one universal truth. Once there is an opening that sets you on a journey of reconciliation, it is like riding a bicycle – you fall off the moment you stop peddling. ■

Chapter I

Truth and Reconciliation

By *Louis Bickford*

Introduction

Since the mid-1990s, the two words “truth” and “reconciliation” have developed a magnetic attraction to each other and the phrase “truth and reconciliation” has become a part of the global lexicon. There is apparently something deeply appealing about these two words together. They seem to fit. They seem to have synergy, complementarity, resonance. And yet there is no automatic, inevitable, or obvious reason that these two words go together.

In this short paper, I would like to explore the various possible relationships between truth and reconciliation. This discussion is located in the broader context of the various challenges associated with dealing with conflict or significant social trauma in the past, such as war crimes or crimes against humanity. More specifically, I would like to focus on what we mean by *truth* and what we mean by *reconciliation*. I believe this provides us with some hints about the possible relationship between these two ideas.

Although philosophers and poets have questioned the meaning and importance of truth since the beginning of human history, the idea of truth took on a particular significance during the human rights movement in Latin America in the 1970s and 1980sⁱ. Confronting authoritarian regimes that were characterized by their astounding ability to conceal the truth about victims of torture and human rights abuse, family members of victims – often organized through groups such as the Mothers of the Plaza de Mayo – demanded to know what had happened to their loved ones. This simple but exceedingly powerful demand – for truth in the midst of lies and obfuscation – was one of the foundational pillars of the human rights movement.

In this way, truth was seen as a value in itself. Later, this paper will explore the ways in which truth-telling had instrumental value (as creating evidence for prosecutions, for example), but I would first like to emphasize what Jose Zalaquett would call the “absolute value of truth.” Consider for a moment the specific context of dictatorships of Argentina, Brazil, Chile, and Uruguay. These regimes had virtually perfected the art of deception.ⁱⁱ Their lies were intentional, enormous, and coldly violent towards not only the victims, but also to the surviving family members of the victims, whose main concern, at first, was to understand what had happened to their sons and daughters. In

some cases, for example, pregnant women in Argentina had been “disappeared” in broad daylight by the regime, between 1976-1983, abducted from the street and taken away by the Regime’s iconic Ford Falcons, a sinister image that would become seared in the collective memory of the period. These women would give birth in captivity, and their children taken away before the mothers were killed. So when the family members of the pregnant women came to the police, they had a simple demand and required a simple answer. They wanted to know “where is my pregnant daughter?” and they wanted to know the truth.

As the awful truth became apparent and it became clear that many loved ones had indeed been killed by the regime, the human rights movements demanded both truth and justice. The impulse for truth would then become articulated in two different ways – as *voice* and as *evidence*. Let me concentrate briefly on each – and also on the methodologies for determining and finding truth that logically follow.

Voice/“Testimonio”

By “voice”, I mean that the demand for truth would prioritize the voices of victims, witnesses, family members, and survivors. The impulse for truth would, in this sense, bypass officialdom and seek the real truth in the stories, accounts, and testimonials of those who were traumatized.

This impulse for Voice – for listening to, hearing, collecting from, understanding, and prioritizing the voices of those who had been harmed by the authoritarian regimes – led logically to a particular set of methodologies for collecting truth. These can be captured under the umbrella term “testimonio”, a Spanish word that differs from its English cognate, “testimony”, a form of legal documentation, as discussed below. “Testimonio” is more of a *literary* than legal genre. It is related to memoir, fiction, poetry, and storytelling.ⁱⁱⁱ

As a method for collecting truth, practitioners of “testimonio” seek out witnesses and victims and ask them to tell *their* story in *their* words: these are First Person accounts. Observing the old adage to never let the facts get in the way of the truth, these practitioners, like Elizabeth Burgos^{iv} or Margaret Randall^v sought to provide victims and family members with a forum to be heard. They generally did not ask difficult questions and avoided cross-examination that might intimidate or seem to harass the interviewee. They identified less with journalists and professional historians than with social movement activists who were seeking to “retrieve” stories from their truest sources and “tell” those stories in ways that would maximize their political and literary power.

The development of “testimonio” as a genre was not isolated. It developed simultaneously and in tandem with some of the work being done by profes-

sional historians and others. Howard Zinn's important and immensely popular "A People's History of the United States" (1980) was one of the many forms of "truth-telling" that sought to focus on subaltern and oppressed groups instead of trusting official versions. In the meantime, the sub-discipline of oral history was also developing in Europe and the United States, also dedicated to hearing voices, but in this case, with the methodological rigor of a serious historian seeking *factual*, as well as *narrative*, truth^{vi}.

This development of history-from-below and truth-telling-from-below, with its emphasis on voice, narrative truth, First Person accounts, and retrieving and highlighting subaltern perspectives would become a major influence on the development of truth commissions in the future.

Evidence/documentation

In the meantime, lawyers and legally-oriented NGOs were busily collecting documents that could prove that the regimes were lying about the whereabouts of the loved ones of their pro-bono clients, the family members of the disappeared. They were filing Habeus Corpus and other legal briefs with the authorities; filling out bureaucratic forms in duplicate and triplicate (and keeping copies); sending formal letters to state agencies asking to meet with the detained people; keeping and hiding any personal letters that were sneaked out of detention facilities by the victims, whether these were scribbled on napkins or cigarette paper; archiving newspaper articles, even if only barely relevant to their case; sending materials out of the country to exiles and others for safekeeping; and keeping every scrap of paper that might be used to find the victims. These amazing collections soon became the single most important resource in the struggle for accountability in Latin America^{vii}.

Soon, as it became apparent that victims would not be found, this comprehensive form of collecting became aimed with equal passion at another goal – holding the perpetrators accountable, one day, for their deeds, whether on the international level or in a domestic court in a hazily democratic potential future. Although either of these options seemed like longshots, they were still important goals for the human rights movement.

In addition to gathering documents, these processes also involved taking depositions, obtaining affidavits, and collecting legal testimony from witnesses and others. Unlike "testimonio", which was aimed primarily at *listening* to victims, the testimony that was gathered in these processes had to pass a very strenuous test. It had to be factually accurate. It had to hold up in a court.

Perpetrators

Until 1995, most truth-telling initiatives sought to hear the voices of victims. This continues to be the case today. I would define truth commissions pri-

marily as forums for listening to victims, hearing their stories, providing them a platform to speak and be acknowledged.

But in 1995, a very interesting development took place in South Africa. As a result the conditions of a very contingent historical moment, a political compromise took place. This compromise^{viii} allowed for a new and innovative component of truth commissions to be introduced, one that had not been tried before and has also not really been done since: an incentive structure to hear the voices of *perpetrators*.

I repeat: this is an unusual element of a truth commission (although it has probably become the most famous element of the South African Truth and Reconciliation Commission). And it is full of problems and moral complications. For example, is it appropriate to let a perpetrator go free in exchange for truthful testimony? But one thing that is undeniable is that the South African TRC was able to hear fuller stories from perpetrators than any other initiative before or since.

Combining these two approaches to truth-telling

These two approaches to truth-telling are not incompatible. But they are also quite different from each other. Indeed, a truly comprehensive form of truth-telling would involve both, as well as additional forms, including the information gathered from forensic science, detective work, and good investigative journalism, not to mention the deeper narrative truth and insight that can be gained through art, fiction, theater, and storytelling.

Truth commissions have needed to balance these two forms of truth-telling. Some have done so better than others.

Truth Commissions

Since 1983, when the Argentine transition to democracy began, there have been dozens of truth commissions around the world^{ix}. These truth commissions have been quite diverse: they have varied in size, budget, and, most importantly, in goals, aspirations, and mandate. For example, not all of them even use the term "reconciliation". The Historical Clarification Commission in Guatemala, for example, steered away from the idea of reconciliation, as did the Paraguayan Truth and Justice Commission. For this reason, I prefer the generic term "truth commission" to "truth and reconciliation commission". Moreover, there are numerous other initiatives and efforts that also define themselves as "truth-telling" efforts. Some of these are non-governmental or unofficial truth projects, like the Historical Memory Recovery Project (REMHI) in Guatemala or the Ardoyne "truth-telling from below" project^x.

Truth-telling, either official or unofficial, has emerged as its own genre or

approach to dealing with conflict, crimes against humanity, war crimes, or other traumatic episodes in a country's past. In terms of other forms of transitional justice – such as prosecutions, reparations, and memoryworks – truth-telling has had intimate and varied relationships. For example, truth-telling has both directly supported prosecutions (e.g. Argentina, Chile, possibly Liberia) and also has been seen as an *alternative* to prosecutions (e.g. South Africa). With reparations, truth-telling has often played a key role in defining victims and identifying beneficiaries; and most truth commissions make recommendations about reparations in their final reports. In terms of memoryworks – memorials, museums, curricular reform, and pedagogical projects that focus on memory of the past – truth-telling efforts have often had symbiotic relationships. On the one hand, memoryworks are themselves a form of truth-telling, as they create public dialogue and open civic spaces^{xi}. On the other hand, memoryworks also emerge from truth-telling processes, either as recommendations from reports, or because once the truth is established, victims want it to be *remembered*.

Reconciliation

A good place to begin the discussion of the term “reconciliation” for the purposes of this presentation is in 1990, when the Chilean government established the world's first “truth and reconciliation” commission. However, in order to understand the term “reconciliation”, we actually need to go much further back into Chilean history. As Brian Loveman and Elizabeth Lira have shown, the idea of reconciliation has been an important part of politics throughout Chilean history, as far back as 1814, and in fact there had been numerous commissions dedicated to reconciliation in Chilean political history. This is the central idea behind what Loveman and Lira call the “via Chilena” (the Chilean way). In this context, reconciliation meant reconciliation within the political class, and involved the following elements:

- Amnesties and commutation of prison sentences
- Return of political exiles
- Pensions or reparations to “both sides” of the conflict
- Symbolic measures such as monuments
- Creation of new political coalitions
- Reincorporation of losers into cabinet posts, congress, etc.
- Constitutional, electoral, and legal reforms to reestablish the “union of the Chilean family”^{xii}

And so we are faced with a peculiar and fascinating fact. The term “reconciliation” gets attached to “truth” in a context in which there is a deep and long historical trajectory. This coupling is linked to the “via Chilena”

in profound ways – and yet the idea later takes off and becomes a globalized and wildly popular idea.^{xiii}

In the meantime, reconciliation was also appearing in different contexts, of course, and its popularity as a concept was growing in any case. Take, for example, the discussions concerning the founding of the International Criminal Tribunal for the Former Yugoslavia and Rwanda. Although they did not mention reconciliation, the International Criminal Tribunal later came to appreciate that this term was an important component of their work, as in this preamble language in the Updated Statute of the International Criminal Tribunal for the Former Yugoslavia^{xiv}:

“... *Commending* the important work of both Tribunals in contributing to lasting peace and security and **national reconciliation** and the progress made since their inception, commending them on their efforts so far to give effect to the Completion Strategies and calling on them to ensure effective and efficient use of their budgets, with accountability....”

And in South Africa, the notion of reconciliation would take center stage in 1995 for the formation of the Truth and Reconciliation Commission (TRC) in that country^{xv}. Curiously, the term “reconciliation” is never defined in the Act, although most other key concepts are carefully explained. Still, it seems that the meaning is to address “the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice” and to create a future “founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of color, race, class, belief or sex”.

And at the same time, the peacebuilding field – focused not, as in Chile, on post-*authoritarian* contexts, but rather on *conflict zones* – was grappling with the idea of reconciliation as well. Theorists such as Johan Galtung in his article “After Violence: 3R, Reconstruction, Reconciliation, Resolution: Coping with Visible and Invisible Effects of War and Violence,”^{xvi} created models of different forms of reconciliation and the relationships between reconciliation and a “positive peace”.

At the end of the day, however, it still is not entirely clear what reconciliation means: it seems to mean a variety of different things in different contexts, including some of the following:

Nation-building: In some contexts, including South Africa, the rhetoric around reconciliation emphasizes the importance of being a single nation in which different ethnicities and races can agree to live and work together and consider themselves constituent parts of a single nation.

Mutual respect and peace between communities: A second, related, meaning, such as in Rwanda, the former Yugoslavia, and Sierra Leone, seems to refer to a specific aspect of the peacebuilding process. As conflict comes to an end, it becomes important for combatants who have fought against each other to learn to co-exist with each other and do so in a way that respects each other's cultures.

Forgetting: It would be naïve and wrong to omit the fact that reconciliation, for many, means selective forgetting. When the Khmer Rouge leaders in Cambodia call for reconciliation, they are, in fact, asking for “bygones to be bygones” and not for a rigorous remembering of the past.

Political cooperation: Another form of reconciliation, such as in Chile and, perhaps, Burma/Myanmar is the idea that political elites can work together in a political system.

Temporal reconciliation: Often, as in the Canadian Truth and Reconciliation Commission, the goal of reconciliation is to deal with a problem in the deep past that has not been resolved and is festering in society, creating new and worrisome problems, or sabotaging the attainment of true democratic rights for the citizens who were oppressed.

Post-conflict reconstruction: In some cases, reconciliation seems to mean the ability to create the institutions necessary for reconstruction after a conflict – the ability to work together to form public and civic institutions, the rule of law, and transparent or democratic decision-making bodies.

These varied and diverse meanings of reconciliation show that it depends greatly on (1) the political/historical context in which the term is being used; (2) *who* is using it (victims, perpetrators, members of the political class, representatives of oppressed groups, etc.); and (3) how it is being used.

Truth and reconciliation

These questions are not uniformly resolved with the coupling of the two terms. In fact, different truth commissions (and other truth-telling initiatives) have seen the relationship between the two ideas quite differently.

That being said, however, these two ideas – truth and reconciliation – are certainly with us for the long term. Moreover, it may be that the very act of discussing the meanings of these ideas and debating how they can/do/should relate to each other is *itself* a valuable contribution to creating peaceful, stable, and deeply democratic societies for the long term. If societies need civic dialogue about big ideas, there are hardly any ideas bigger than these. ■

Chapter II

Historical Legacy, Memory and Conflict Resolution

By Elazar Barkan

Introduction

On April 10, 2010 the plane carrying the Polish president Lech Kaczynski on his way to commemorate the WWII Katyn massacre crashed and killed all on board. The elite of Polish society was decapitated for the second time, 70 years after more the 22000 Polish officers were murdered on the site by the Soviet regime. The NYT wrote that “The president’s death on Russian soil is bound to open old wounds in the relationship between Russia and Poland.”^{xvii} Within few days, the public expectations changed, and the Russian political response was seen as providing for an opening of reconciliation.

On April 26, 2010 the newly elected President of Ukraine Yanukovich reversed the Ukrainian official policy concerning the Holodomor, the famine that killed millions in Ukraine in 1932-33. Previously Ukraine held that the Holodomor was a genocide, intentionally inflicted by Stalin and the Soviet Union, notwithstanding the many millions non-Ukrainians who died, including a higher percentage of death in Kazakhstan, and a higher total of number of Death in Russia. Ukraine has been conducting a diplomatic campaign to achieve recognition of the genocide, and a growing number of countries officially declared their support. Among the first international actions of Yanukovich was to declare at the Council of Europe that the Holodomor should not be viewed as genocide because it targeted its victims indiscriminately, irrespective of ethnic identity. This was a dramatic turnaround following the shift in power in Ukraine from the pro western party that emerged after the Orange Revolution to those who favor Moscow. The Holodomor declaration was displayed as an embodiment of the Ukraine foreign policy, to be performed internationally and prominently.

In both cases, Russia’s “history wars” featured prominently. The political struggle over memory and history has also become a critical part of both domestic, and international-regional, affairs in Russia.

History and Politics of Transition

History is at the center of a national identity. The self-perception of nations

shapes and determines the scope of national ambitions and policies of the state. In this context, a national identity that is informed by fear, hate, and animosity towards its neighbors, is subject to instigate conflict and fall prey to nationalist propaganda. This role of history in politics has been increasing since the end of the Cold War, though it played a critical role previously. But within the last generation history has become a turf conflict among politicians both within and among countries. It would not be an exaggeration to say that today history is at the heart of most national conflicts around the world; more than a competition over resources, and except for the “War on Terror” possibly even more than over security. Because history is a closely tied to national identity and animosity can linger for a long time, it is imperative to recognize that leaving history unaddressed overshadows any presumption of success in conflict prevention. Indeed any such illusion can easily be swept away by nationalist propaganda. Responding to the national violent past has become a core component of the contemporary identity of numerous nations, and in particular is a critical aspect of the discourse of rights and ethics in public culture.

Faced with the horrific violence in many parts of the world, there is widespread recognition that the stakes for peace around the world cannot be higher. Because historical conflicts are tied closely to violations of human rights and to peace and security, it is imperative that historical narratives and attending to historical conflicts becomes an essential element of global diplomacy conflict resolution and prevention. While much of it has become part of transitional justice, historical conflicts do not belong exclusively to this category. In the best of cases, the response to gross violations of human rights takes various forms of redress, from retributive justice (punishing perpetrators) to restorative policies, from truth commissions to financial reparation and compensation, restitution, apologies, and historical commissions. Each of these mechanisms has evolved and expanded over the last generation. Truth Commissions have become a conventional practice, so much so that it sometimes seemed a precondition for any peace settlement, as well as in countries that emerge from a period of political violence or dictatorship. Historical commissions are becoming part of this repertoire.

Former UN former Secretary General Kofi Annan described the new attention to gross violation of human rights in the past under the broad category of transitional justice as aimed to 1) ensure accountability; 2) serve justice and 3) achieve reconciliation.^{xviii} This description encompasses more than the “transitional” in justice, and includes also 1) democratic societies that are not going through transition, 2) those that have become democracies long ago, but never attended to the past, and 3) semi authoritarian regimes which find themselves involved with policies that need to take ac-

count of historical disputes. In short, history as politics involves many countries in all regions of the world today.

There is a need for a word of caution. Transitional justice has become a general category with great appeal, but also a practice that races ahead of our knowledge of its impact on the societies that are engaged in it. This extensive proliferation makes it attractive to politicians, as it provides an ethical safety net with little concrete immediate obligations. Kenya is one recent example where much hope was invested in a truth cum historical commission, and where the implementation currently does not bode well. There is a need to know more about historical and transitional redress in order to implement it better.

Redress often includes both judicial and non-judicial mechanism: a measure of international involvement, a minimal number of individual prosecutions, and in exceptional cases reparations, possible lustration, and truth-commission. These measures are employed differently in each case, with a choice of one or two mechanisms play a leading role in each society. The growing literature on redress points to the increasing centrality of the rhetoric of redress in post conflict societies and in attempts to bring conflicts to conclusion. But it also raises new challenging questions about it, not least of which pondering the impact of transitional justice and redress on developing democratization.^{xix} The challenge is created by the dissonance between the all encompassing expectations and Realpolitik, in particular the often imprecise definition of success.

Role of Historical Redress

Historical redress is not well integrated into discussions about transition to democracy and human rights or conflict resolution. The role of historical commissions as a mechanism of conflict resolution is even less well explored. First we need to delineate how historical commissions differ from truth commissions. A word of caution is in order. Historical and truth commissions are varied enough within each category that the use of the term has to be understood as an ideal type, not a rigid classification. Politically, there is some overlap between these types of commissions, and several are explicitly formulated to serve both types.

Historical commissions are commissions that investigate past violence as a valuable way to acknowledge human rights abuses at the macro level, and reconcile interstate or intrastate conflicts. There have been and are numerous historical commissions worldwide. The diverse fora include commissions that are more like truth commissions, others that are bilateral, national, commercial, non-governmental, informal, or academic. Some commissions work to establish a national claim, others to resolve a bilateral conflict.

These commissions share an engagement with controversial past, conduct investigation and frequently issue a report the substance of which reframes critical aspects of the national history. At times the commissions are influential, in other cases they are ignored, or receive little notice by the public or politicians. A critical issue is whether the commissions come after a political transition or a political compromise, what of the history is open for investigation, and the political culture within which the work is to be done.

Historical Commissions are different from Truth Commissions

The delineation between a Truth Commission and a Historical Commission is often unclear. To a certain degree it parallels the relation of judicial to historical truth. Both aim to establish a record and to acknowledge the past. The judicial truth aims to resolve very specific micro cases, it is subject to specific evidentiary procedure and its decision is reached within a clear and predetermined hierarchy, such as a court and eventually by a Court of Appeals. The judicial truth is about an outcome, not the process. The indicted person is either guilty or not, and on specific crimes. The data of the trial may be interesting for historical purposes, but becomes irrelevant at the end of the trial. What remains is the verdict. Its reliance on procedure, argument, and adversarial approach means that the specific outcome depends on numerous variables. The final decision of a court is definitive.

Historical truth is very different. It is interested more in the macro truth even when it engages and studies the micro. It is not about primarily punishing, its evidentiary findings are subject to revision, it is more likely to be based on textual and inanimate evidence than on testimony. Truth commissions for example have been relying more heavily on oral testimony, although there is extensive overlap between the two. Most importantly all historians recognize that future historians will write a revised history, so in this sense the conclusions of historical studies by individuals or commissions are always provisional and subject to reevaluation.

Judicial truth is imposed, and while it is a better when judicial truth is persuasive, justice ultimately relies on force and the power of the state to impose its conclusions. In contrast, historical truth depends almost exclusively on its persuasive power to be accepted, and if it fails, for example if a commission produces a narrative that is not persuasive, it has no power to impose it as historical truth. Its power is in its rich description and data, its construction of the identity of the protagonists and of the national memory. This memory is impacted in turn by trials, commissions, and other forms of narration and testimony that are more free-flowing. In this free market of ideas and memories, the competition is subject to much politics and manipulation. The historical narrative has to be persuasive and be able to build a

strong political support in order to contribute to conflict resolution.

Historical commissions therefore are particularly important in cases of historical conflict, when historical memory dominates over contemporary politics. Japan's colonialism and its legacy in the relation with China and Korea provide a prominent example. Turkey obviously faces the challenge of integrating its history into a productive contemporary international and domestic politics.

The concept of "historical conflict"

Many conflicts, probably all conflicts, have historical context. In contrast certain conflicts are "historical" in the sense that it is the legacy of the conflict that continues to haunt the present. This is a memory of an event, of a conflict, of mass violence that shapes the identity of the protagonists and its ramification, more than other contemporary causes. The historical context of a conflict is therefore at least as an ideal type, is distinct from a historical conflict. Historical conflict is about our view of the past, the legacy of which is the cause of polarized memories that drive a contemporary conflict. The historian expertise is obviously useful for both types of conflicts. Understanding the historical context of a contemporary conflict allows politicians to engage differently in efforts to resolve disagreements. In cases of historical conflicts, however, the historical narrative is the very core of the conflict.

The most important challenge to realize is that the study of historical conflicts is a political intricate enterprise, which is often misconceived as a simple or primarily scholarly challenge. One such example is provided by politicians who pronounce with regard to a particular conflict: "this is a matter for the historians." By this they imply that historically scientific research will determine the truth. For example how to name particularly egregious gross violations of past human rights or war crimes: was it genocide, or merely ethnic cleansing and war crimes? This assumes that such matters are clear, exclusively scholarly, and that scholarship is not political.

I would suggest that while scholarly integrity is a pre condition, it is only a start. The reference to limiting the permissible lies is very applicable, but it is only a beginning. The successful commission will go farther than limiting the range of lies, and would provide a framework for a shared narrative. This frame will include alternative perspectives, but nonetheless shares a framework, and where disagreement might be professional, not necessarily national.

Assumptions that involve the "history as not political" perception include the notion that the history can just be told in an objective manner that will describe non-political events; that such a historical empirical narrative will lend itself clearly to a definition of particular legal and moral categories, which can be announced *ex cathedra*. That means that naming of the nar-

rative will be non-controversial and will clear up political controversies.

It is self evident from this description that although such smooth sailing is very improbable, the desire for investigation of the historical truth stems from such expectations. This desire reflects the enormous rhetorical power that the scientific investigation of history has on public opinion. Although the notion of history as a science rubs wrongly many historians, in the public discourse (even the “sophisticated” and erudite) this “objectivity” even if not named as such, has a seductive appeal. The retort “you will not debate whether the Holocaust happened” is a familiar response to epistemological skepticism. Without an explicit methodological discussion, the “non-fiction” category implicitly continues to hold the high scientific ground as a concept that conveys adherence to truth.

Recognizing the dissonance between a “public” acceptance of history as truth, and professional expectations and standards of history as “construction,” the challenge is to mediate between the two norms, and to turn it to be politically productive. To do so we have to understand, and overcome, philosophical and methodological hurdles as well as political and professional.

A few considerations for Conflict Resolution

Conflict resolution professionals and diplomats have to recognize that they have to engage professional historians who are by training, and perhaps nature, resistant to work jointly on committees, hesitant to be self-conscious or explicit about the political nature of their work, and that in order to succeed, the work has to be planned to take account of the various constraints.

These considerations include:

- Conflict resolution methodology should instruct the built-up of the project, including having mechanism for mediating and arbitrating
- Philosophical: Overcome the inability to define “truth” and accept the empirical goal of describing events.

Agree on what constitutes “good” empirical evidence.

- Methodological: Engage a historical empirical methodology, using archives, various data sets, and reconstructing the historical narratives based on available historical verifiable research.

Engage the historical community in presenting the evidence to be examined by stakeholders and third party historians.

It is critical to be able to present evidence, and interrogate controversial evidence by all sides.

Goals of research, and research questions should be specific and answerable.

- Professional: Historians are used to work individually, and write their own narratives. They are infrequently part of a large collaborative effort. Even when they are part of a commission, or a joint research project, they have their own piece of research. Leading historians are rarely involved in joint research. This should be a consideration not a stumbling block. Technical support system should be instituted to facilitate the collaborative research, as well as adequate financial frame. (It should be clear that historical commissions are relatively inexpensive.)
- Political: The politics present both the demand and obstacles. All stakeholders should be included in the process, and subject to the same criteria. Goals should be specific. Formal and civil society representatives should be included. As should the diaspora when relevant. The professional norms should apply to all.

Overview of Historical Commissions

During the 1990s, there were more than forty Holocaust-related commissions, as well as other World War Two related commissions. Certain bilateral commissions served as a form of mediation between governments (such as the Czech-German Commission concerning the Sudeten Germans); other commissions were domestic and were formed as a result of internal or international pressure. Such commissions are often legitimized by international representatives or organizations. In Switzerland, both the Volker and the Bergier Commissions addressed crimes committed by a democracy foremost as a bystander in the war, and as a beneficiary and an exploitative of crimes committed by others. In the Baltic States, these commissions investigate Nazi and Communist crimes, thereby establishing a seeming parity and raising questions about the uniqueness of the holocaust and the role of collaborators and resistance under dictatorships. The numerous commissions in Latin America often had components of historical investigations, though often the commissions relied on testimonies, and were more truth commissions.

At times, there is an urgent need for a historical commission to resolve a contemporary conflict. Yet, more often than not, countries are unable to bring themselves to constitute such a commission. Often the commissions that are established leave much to be desired. Note the North East Asia commissions. The failure in East Asia to resolve the conflicts over the memory of WWII is one of the places in needs of study, since Japan’s “history problem” is currently a topic on the agenda of the region’s leaders. The most volatile issues between Japan, China and Korea involve the memory of Japanese colonialism and wartime actions. In the conflict between China and Japan, much of the national animosity is filtered through historical memories

and misrepresentations. More recently the engagement with the politics of history led also to domestic investigations. For example, in Korea, the dynamics between internal commissions, such as the TRC in Korea, and the inter-state investigations is critical, yet this tension is ignored by the stakeholders and the participants in the commissions who do their work without interacting with one another. The regional commissions are separated from the domestic commission, which itself has recently been given “sunset” instructions, and from the National Human Rights commission which does not deal with historical issues. Yet, all of these deal with interrelated injustices.

Illustrative List of Historical Commissions

- Post holocaust commissions (40 +)
- Latin America: Truth and Historical commissions
- Eastern Europe: (Poland / Ukraine historical exchanges (not quite a commission); Baltic states; Rumania; Poland (IPN – the role of an institute as a historical commission), Russia
- Western Europe
 - Germany – a whole range of commissions, including German-Czech; the German-Polish; the internal German ones, eg. GDR.
 - Spain – non-govt; judicial initiated inquiries.
 - France – both post WWII and post colonial investigations, debates about historical laws.
- East Asia
 - Domestic commissions in Japan and Korea
 - Bi and Tri-Lateral commissions
- Indigenous: (Canada: Royal Commission on Aboriginal Peoples; Residential Schools Truth and Reconciliation Commission; Australia)
- Racial: US (Mississippi Advisory Committee to USCCR- “Burning of African American Churches in Mississippi and Perceptions of Race Relations”; New Mexico Advisory Committee to USCCR- “Farming-ton Report- Civil Rights for Native Americans”; The Wilmington Race Riot Commission; Commission on Wartime Relocation and Internment of Civilians; Tulsa Race Riot; Rosewood, Fl.; New Jersey African-American Reconciliation Study Commission)
- Africa: Various commissions, many in name, results varied

Russia as an Example

The Role of History in National Reconciliation

Russia provides a recent example where a government has gone through partial transition, where a country changed the type of government, but maintained continuity of many individuals in the government. Culturally and psychologically there is substantial continuity between the Soviet Union and Russia, and a strong sense of national pride remains. The Soviet Union has not been delegitimized in a similar sense to the way that many new democracies disavowed their former authoritarian regimes. It is therefore intriguing to see how Russia addresses the historical legacy and the extensive gross violations of human rights perpetrated by the Soviet regime. It is a close analogy, but not similar to the Turkish situation.

Russia has done practically nothing to redress the past. This is in contrast to the rest of the former Soviet bloc, where many countries are rewriting their history and the Soviet oppression. This revision of the historical record is particularly acute in Ukraine, Baltic States, and Poland. In Russia this revisionism is seen as an attack on Russia, and there have been demands to protect the nation legally and to stop historical revisionism that is “contrary to interests of Russia”.

Generally, truth in history is more nuanced than political ideology would like. In the Russian case, crystallizing WWII legacy into the “Patriotic War” overlooks the early cooperation between Stalin and Hitler, and the later parts of the war when the Soviet liberation/invasion of Eastern Europe inflicted horrific suffering on many millions. Both of these phases of the war, the early and the late, do not negate the middle, long, patriotic, and heroic Russian defense, which saved the world as we know it. But the heroic part does not negate the crimes committed, at the beginning in the occupation of Poland, or in the latter part of the war. Yet, although people are able in principle to grasp a multi layered truth, in practice national and private memory is often overwhelmed by complexity, and it flattens the construction of the memory to binary choices. The choices are formulated in black and white: either this was a patriotic war or that it is called criminal. Either one accepts the narrative of liberation and then there is no room for criticism, or criticism means dismissing and ignoring the Soviet sacrifices. Although it is primarily nationalist ideologues who see risk in complexity and plurality, public discourse is prone to fall into same simplification. The question ought to be not a binary choice between patriotism and crimes, but display patience to engage a complicated truth, one that can counter propaganda.

Russian politics provide an illuminating example. As the crimes in Soviet history emerged in the late 1980s and 1990s –when the Soviet past became a prominent public topic primarily in the years 1989-1991- and when the

identification of the despised regime was divorced from those who lived under it and were viewed as its victims. The Russian people and the Soviet regime were viewed as two separate identities. During those early days, the break with the past was greater because there was nothing that the “democrats” shared with the Soviet past, and they labeled themselves “the victims”. For a moment there was a clean break. The Soviet years were viewed as having “destroyed the historical continuity and left a gap in the perception of historical time.” Soviet history “had to disappear” and “national amnesia” became the route for Russia to enter the “civilized world.”^{xx} This radical transformation first liberated Russians “from any sense of historical guilt and responsibility” but later as the infatuation with the west disappeared, it “provided grounds for the gradual restoration of the positive image of Soviet history.” Within this context, the “Great Patriotic War” became the “myth of origins” of Russian history which legitimized even the Soviet period. Its greatest merit was to “mask the everyday tragedies of life under Soviet rule” and to suppress the memory of the Gulag and the sufferings of the victims of the Soviet system. The “war myth equated the victims and their murderers in order to unite society against a common enemy: the Germans. The heroic narrative buried the crimes to provide a real foundation for the ‘new nation, the Soviet people.’” Celebrating the glorious history of Russia – both imperial and Soviet – has become commonplace “shared by intellectuals and by the population at large,” which goes hand in hand with defending the nation against internal critics, the enemy within.^{xxi}

History provides for multiple conflicts within a nation and between a nation and its others. It has become quite clear when we deal in countries in the process of democratization, as well as with well established democracies, that the historical memory of the people is contested, and this division has both identity and policy implications for the domestic and international arena. The first question to ask when we investigate the role of history in conflict resolution is to clarify and explicate which conflict is the inquiry meant to resolve: who are the stakeholders and the interlocutors in the investigation? It is most likely that addressing certain conflicts might aggravate other historical conflicts, such as attending to nationalist demands at home is likely to exasperate international Others, and international relation of the country. When Russia attends to the domestic constituencies, it finds itself facing criticism from the former Eastern bloc. The analogy with Turkey is very clear.

Under Putin, the Russian history wars were fought with several of its neighbors, particularly the Baltic States, Poland and Ukraine – but perhaps most importantly within Russia. Similarly, in Ukraine the struggle was domestic as much as with Russia. In Poland the historical struggle included its

own domestic historical conflicts, primarily over WWII, it also included the relations with Russia which were viewed through the prism of the legacy of Katyn, reaching an apogee in 2010.

Conclusion

Historical legacy has become cardinal in international and domestic relations. There is increasing comparative knowledge of constructive historical conflict resolution to enable a study of potential formalization of conflict resolution methodology for historical disputes. Turkey expands enormous diplomatic capital each year to stem recognition of 1915 as genocide. Being on the defensive, interferes with many other political priorities in Turkey. If the above analysis is persuasive, Turkey might choose to invest certain preliminary resources to evaluate, prepare and analyze what would it mean to engage history not as a self-defensive mechanism, but rather as a tool for reconciliation. If that were the case, a domestic white paper can be formulate what should or should not be done in setting up mechanism for recognizing and redressing a violent past. Such a mechanism should not be unilateral, and can be shaped to fit subjective interests, but it can only go so far without persuading the other side. International expertise might be involved, and comparative perspectives be included, but most important is for Turkish government to realize that the country would benefit greatly from such a resolution. ■

Chapter III

Justice and Amnesty Options

By Paul van Zyl

Introduction

Any discussion of amnesty and justice must carefully analyze the balance of power between those seeking to assert justice claims and those who would rather avoid any reckoning with human rights abuse. In years past it was assumed that the decision-makers had a binary choice. They could either insist on full punishment or succumb to the imperatives of impunity and allow those responsible for human rights crimes to escape accountability. Recently, we have come to recognize that the choices are not that stark. An intelligent and calibrated policy ought to be able to address the realpolitik of power relations without fully subordinating justice claims. In fact, those who are wary of justice claims - and fear that they might impede or jeopardize the chances of building a sustainable peace - are beginning to realize that completely ignoring these claims can pose as great a risk to peace as an unyielding insistence on full justice.

Just as those who wish to ensure a smooth transition from a period of conflict to era of peace should pay proper attention to the need for justice, so too should justice advocates understand the realistic limits of what can be achieved in each particular context. This paper will first explore some of the dynamics of transition and then deal with amnesty and justice concerns in this context. This paper deliberately avoids dealing with the factual circumstances pertaining to reconciliation efforts within Turkey. It does so because there are other analysts who are far better placed to make a contribution in this regard. Furthermore, it is hoped that by avoiding taking position on some of the more difficult and contentious issues at play within Turkey the paper can serve as a technical resources to a broad cross spectrum of actors wishing to advance a reconciliation agenda within Turkey.

The dynamics of reconciliation

There is no perfect or global model reconciliation process. The range of ways in which a country may accomplish a transition from conflict to peace are as varied as the cultural, historical, and social conditions under which people live. The range of transitional strategies, institutions or arrangements

that can be created to facilitate or carry out a transition is as wide as the human imagination. Before and during a transition, all stakeholders should consider the full array of dilemmas, problems, and difficulties they are likely to face, including wrestling with some of the conceptual puzzles related to incremental transitional strategies.

Choices made by key individuals and groups during transitions from conflict to peace do have an impact on any country's chances of successfully securing peace and in the nature and durability of the ensuing arrangements. There are ways that the international community can provide useful information to the primary actors in a democratic transition by pointing to the ways in which these issues have arisen in other contexts.

Strategies to encourage transition from conflict to peace admit imperfections and compromises because they are often temporary and necessarily impermanent. Therefore it is important not to evaluate reconciliation initiatives against the standards and criteria by which one would measure a final settlement or established democratic regime. In fact, a useful analogy to apply to reconciliation efforts is the test one would apply to the physical structure of a bridge: is it strong enough to carry the peace process or is it too fragile? The ultimate goal is that of securing the objectives of the peace process itself - the irreversible transformation of the society. This objective is best accomplished by arrangements that promote or establish the following conditions or objectives:

- To provide effective institutions for governance to ensure a minimum level of effective delivery of public services.
- To be a process that leads to an inclusive, legitimate final settlement, and provides for the means for ratification and implementation of such final framework.
- To protect the interests of the various and competing parties and make the process sufficiently attractive to these parties for them to voluntarily enter into the arrangements and remain bound by them.
- To secure a minimum floor of basic human rights and political freedoms.

As all reconciliation processes take place in periods of political uncertainty and political distrust, the most critical aspect of the peace process is that they should inhibit the potential for a reversal or a change of mind. In this sense, the "bridge" should slope downward. Embarking on a process of reconciliation itself can secure this downward trajectory, because temporary peace is an inducement for permanent peace; stability allows for the growth and consolidation of civil society and a free press; the civilianization of government promotes accountable government; peace and stability promote the

modernization of society and the rule of law. On the other hand, the very fragility of the alliances, institutions, and the uncertainty of the future for those who stand to lose power at the end of the peace process constitute a very unfavorable setting for most transitions.

Clearly it is vitally important to balance the strength of the bridge (and the resulting irreversibility of the transition) against the inevitable compromises made. It may not be worth building the bridge if the outcome will be so tainted and illegitimate that the entire exercise is ultimately a step backward, entrenching antidemocratic norms for the long term. This is the dilemma and challenge of forging long-term reconciliation.

Understanding the fears and aspirations of parties to a conflict

Building reconciliation must inevitably take place in a complex setting of political realities, power relationships, and multiple goals of actors. In any context, it is worthwhile to state explicitly some of the most significant goals, fears, and demands of key actors, as an aid to creative thinking about scenarios that might receive support from key actors, as a measurement tool (e.g., against which to measure specific peace processes and scenarios as they are developed) and as a reminder that reconciliation options are likely to be imperfect, given the context in which they arise and are implemented.

However, despite these advantages, it is not always helpful to divide the actors sharply into monolithic groupings that emphasize their differences rather than their concordance. The following points are generalizations and it is recognized that there is considerable overlap of membership and aspirations between groupings and that these points will not apply to every individual actor within the group. These concerns are listed, not because they will be precisely applicable in the Turkish context, but rather as a way of illustrating some of the issues that will have to be surfaced and dealt with in order to build sustainable peace.

Perspectives of various state actors

Fear of disintegration of territorial integrity

Militaries often fear that their country will disintegrate if a strong hand is not in control and often portray themselves as the force that prevent the nation from division or disintegration. Military determination to prevent separatism or secession at all costs is a key concern that must be addressed in any reconciliation process.

Fear of losing economic benefits

When economic interests are closely tied to political control and political and military have acquired interests in various parts of the economy, it is

critical to recognize they may have strong disincentives to end conflict and the power and privilege that arise in these contexts. It is thus important to consider the material interests that these actors might have in sustaining their current positions of patronage and power. There may (or may not) be creative ways to allay these fears while still negotiating an end to conflict that is acceptable to all parties.

Fear of losing power

Members of the military may derive social and political power from their status as autonomous guardians of the national interest. The loss of this prestige is perhaps the most difficult fear to allay, as a shift in status for many may be unavoidable if an end to conflict is successfully negotiated. However, it may be possible to persuade members of the military that they can play an important and much-valued social role by withdrawing from the political sphere and concentrating on the protective role of the armed forces.

Fear of prosecution and retributive justice actions

Putting aside for a moment the question of whether members of the military should be held accountable for human rights crimes (or how those accountability measures might be constructed), it is likely that members of the military fear that a reconciliation process could lead to their prosecution.

Perspectives of other actors

An end to human rights violations

Reconciliation and peace will be undermined by ongoing or systemic violations of human rights by the state, its security forces or other armed groups.

Subjecting security forces to civilian authority

Democratically elected representatives should exercise final authority over security forces. It may be difficult to fully realize this objective immediately, but democratic forces retain it as an ultimate goal.

Putting back together divided societies

If an end to conflict is achieved, major initiatives in resettlement, health and development will be required to reintegrate displaced communities.

Diverse demands concerning ethnic rights

Beyond sharing an obvious aversion to persecution, abuse, and discrimination, minority groups may have various concerns regarding language and educational autonomy, religion, cultural development, and the right or ability to celebrate cultural and linguistic identity.

Diverse demands for some form of political autonomy/decentralization

Demands concerning cultural and linguistic identity are not entirely separate from demands for different forms of political autonomy. Reconciliation should result in a system that permits accommodation of all groups within a single nation.

Common interests

Despite differing approaches to reconciliation, there are also common interests that most, if not all, the parties share. It is crucially important that the advantages of reconciliation, often referred to as the “peace dividend,” are maximized both in reality and in the minds of the key parties. These could include:

- Economic development of all parts of the country
- Full membership of the international community and participation in international organizations as well as regional groups such as the European Union
- A modern, professional military and the acceptance of human rights principles and practices by all armed groups.
- An achievement of peace and a measure of national unity
- A reduction in crime and more effective law enforcement based on citizen cooperation and trust
- Unimpeded functioning of government and an effective delivery of services
- An increase in tourism
- Averting a humanitarian and economic crisis caused by conflict and widespread displacement

Transitional Justice and Accountability Mechanisms

One of the issues involved in democratic negotiations is how to confront the past. If an end to conflict is finally negotiated in Turkey should those responsible for human rights abuse both inside and outside the state be held accountable for human rights abuses? International law requires states to fulfill certain obligations in responding to certain systemic or egregious human rights abuse, such as:

- To punish, and in some circumstances prosecute those responsible for the violation.
- To conduct an investigation to establish the truth regarding victims’ suffering and violation.
- To conduct an investigation capable of identifying the perpetrators of the violation.

- In some instances, to provide reparation or compensation to the victim of the human rights violation.
- To take steps to ensure that the violation does not recur.

In seeking to fulfill these obligations, democratic forces will be painfully aware of the realpolitik and power relations inherent in negotiations. Moreover, there are at least two time frames to consider: the period immediately after a peace/reconciliation process has been agreed to and the long term prospects for accountability. For example, would a truth commission or a reparations program make important contributions to long-term peace if implemented as part of a reconciliation plan? In the long term, if human rights advocates are forced to make significant justice concessions, every effort should be made to formulate these compromises so as to postpone (rather than foreclose) efforts to ensure accountability for gross violations of human rights.

With both time frames in mind, the following strategies might be considered:

Limiting Amnesties

Given the nature of the conflict in Turkey, some form of amnesty/leniency may prove to be necessary in efforts to build an enduring peace. However, the military’s insistence that it has not been responsible for human rights abuse may lead it to conclude that an amnesty is not necessary for them and that justice is essential for non-state actors responsible for serious crimes. This would preserve the possibility that at some stage (perhaps once judicial institutions become strong and independent) there might be justice. To the degree that those with power agree to some form of amnesty arrangement, it will be very important to discuss the conditions and limitations attached to such amnesty. Although it seems counterintuitive, it might be possible to persuade those responsible for human rights violations to accept a limited and conditional amnesty rather than a blanket amnesty because of a growing legal consensus that the latter are void and unenforceable. Of course, an equally cogent argument can be made for allowing perpetrators to demand and rely on a blanket amnesty precisely because such amnesties are generally contrary to international law and afford less real protection in the medium-term than may be assumed.

Establishment of truth-seeking mechanisms

There are at least two ways in which the truth can be established before and after peace processes. The first method is through the investigative work of courts, which – because amnesty laws have prevented them from prosecuting – are nevertheless able to investigate crimes and uncover the truth. This is the so-called Aylwin Doctrine, named for the democratic president of Chile

in 1990 who honored a military amnesty from prosecution, but still encouraged judicial investigations.

The second method is the establishment of formal truth-seeking mechanisms such as a commission of inquiry or a broader truth commission. In the past two decades more than 20 truth commissions have been established. Four truth commissions (in Peru, Ghana, Sierra Leone and East Timor) are currently under way. These commissions represent an important contribution to the fight against impunity, and it is now possible to draw on a wealth of comparative experience in deciding whether and how to establish truth commissions.

A third major area of accountability for past crimes lies in the design of new institutions (and/or reform of existing institutions) under a democratic dispensation. In this sense, reform of the judiciary, the police force, and the military itself might include components of vetting, intended to promote accountability by removing “bad apples” from positions of power or preventing those responsible for abuse from being appointed to important posts.

In considering how to deal with past abuses, victims and their families often call for reparations. Instead of actions that focus energy on punishing perpetrators, reparations efforts seek to provide direct assistance to the victims of such abuse. Clearly, both kinds of efforts, the criminal and the reparative, can be considered as elements of justice. Although ‘reparations’ is often viewed as synonymous with monetary compensation, there are actually numerous forms of reparation, including:

Restitution

- Restoration of liberty, legal rights, social status, citizenship
- Return to one’s place of residence
- Restoration of employment
- Return of property

Rehabilitation

- Physical therapy
- Emotional counseling
- Symbolic forms of reparation*
- Apology, including public acknowledgement of responsibility
- Commemorations and tributes to victims
- Memorials and monuments/public space

Compensation

- For physical or mental harm
- For lost opportunities
- For material damages and loss of earnings
- For harm to reputation or dignity
- For legal and medical costs

The nature of some crimes/harms is such that ongoing reparations may be required; for example sexual violence that leads to pregnancy. Similarly, where the major loss has been intangible, such as the social stigma encountered by victims of sexual violence or the loss of opportunities suffered by forcibly conscripted child soldiers, a reparations program would benefit from ongoing revision and evaluation.

A further consideration related to dealing with past human rights abuses involves the definition of victimization. This is tricky ground in the Turkish case because the military, democrats, and non-state forces all have differing ideas of whether they are or were “victims” and, if so, how to define victim. The military, for example, largely denies that it was responsible for significant human rights abuse. Some non-state groups, on the other hand, claim that victimization has been widespread and systematic for decades.

It should be noted that defining victim is always a problem and source of controversy during reconciliation processes. In the Turkish context, as in many countries that have endured long-term repression, it is not entirely impossible for families to contain victims of human rights abuse, and collaborators with the state apparatus or perpetrators of human rights abuse. Each of these could be considered a victim in a different way, and how best to assist their individual and collective rehabilitation is a complex issue. Still, both for individual victims and also for society as a whole, those involved in building peace might consider truth-seeking mechanisms (such as truth commissions) and reparations programs that focus on victims of human rights abuse under military rule.

An examination of amnesties^{xxii}

Amnesties have traditionally been viewed with hostility and skepticism by those committed to ending impunity and promoting human rights. Given the origin and content of many amnesty laws, this perspective is wholly justified. Amnesties have all too often been associated with efforts by repressive and abusive regimes, movements or individuals to escape the punitive consequences of their actions. This has led many human rights organizations and activists to reflexively oppose amnesties. However, there are a range of creative ways to think about amnesties that could, paradoxically, enhance the prospects of achieving many of the transitional justice goals outlined in the previous section. Freeman suggests that the following questions should be answered in the affirmative in order for the overall legitimacy of an amnesty to be established:

“Is the amnesty crafted in good faith and in a manner that promises to fulfill a state’s transitional justice obligations to the greatest extent possible in the particular context while impairing them as little as possible?”

There are some instances where an amnesty could be proposed for a legitimate purpose, but in such cases great care should be devoted to ensuring that transitional justice goals are still fulfilled as far as possible. If an amnesty scheme is created with a legitimate purpose it is also important that it come into being through a legitimate process. Generally this should include some form of democratic endorsement, ideally through the passage of legislation, as well as an open and transparent process of consultation.

The most important concept I wish to convey in this paper is that carefully designed amnesties need not be instruments of impunity. To the extent that they are designed to promote peace or encourage powerful groups to relinquish power or lay down arms, they almost by definition will involve some benefits and favorable treatment. However there are dozens of different ways in which these benefits can be structured to offset their “impunity effects”. The following section will provide a few specific illustrations of this general assertion.^{xxiii}

The crimes or acts that are eligible or ineligible for amnesty

It is not necessary to offer an all or nothing amnesty with regard to the crimes that are potentially covered. A range of ethical considerations and political constraints may dictate that certain crimes should be expressly excluded from any amnesty agreement. For example, it might be desirable to exclude financial crimes that are motivated solely by greed or personal enrichment. Similarly, it may be advisable to require that all crimes should have been committed with a political motive and to explicitly exclude crimes committed because of personal animosity, malice, ill-will or spite towards the victim. Certain categories of crimes might also be excluded, for example crimes that were committed in a particularly sensitive social or political context, which have resulted in intense anger within certain communities. The disadvantages of granting amnesties to these specific crimes may far outweigh and prospective benefits. Similarly it might be advisable to create a “tiered” amnesty which would offer some form of immunity for certain categories of crimes but exclude some of the more egregious criminal acts such as genocide or crimes against humanity.

The persons who are eligible or ineligible for amnesty

It is not necessary to define eligibility for amnesty solely by reference to the crimes committed. It may also be desirable to define which categories or persons, or which specific individuals are eligible or ineligible for amnesty. For example, it is possible to limit eligibility for amnesty to persons who are members of or affiliated with certain groups, or even certain sub-groups within the larger organizations, institutions or groups. It is also possible to include

or exclude persons based on their rank or on the nature of their participation in the crimes for which amnesty is sought. With regard to the latter limitation, it is possible to limit amnesty to those who carried out the crimes and not those who organized, planned or ordered the crimes. Depending on the circumstances and strategic imperatives it may also be possible to adopt the opposite approach: eligibility for the intellectual authors and exclusion for the trigger-pullers. It is also possible to exclude persons from eligibility based on whether they have received amnesty in the past based on the idea that multiple offenders are likely to re-offend and should not benefit from the favorable treatment arising from amnesty. A further idea might be to exclude or include specific individuals in amnesty regimes. Certain perpetrators may have committed such heinous crimes or have played such a notorious role in the conflict that any benefits gained by granting them amnesty would be outweighed by the anger, resentment and controversy that would arise.

The legal consequences of the grant of amnesty for the recipient thereof

Once it has been determined that a person is eligible for amnesty it is often erroneously assumed that it is necessary to extinguish all forms of liability and to foreclose any adverse consequences with respect to the crimes for which amnesty has been granted. In fact, it is possible to “unbundle” the various forms of liability that arise after the commission of a crime and provide amnesty for only some forms of liability and not others. For example, it is possible to extinguish only criminal liability and not civil liability, thereby providing a perpetrator with an assurance that he or she will not be sent to prison or suffer another form of criminal punishment – but leaving open the possibility that victims could sue in order to obtain compensation for damages arising from the commission of the crime.

Certain amnesties cause all aspects of the case against a specific perpetrator to come to an immediate end. They not only preclude any court judgments, but also prevent any other entity (either governmental or private) from taking any adverse measures against a perpetrator. Other amnesties leave open the possibility that a person could be dismissed or demoted based on the conduct for which amnesty has been granted even if criminal and civil liability has been extinguished. It is also possible to calibrate the consequences (either beneficial or adverse) of granting amnesty so they bear some relationship to the nature and severity of the crime or the standing and seniority of person who committed it.

The geographical and temporal scope of the amnesty

Amnesties can also be expanded and limited by defining their geographical and temporal scope. It is possible to stipulate that only crimes committed in

certain areas or provinces are eligible for amnesty and also expressly include or exclude crimes committed outside the national territory. Obviously amnesties for crimes committed abroad are of debatable efficacy from the perspective of courts in those countries. It is essential to define the temporal scope of any amnesty primarily because it is generally unwise to grant amnesty for future acts, but also because it signals how far back in a country's history one is prepared to go in order to deal with past crimes. The temporal scope of an amnesty will also influence the efficacy of immunity granted for crimes such as kidnapping and "disappearance". In some jurisdictions these crimes have been ruled to be "ongoing" crimes and therefore ineligible for amnesty because they continue to occur after the end date after which amnesty may not be granted.

Conditions for obtaining the amnesty

The nature of any amnesty scheme is significantly affected by the pre-conditions that are attached to the grant of amnesty. Several amnesty schemes have established a deadline by which amnesty applications must be lodged, after which investigations and prosecutions can commence. Some amnesties require individual applications to be made for amnesty rather than amnesty serving as broadly applicable immunity shield that can be invoked by any individual who is investigated or prosecuted for criminal acts. Certain amnesties have required that the application be made public and that there is a separate public hearing during which victims and other interested parties have a right to make submissions and even subject the perpetrator to questioning. Some amnesty schemes have required that perpetrators include an apology or a renunciation of violence in their application while others have gone further and demanded that perpetrators offer financial compensation or perform community service as a tangible expression of their remorse. It may be desirable to require that perpetrators who are granted amnesty agree, as a condition of continuing to benefit from the amnesty, to cooperate with law enforcement officials particularly with regard to the prosecution of those who have decided not to apply for amnesty.

Conditions for continuing to benefit from the amnesty

A further strategy for ensuring that amnesties have an enduringly positive effect is to specify a set of conditions that each perpetrator must fulfill in order to continue to benefit from the amnesty. For example, it would be easy to stipulate that a perpetrator will not only be subject to prosecution for any future criminal acts, but that he or she will lose the benefits of a prior amnesty if she or he commits such acts. Such a condition can act as a doubly powerful disincentive to commit future crimes. It is also possible to state

that amnesty will be revoked if it is established that a person provided inaccurate information during an amnesty application or failed to fully disclose all material facts to the persons responsible for making the decision whether to grant amnesty.

Conclusion

In a perfect world it would never be necessary to seek to weigh the benefits of peacemaking against the imperatives of accountability for gross violations of human right. Indeed in such a world peace and justice would reinforce each other. However, in many instances it may be necessary to make painful compromises in order to end conflict and persuade forces that have used oppression or violence to relinquish power and change their conduct. In such cases it will be necessary to be intimately familiar with the mechanics and specificities of amnesty programs. This is because the design of amnesties can make an enormous difference in determining whether the compromise reached is one that will orient one towards greater peace and human rights protection or whether it will reinforce impunity and dynamics that lead to conflict and oppression in the first place. While any diminution of punishment for heinous crimes should be regarded as a last resort, when such a decision has been made there will still be possibilities to accompany such amnesties with a series of pre-conditions and other measures that will tend to promote truth, reparation and reform along the way. Approaching amnesties with imagination and technical know-how can make the difference between vicious circles of conflict and a sophisticated strategy to build a just and sustainable peace. ■

Chapter IV

Dealing with the Fighters: Programs for Disarmament, Demobilization and Reintegration of Ex-combatants

By Ana Cutter Patel

Introduction

As a violent armed conflict comes to an end via cease-fires, peace negotiations, or victory, countries confront the challenge of what to do with the hundreds and often thousands of armed combatants that fought the war. This is often a daunting problem with serious political, military, humanitarian and development implications. In Colombia, for example, government authorities have created a program that encouraged and supported the disarmament of over 31,800 ex-paramilitaries, as well as 21,000 former members of guerrilla groups, to date. Many of them came to the program with little or no education, few jobs skills, health problems, and accompanied by their families.

Programs for the disarmament, demobilization, and reintegration (DDR) of ex-combatants emerged as a response to this challenge. Since the late 1980s, DDR has become a standard feature of peace agreements and post-conflict peacebuilding environments. Approximately thirty-four DDR programs were created between 1994 and 2005. In 2007, there were over a million former combatants participating in DDR programs in 19 different countries.^{xxiv} The total cost of these 19 DDR programs was estimated at over \$1.6 billion dollars, an average of \$1,434 per person demobilized.^{xxv}

DDR programs can function as a critical step in ending violence by disarming large numbers of armed actors, disbanding illegal, dysfunctional or oversized military organizations, and reintegrating ex-combatants into civilian or legitimate security sector livelihoods. For civilian populations that have suffered years of violence, DDR is often the first public indication that the fighting and violence has finally ended. Yet donors, governments, and practitioners tend to focus on DDR as a short-term technical, and primarily military, exercise with no consideration of the larger implications of these programs. The results of this kind of “guns, camps and cash” approach are disappointing. If measured on the rates of returns to violence in the countries

where these programs were implemented, most DDR programs have failed. What DDR experts and practitioners are learning from the failures – and a few qualified successes – is that transitions from armed conflict to peace must be based on a long-term strategy. Moreover, DDR alone cannot build peace, nor can it prevent the armed groups from reverting to violence. It needs to be implemented as part of comprehensive strategy for peacebuilding and reconstruction, including elements of security sector reform, political and justice reform, transitional justice measures, and socio-economic development. Finally, the focus of DDR programs cannot be solely on ex-combatants, many of whom have committed acts of violence and violated national and international human rights laws. Victims and victimized communities must also have a stake in DDR, including access to justice and benefits. Ex-combatants cannot be reintegrated into communities who cannot or will not absorb them.

In this paper, I aim to provide a broad overview of DDR as part of a post-conflict peacebuilding strategy. I will discuss the objectives, as well as the three components, of DDR. I will present some of the lessons learned by researchers and practitioners of DDR, and then explore a few interesting new approaches.

Definitions and objectives: What is DDR?

DDR is a process that seeks to remove weapons from the hands of combatants, take the combatants out of military structures, and help them to integrate socially and economically into society. These processes look different in different country contexts, and are ultimately shaped by the actors who are party to the conflict, as well as the legal and political frameworks that emerge from a ceasefire or peace agreement between these actors. However, while the sequencing may be different from conflict to conflict, most DDR processes include at least three components:

Disarmament: Disarmament is the collection and destruction of weapons – not only weapons of combatants, but often also of the civilian population. Disarmament further includes the development of responsible arms management programmes. The disarmament process is often followed by assembling ex-combatants in camps.

Demobilization: Demobilization involves the dismantlement of the command, control, and remobilization capacity of armed factions. As described by the Integrated DDR Standards of the United Nations, demobilization is both a physical and mental process – physical in terms of the separation of combatants from their military unit, and mental in terms of preparing the ex-combatant for life outside the structure of an armed group.^{xxvi}

Reintegration: Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time-frame, primarily taking place in communities at the local level.

While the majority of participants are men, ex-combatants can be members of irregular armed groups like rebel armies or guerrillas, or paramilitaries, but also members of the army or other national forces. In many cases there are also significant numbers of child soldiers – boys and girls, as well as women combatants that need to be demobilized.

The establishment of a DDR process is usually agreed to and defined within a ceasefire or peace accord. These types of agreements provide the political and legal framework for the process. In many post-conflict contexts, the parties to a ceasefire or peace agreement may not trust each other, or lack the capacity to design, plan, and implement DDR programs. In these situations a third party like the United Nations, the International Organization of Migration, or a regional body like the Africa Union, or a non-governmental organization, may play a leading role. In many cases, there is a national body created to oversee the DDR process on behalf of the government. For example, in Nepal, the Joint Monitoring Coordinating Committee, with representation from both the Maoist Communist Party of Nepal and the Nepal Royal Army, are working with the United Nations Mission in Nepal, to reintegrate about 20,000 members of the People's Republic Army, the fighting force of the Maoists.

Beyond the signing of an agreement there are certain preconditions for DDR to take place, including a minimum guarantee of security and willingness of the parties to the conflict to engage in DDR. Political will is particularly important. DDR is essentially a politically driven process and most DDR programs stall, or are only partly implemented, because the political climate is not right. The success of the DDR process therefore depends on the political will of the various parties to the conflict to enter into the process in a genuine manner.

The objectives of a DDR process include the re-establishment of the state monopoly over the use of force, prevention of the renewal of violence, and establishment of conditions that allow for the reintegration of the armed factions. DDR programs aim to address the post-conflict security challenges that arise from ex-combatants being left without livelihoods or support networks during the critical transition period from conflict to peace and development. Through a process of comprehensively disarming ex-combatants, preparing them for civilian life, and providing them with opportunities for

sustainable economic and social reintegration; DDR seeks to support ex-combatants so that they can become stakeholders in the peace. Beyond the immediate security aims of these processes, they also seek to contribute to stability in post-conflict environments, facilitate national reconciliation, and to link to broader peacebuilding processes, so that recovery and development can begin.

How do we define success in DDR?

Frequently, evaluations of DDR programs list the number of weapons collected and the numbers of fighters demobilized. While these numbers are critical indicators, they do not take into account the number of new recruits joining illegal armed groups, or the level of on-going violence. As an integral part of a comprehensive peacebuilding process, a successful DDR program must be judged by the reduction of violence and the end of violent conflict.

Lessons learned in DDR

Each DDR program is unique and necessarily reflects, or responds, to the specific characteristics of the armed conflict, the negotiation process, the parties to the conflict, and the culture and history of the country, or countries, involved. Consider that a DDR process for a paramilitary force that has worked alongside the national army and police will require a very different set of incentives and options to disarm, demobilize, and reintegrate, than a guerrilla forces that considers the governments its enemy. Over the past 30 years there are, however, lessons have been learned that can benefit planners and practitioners across diverse country contexts. For the purposes of this paper, I will briefly describe the following seven points.

- National ownership is critical
- Successful program design needs good information and analysis
- Getting to DDR requires a combinations and carrots and sticks
- Justice approach
- DDR alone cannot bring justice and peace
- Focus cannot be solely on ex-combatants
- Don't short change reintegration

National and community ownership is critical

DDR programs require money and human resources, legal and policy changes, and, often, a change in the sentiment of the general population towards the combatants. As with any initiative that requires this level of change; the higher the sense of national and local ownership, the higher the

prospect for success. If the DDR program is perceived as a top-down international or government initiative, with no involvement or coordination with local officials and communities, those officials and communities are much less likely to support the program.

Successful program design needs good information and analysis

Designing and implementing a DDR program is dependent on good baseline data, political analysis, and cultural understanding. Many programs have failed because of poor data and analysis and a lack of local knowledge. For example, a first attempt at DDR in Liberia after the Comprehensive Peace Agreement was signed in 2003 had to be aborted. Fear that the security situation in the capital city of Monrovia would deteriorate if the factions were not immediately disarmed prompted an ill-advised early start to the first phase of DDR. Authorities were overwhelmed by the high turnout of ex-fighters for this first phase, and the situation deteriorated into violence and looting at the cantonment sites. The process was aborted just ten days later, because of the lack of preparation and inadequate security. Good practice includes direct field assessments, direct communication with leaders of the armed group or groups, and the integration of local experts into the planning team.

Getting to DDR requires a combinations and carrots and sticks

In most cases, the offer of incentives to ex-combatants to enter a DDR program, which may include pardons, targeted amnesties for low level crimes, security guarantees, cash and reintegration programs with education opportunities or job skills training, must be backed with a credible threat of police or military action. Ex-combatants must weigh the potential benefits of entering the DDR program against the pros and cons of leaving the armed group, for example the concern that the armed group will take revenge on deserters, or the possibilities of injury, detention or death.

Ex-combatants frequently fear the prospect of facing justice or some kind of retribution for their participation in an illegal armed group, or for their actions as combatants. Justice elements such as targeted amnesties can be an incentive for disarmament. For example, while amnesties for war crimes, crimes against humanity, genocide, and gross violations of human rights are illegal under international law, targeted amnesties for lower-level combatants can act as an incentive for their participation in demobilization while still allowing for prosecution of those (senior officers) most responsible for human rights crimes. Ex-combatants in Sierra Leone supported the work of the Special Court for Sierra Leone in part because of its promise to focus on those bearing the greatest responsibility for the violation of human rights and international crimes.

Justice approach

DDR carried out in situations without recourse to, or coordination with, justice mechanisms such as prosecutions for war crimes, truth commissions or reparations for victims can result in increased tensions, including growing inequities between ex-combatants and victims that can foster resentment and impede reintegration. Increasingly the question is not if there should be a justice element as part of a peace agreement – but what it should be – recent agreements in Burundi, Aceh in Indonesia, and Liberia all included provisions for a truth commission, and DDR programs in Colombia and Uganda are explicitly linked with criminal justice processes.

DDR alone cannot bring justice and peace

DDR alone cannot build peace, nor can it prevent the armed groups from reverting to violence. It needs to be implemented as part of comprehensive strategy for peacebuilding and reconstruction, including elements of security sector reform, political and justice reform, transitional justice measures, and socioeconomic development.

Focus cannot be solely on ex-combatants

DDR necessarily focuses on ex-combatants, but these programs must also take into consideration the capacity and willingness of communities to absorb ex-combatants after disarmament and demobilization. Often communities reject ex-combatants or marginalize them in ways that makes reintegration impossible. Concepts of ‘community-centered’ reintegration may offer an alternative model to current focuses that tend to be individual-specific. Such approaches may also offer a bridge to link the claims and needs of ex-combatants and victims, together with those of the communities where they reside. At the very least, increased consultation with victims’ groups, communities receiving demobilized combatants, municipal governments, faith-based organizations and the demobilized combatants and their families can inform and strengthen the legitimacy of DDR and transitional justice processes. An important international study supported by the Swedish Government proposed an approach to reintegration that includes a multi-donor trust fund with two targets: one committed to on the reintegration of ex-combatants and another dedicated to the needs of the recipient communities.^{xxvii}

Don't short change reintegration

DDR programs tend to put far greater attention and resources toward disarmament and demobilization. Considerably less emphasis is placed on preparing a coherent and long-term strategy and implementation of activities to support reintegration. In the rush to provide ‘support’, communities are not

adequately consulted or prepared for the return of ex-combatants and the absorptive capacities of recipient communities cannot meet the needs of returning combatants.

Different approaches to DDR

The points has been made that while DDR usually includes components of disarmament, demobilization, and reintegration, different countries have taken very different approaches to DDR programs. The following three country examples explore: 1) DDR as coordinated with political reform in El Salvador; 2) demobilization without a formal DDR program or official peace agreement “DDR from below” in Colombia; and 3) community reintegration efforts in Haiti.

DDR coordinated with political reform: El Salvador

In January 1992, the government of El Salvador and the guerrilla groups who had come together as the FMLN signed peace accords to put an end to twelve years of civil war in which approximately 80,000 people were killed. The success of the peace in El Salvador depended on turning the guerrilla army into a political party. The peace negotiations, therefore, revolved around two issues: the democratization and demilitarization of society, and the incorporation of the guerrilla forces into the legal political system. The wide range of measures set forth in the peace accords included: eliminating the repressive state apparatus, such as paramilitary groups; reforming and vetting the armed forces; building a new National Civilian Police; approving constitutional and judicial reforms; and reforming the electoral system, which included legalizing the FMLN as a political party.

The Peace Accords included a timetable for implementation that linked reintegration of the former FMLN combatants into civilian life with institutional reform measures that the government had undertaken to facilitate that process. This synchronization reflects the political and military strength of the FMLN. The FMLN was not willing to demobilize and dismantle its military structure without simultaneously realizing all of the measures in the peace accords that were seen as fundamental for the security of its members and for their full incorporation into the political system.

According to the final figures provided by the United Nations Observer Mission in El Salvador in 1994, the total number of demobilized members of the FMLN came to 15,009. There were 4,492 women, accounting for approximately 30 percent of all the forces. Additionally, the reform of the Armed Forces of El Salvador (FAES), led to the demobilization of another 22,600 troops. It is estimated that some 40,000 persons were demobilized from both forces.

While the disarmament and demobilization processes in El Salvador were largely successful, the reintegration process faced serious problems in its design and implementation, which stood in the way of compliance with the timetables established in the peace accords, and which afterward had a negative impact on the process of peacemaking and democratization in El Salvador. While the reinsertion and political reintegration of the FMLN was highly successful, the same cannot be said of the political insertion of the former combatants of the FAES, nor of the reintegration of former combatants from both sides into communities. In addition, the reinsertion programs failed to consider the specific needs of women and child combatants.

Yet the DDR process in El Salvador challenges conventional thinking on DDR. For example, the relationship between DDR elements was not linear. Demobilization, disarmament and political reintegration of the FMLN all took place simultaneously, since the reincorporation of the former combatants into civilian life began even before the formal disarmament. The DDR program in El Salvador was also innovative for its targeted training programs for mid-level commanders, and its decision to keep the command structure of the demobilized forces intact. Indeed, the continuation of the military structures facilitated the transition from war to peace.^{xxviii}

Demobilization from below: Colombia^{xxix}

What if there is no ceasefire or peace agreement? A few countries have provided incentives for on-going demobilization without a comprehensive framework or agreement with the armed groups. The demobilization from below approach aims to weaken the armed group by encouraging their fighters to disarm and demobilize individually.

In Colombia a number of armed groups have operated since the mid-1960s, most notable among them the left-wing guerrilla group known as the FARC, and, beginning in the early 1980s, paramilitary groups that emerged out of drug-trafficking interests and also the reaction of rural landowners to attacks and kidnappings perpetrated by left-wing guerrilla forces.

In 2003, the government signed a peace accord with the paramilitaries. The accord provided for a collective demobilization program for the paramilitaries – meaning they disarmed and demobilized as units. These collective processes occur when the paramilitary commanders provide lists of combatants – there is usually a ceremony where the paramilitary groups hand over their weapons and takes oaths of loyalty back to the state. Simultaneously, the Colombia Government created an independent individual demobilization process for combatants from the other armed groups.

The Colombian state is working towards the collective and individual demobilization of more than 43,000 members of armed groups. Those demo-

bilizing collectively are ex-combatants who have laid down their arms as a unit. The process begins when a representative from each illegal armed group provides a list of group members and other affiliated persons. If a combatant is not included on the list, he or she is ineligible for the benefits of the reinsertion program. Moreover, all listed members receive these benefits, regardless of the role they played in the armed group or the types of crimes they may have committed.

Individually demobilized persons, or those demobilized from below, include those who belong to armed groups that are not currently involved in any collective negotiations with the government (mainly the FARC and ELN). Individual demobilizations are proceeding steadily in Colombia, partly because of a 2003 decree that gave de facto amnesty to any former combatants not under investigation for human rights violations. Individual combatants who enter the DDR program are encouraged to communicate with their comrades and tell them that they will receive the same benefits if they lay down their guns. Simultaneously, the Colombian National Army is waging a violent offensive against the guerrilla groups, meaning that those who continue to fight face higher prospects of death, injury, or capture, and will lose the benefits of disarming voluntarily.

Community reintegration in Haiti

Security is the primary challenge for Haiti. Violence is pervasive, especially in the capital city of Port-au-Prince. The biggest problem is the illegal armed gangs, which perpetrate the violence, but it is also fostered by the highest levels of poverty in the Western Hemisphere. Dismantling the gangs is critical to the success of every broader goal of the Haitian government, from education reform, infrastructure, private sector investment, jobs and agriculture to governance.

Protecting citizens is also central to the goal of dismantling these urban gangs. In 2006, with the establishment of the National Commission on Disarmament, Dismantlement and Reintegration (NCDDR), the government put into place a three-part strategy for dealing with the gang-related violence:

First, with the help of the United Nations Mission in Haiti, there is a military effort to squeeze the gangs by seizing and holding their territory, including by creating checkpoints on the roads leading into and out of the slum areas.

Second, the DDR program for gang members is linked to community development and violence reduction projects for the communities. These projects aim to create jobs, enhance infrastructure, provide visible services, and bolster the state's presence in armed group strongholds.

Third, if gang members refuse to disarm, they are targeted by special Haitian National Police units backed by UN troops and police.

Efforts at the community level are implemented through a network of Community Development Committees (CDCs), which are composed of community representatives. The NCDDR and the UN organize community-based projects to support the reintegration of former gang members to their communities, reinforce local community's capacity to resolve conflicts without violence, promote a culture of peace, assist victims of violence and support the creation of temporary employment. The approach aims to demilitarize communities as well as individuals. This new strategy has not solved the security challenge in Haiti. But it has encouraged the voluntary surrender of weapons through a combination of deterrents, the provision of incentives, the creation of safe spaces, and meaningful local level dialogue.

Conclusion

Security is a primary preoccupation of peacebuilding efforts and DDR program for combatants are often a first step in the process towards ending violent conflict. DDR can contribute to ending of limiting violence by disarming large numbers of armed actors, disbanding illegal or dysfunctional military organizations, and reintegrating ex-combatants into civilian or legitimate security-related livelihoods. DDR alone, however, cannot build peace. It needs to be part of a larger system of peacebuilding interventions, which include security sector reform, transitional justice, good governance, and broader socioeconomic development programs. ■

Annex A

Biographies

Elazar Barkan is professor of International and Public Affairs, the co-director of the Center for the Study of Human Rights at Columbia University and director of the Human Rights Concentration. He is the former co-director of the Institute for Historical Justice and Reconciliation at The Hague. His research interests focus on human rights and on the role of history in contemporary society and politics and the response to historical crimes and injustices. His current research projects include a comparative analysis of historical commissions and a study of the legacy of shared sacred sites in the Ottoman Empire. Among his books are *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Norton, May 2000); *Shared History - Divided Memory. Jews and Others in Soviet Occupied Poland, 1939-1941*, an edited volume with Elizabeth A. Cole, and Kai Struve, (Leipzig: Leipziger Universitätsverlag 2008, Leipziger Beiträge zur jüdischen Geschichte und Kultur; 5); *Taking Wrongs Seriously: Apologies and Reconciliation*, an edited volume with Alexander Karn, (Stanford University Press, 2006). More recent articles include: “Historians and Historical Reconciliation,” (AHR Forum) and “Historical Reconciliation: Redress, Rights and Politics” *Journal of International Affairs*, Columbia University, 60 (2006) 1: 1-15

Louis N. Bickford is currently working with Canadian Truth and Reconciliation Commission (TRC) and on memory and documentation in Afghanistan with the Afghan Independent Human Rights Commission. His work with truth commissions has been varied and substantial. For almost two decades, he has worked extensively assisting the design and development of TRCs, as well as with related projects in the creation of memory sites, memorials, museums, and commemorative spaces, oral history, testimony gathering, and other forms of truth and memory work. Dr. Bickford has worked in European settings, such as Serbia and Bosnia. In the Western hemisphere, he has worked with official or unofficial truth-telling initiatives in Peru, Colombia, and Paraguay. He also worked in Ghana, Nigeria, Cambodia, and Morocco. Dr. Bickford is an Associate Professor at New York University’s Wagner School and holds a Ph.D. in Political Science from McGill University in Canada.

Ana Patel is Executive Director, Outward Bound Center for PeaceBuilding (OBPC). Prior to joining OBPC, Ms. Patel was Deputy Director of the International Policymakers Program at the International Center for Transitional Justice. She has over 15 years of experience in the fields of peacebuilding, development, and human rights across the globe with such organizations as the International Center for Transitional Justice, the United Nations Development Programme and the Carnegie Council on Ethics and International Affairs. Her areas of experience include fieldwork, advocacy, fundraising, policy research, media and public outreach, program design and management, implementation and evaluation and teaching and training in multicultural contexts. Ms. Patel was a U.S. Peace Corps volunteer in the Dominican Republic. She is also an Adjunct Lecturer and Fellow at the Center for International Conflict Resolution at the School of International and Public Affairs at Columbia University. Her co-edited volume, *Disarming the Past: Transitional Justice and Ex-combatants* was published in January 2010 by the Social Science Research Council.

David L. Phillips is Director of the Program on Conflict Prevention and Peacebuilding at American University, adjunct associate professor at New York University’s Graduate School of Politics, and adjunct research scholar at Columbia University’s Center for the Study of Human Rights. Mr. Phillips has worked as a senior adviser to the United Nations Secretariat and as a foreign affairs expert and senior adviser to the U.S. Department of State. He has held positions as a visiting scholar at Harvard University’s Center for Middle East Studies, executive director of Columbia University’s International Conflict Resolution Program, and as a professor at the Diplomatic Academy of Vienna. He has also been a senior fellow and deputy director of the Council on Foreign Relations’ Center for Preventive Action, director of the European Centre for Common Ground, project director at the International Peace Research Institute of Oslo, president of the Congressional Human Rights Foundation, and executive director of the Elie Wiesel Foundation. Mr. Phillips is the author of many books, reports and other publications including *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation* (Berghahn Books, 2005); *Losing Iraq: Inside the Postwar Reconstruction Fiasco* (Perseus Books, 2005), and *From Bullets to Ballots Violent Muslim Movements in Transition* (Transaction Publishers, 2009).

Paul van Zyl is CEO of Peace Ventures. Mr. Van Zyl has advised countries around the world on how to facilitate transitions to peace and democracy following periods of mass atrocity and human rights abuse. From 1995-1998, Mr. Van Zyl, a native South African, served as the Executive Secretary

of South Africa's Truth and Reconciliation Commission, which was charged with investigating Apartheid-era crimes. He has also worked as a researcher for the Goldstone Commission, as a department head at the Centre for the Study of Violence and Reconciliation in Johannesburg, and as an associate at Davis Polk and Wardwell in New York. As co-founder of the International Center for Transitional Justice (ICTJ) in 2001, Mr. Van Zyl has worked in over 35 countries. He also serves as Director of New York University School of Law's Transitional Justice Program, and teaches law both in New York and Singapore. He obtained a BA and an LLB from the University of the Witwatersrand in Johannesburg and an LLM in International Law from the University of Leiden in the Netherlands. Following these studies, he joined the Hauser Global Scholars Program at New York University School of Law, where he completed a LLM in Corporate Law. ■

End Notes

Chapter I

- ⁱ See Louis Bickford and Debra Schultz, 2009, "Memory and Justice: a Brief and Selected History of a Movement", published on-line at <http://memoryandjustice.org/about/history/>
- ⁱⁱ See Marguerite Feitlowitz, 1998, *A Lexicon of Terror: Argentina and the legacies of torture* (Oxford: Oxford University Press)
- ⁱⁱⁱ See Harold Scheub, "Now for a Story", in Ksenija Bilbija, Jo Ellen Fair, Cynthia E. Milton, and Leigh A. Payne (eds), *The Art of Truth-Telling about Authoritarian Rule*
- ^{iv} See Elizabeth Burgos, "Forward to the 2008 Edition: How I became Persona Non Grata", in David Stoll (2008), *Rigoberta Menchú and the Story of All Poor Guatemalans* (Boulder, Colorado: Westview Press), pp. ix-xvii.
- ^v See Margaret Randall (1994), *Sandino's Daughters Revisited: Feminism in Nicaragua* (Rutgers University Press).
- ^{vi} The different kinds of truth that emerge in different forms of truth-telling are examined best in a number of the chapters in Robert Rotberg and Dennis Thompson (2000), *Truth V Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press).
- ^{vii} See Louis Bickford (1999), "The Archival Imperative", *Human Rights Quarterly* Volume 21, Number 4, November, pp. 1097-1122.
- ^{viii} See Alister Sparks, (1995), *Tomorrow is Another Country: the Inside Story of South Africa's negotiated Settlement* (Cape Town: Jonathan ball Publishers) for an excellent analysis of these negotiations.
- ^{ix} The United States Institute for Peace (USIP) website has a comprehensive list. See: <http://www.usip.org/library/truth.html>
- ^x See Louis Bickford (2007), "Unofficial Truth Projects", *Human Rights Quarterly*, Volume 29, Number 4, November, pp. 994-1035
- ^x See Sebastian Brett, Louis Bickford, Liz Šev enko, and Marcela Rios, "Memorialization and Democracy: State Policy and Civic Action" (ICTJ: July 2008)
- ^{xii} This list and the discussion is taken from Brian Loveman and Elizabeth Lira, "Truth, Justice, Reconciliation, and Impunity as Historical Themes: Chile 1814-2006", *Radical History Review. Special Issue: Truth Commissions: State Terror, History, and Memory* 97 (Winter, 2007), pp 43-77.
- ^{xiii} See Paige Arthur, 2009, "How 'Transitions' Reshaped Human Rights:

A Conceptual History of Transitional Justice”, *Human Rights Quarterly*, Volume 31, Number 2, May, pp. 321-367

^{xiv} International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (September 2008) (emphasis added)

^{xv} See Promotion of National Unity and Reconciliation Act 34 of 1995.

^{xvi} See Galtung, Johan. 1998a. “After Violence: 3R, Reconstruction, Reconciliation, Resolution: Coping with Visible and Invisible Effects of War and Violence,” *Transcend: A Peace and Development Network*, July. <http://www.transcend.org/TRRECBAS.HTM>

Chapter II

^{xvii} This was a repeated theme in many publications.

<http://www.newsweek.com/id/236220> Simon Shuster, “Plane Crash Kills Polish President: A Blow to Russia-Poland Relations” Apr. 10, 2010 <http://www.time.com/time/world/article/0,8599,1981060,00.html#ixzz0kkQWYH51> Editorial, *The Boston Globe*, “Putin: Easing the burden of memory” http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/04/10/putin_easing_the_burden_of_memory/

^{xviii} UN *Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 23 August 2004, p. 4.

^{xix} Jack Snyder and Leslie Vinjamuri “Trials and Errors, Principle and Pragmatism in Strategies of International Justice. *International Security*, Vol. 28, No. 3 (Winter 2003/04) pp. 5–44.

^{xx} Dina Khapaeva, *Historical Memory in Post-Soviet Gothic Society*, social research Vol 76: No 1 : Spring 2009 365.

^{xxi} Dina Khapaeva, pp 367-369. One example quoted by Dina Khapaeva, is of Mironov, a self-appointed defender of Russian history.

Chapter III

^{xxii} The following section of the paper is strongly influenced by the analysis of amnesty programs developed by Mark Freeman, initially while working at the International Center for Transitional Justice, and later in an extremely valuable book entitled “Necessary Evils: Amnesties and the search for justice.”

^{xxiii} The following section draws heavily from Freeman. See in particular Appendix 1.

Chapter IV

^{xxiv} Carmes A. and E. Sanz, *DDR 2009: Analysis of the World’s Disarmament, Demobilization and Reintegration (DDR) Programs in 2008*, (Bellaterra: School for a Culture of Peace, 2009)

^{xxv} Ibid.

^{xxvi} United Nations, *Integrated DDR Standards*, <http://unddr.org/iddrs/04/20.phb> (accessed on May 15, 2010)

^{xxvii} See the Stockholm Initiative on Disarmament Demobilization Reintegration available at <http://www.sweden.gov.se/sb/d/4890>

^{xxviii} For more information on the El Salvador case, see Segovia, Alex, “DDR and Transitional Justice: The Case of El Salvador,” country case study (New York: International Center for Transitional Justice, 2009)

^{xxix} For more information on the Colombia case, see Jaramillo, Sergio, Giha, Yanet, and Torres, Paula, *Disarmament, Demobilization and Reintegration amidst Conflict: The Case of Colombia*, country case study (New York: International Center for Transitional Justice, 2009)