



Universiteit Leiden
CampusDenHaag.nl



Reconciliation v. Accountability: Balancing Interests of Peace and Justice

A seminar and book launch co-organised by the Centre for International Law Research and Policy, the Royal Norwegian Embassy in The Hague, Leiden University, Peking University International Law Institute, and O.P. Jindal Global University

*in the Great Hall of Justice, Peace Palace, The Hague
on Friday 29 May 2015 from 09:00 to 13:00.*

With the establishment of the United Nations Security Council Commission of Experts for the Former Yugoslavia in October 1992 – at a time when the UN-EU International Conference for the Former Yugoslavia was already conducting a peace process – the stage appeared set for a tense relationship between international mandates for *peace* and criminal justice or accountability for core international crimes. The perception of polarisation crystallized when the International Criminal Tribunal for the Former Yugoslavia (‘ICTY’) became operational in 1994. Since then, a broad discourse on the relationship between peace and criminal justice has emerged, with a widespread view that the two are not easily compatible.

South Africa’s truth and reconciliation process – and its projection on world public opinion following the collapse of the Apartheid regime – was welcomed by some ‘peace-before-justice’ proponents as a partner in the peace versus criminal justice discourse. Surely, a peace or transitional settlement combined with a well-organised truth and reconciliation mechanism must satisfy reasonable expectations for government response to mass-atrocity? Should not this combination pacify the persistent calls for criminal justice accountability, or at least postpone its introduction until after peace has taken proper hold?

Such rhetorical use of truth and reconciliation mechanisms added a further polarity to the peace versus criminal justice discourse, namely that of *reconciliation*¹ versus criminal justice. Truth and reconciliation mechanisms such as the South African process – so the argument would go – have the capacity to generate reconciliation in societies affected by core international crimes, whereas criminal justice does *not*, at least not to the same extent. As criminal justice implies retribution, it may even be capable of undermining peace and reconciliation.

Does this perceived dichotomy between reconciliation and criminal justice for core international crimes really reflect reality? Or can criminal justice itself actually contribute to reconciliation in territorial states affected by atrocities?² If so, how can criminal justice proceedings contribute most effectively to reconciliation or unity? Are there key factors or indicators that criminal jurisdictions need to meet in order to have such societal impact (for example, victim participation and reparation, even-handedness, proceedings located in territorial states, or speedy

¹ ‘Reconciliation’ has no agreed definition in international law, and this seminar does not impose a particular definition on the participants. We will include socio-political or communitarian conditions or effects within the ambit of the term (similar to ‘social reconstruction’ or ‘unity’), and not necessarily link it to “the ability of one individual to regain empathy for another” (contrary to J. Halpern and H.M. Weinstein, ‘Rehumanizing the Other: Empathy and Reconciliation’, in *Human Rights Quarterly* 26 (2004), pp. 561–583). Halpern and Weinstein do agree that ‘reconciliation’ ultimately has something to do with “the ability to live together over the years” (p. 577).

² Absent proper empirical knowledge on this question, the seminar seeks to engage the informed reason of a group of experts. It has been suggested that an empirical approach does not support that criminal justice for mass violence can contribute to reconciliation – see L.E. Fletcher and H.M. Weinstein, ‘Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation’, in *Human Rights Quarterly* 24 (2002), pp. 573-639 – but their argument rests essentially on one, limited case study of an aspect of the particular situation in Bosnia-Herzegovina, early in the life of relevant war crimes trials. Fletcher and Weinstein question how transitional justice measures more generally can contribute to reconciliation (p. 637), even suggesting that the relationship between truth and reconciliation commissions to the process of reconciliation “is no more apparent than that of trials” (p. 638).

and cost-efficient trials)? Does the rhetoric of dichotomy or tension between reconciliation and criminal justice serve any meaningful purpose? Is it a 'positive' tension? What should be the impact on the transitional justice discourse if criminal justice can indeed itself contribute to reconciliation? Seven experts will address these questions from the perspective of six international(ised) criminal jurisdictions and national jurisdictions more generally. There will be time for questions and comments from other seminar participants.³

At the tail end of the seminar, the outcome of another CILRAP-project on a novel theme – the anthology '*Military Self-Interest in Accountability for Core International Crimes*' (edited by Morten Bergsmo and SONG Tianying) – will be launched and discussed by Andrew Cayley QC and Arne Willy Dahl. The book opens a discourse on why accountability for core international crimes can be in the self-interest of armed forces. Wolfgang Kaleck will then present his new book '*Double Standards: International Criminal Law and the West*', a short monograph that assesses the problem of selectivity in international criminal justice. Mark Klamberg ends the event with remarks on the recently completed online '*Commentary on the Law of the ICC: Statute*'.

Registration:

Those interested in attending (which is free) should register by sending an e-mail message to info@cilrap.org before 15 May 2015. Confirmed registrants will receive e-mail notification.

Programme:

- 08:15 Registration and coffee
- 09:00 *Introduction* by the chair, Ambassador Anniken R. Krutnes (Norwegian Embassy in The Hague)
- 09:10 *Can Criminal Justice for Core International Crimes Contribute to Reconciliation?*
- **2015 LI Haopei Lecture:** *The ICTR and Reconciliation in Rwanda*, by Judge Erik Møse (European Court of Human Rights, formerly ICTR President)
 - *The ICTY*, by Mirko Klarin (Director, Agency SENSE)
 - *The Special Tribunal for Lebanon*, by Judge David Re (STL)
- 10:30 Coffee, small sandwiches and cakes
- 11:00 Continuation: *Can Criminal Justice for Core International Crimes Contribute to Reconciliation?*
- *The Special Court for Sierra Leone*, by Dr. Christopher Mahony (World Bank)
 - *Extraordinary Chambers in the Courts of Cambodia*, by Professor Susan R. Lamb (Jindal Global University, formerly ECCC)
 - *The Iraqi Special Tribunal*, by Dr. William H. Wiley (Director, Commission for International Justice and Accountability, formerly IST)
 - *National Jurisdictions*, by Professor Carsten Stahn (Leiden University)
 - Questions and comments
- 12:00 Launch of the new anthology '*Military Self-Interest in Accountability for Core International Crimes*' (participants will receive a free hard copy during the event), with remarks by:
- Andrew Cayley CMG QC (Director of Service Prosecutions, United Kingdom)
 - Arne Willy Dahl (retired Judge Advocate General for the Norwegian Armed Forces, formerly President of the International Society for Military Law and the Law of War)
- 12:30 Launch of the new monograph '*Double Standards: International Criminal Law and the West*' (participants will receive a free hard copy during the event), with remarks by the author:
- Wolfgang Kaleck (General Secretary, European Centre for Constitutional and Human Rights)
- 12:45 Launch of the completed online '*Commentary on the Law of the ICC*' ('CLICC'), with remarks by:
- Associate Professor Mark Klamberg (Uppsala University)
- 13:00 End of event

³ Although the name "Role of International Criminal Justice in Reconciliation" suggests close thematic kinship with this seminar, the Assembly President Mr. Vuk Jeremić's summary of the thematic debate in the UN General Assembly at UN Headquarters on 10 April 2013 does not answer the questions listed here, but it does show the need for an informed discourse which this seminar seeks to trigger.