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The International Institute of Higher Studies in Criminal Sciences

FIGHTING IMPUNITY AND PROMOTING INTERNATIONAL JUSTICE

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I H R L I

ASSOCIATION INTERNATIONALE DE DROIT PÉNAL

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DESCRIPTION OF THE PROJECT AND IT'S SUBSTANTIVE NATURE AND CONTENT

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1. ASSESSING CONFLICT-OUTCOMES: ACCOUNTABILITY AND IMPUNITY

Surprising as it may seem, nowhere is there a repository of the world's conflicts since World War II. Nor is there a repository for the number of victims, post-conflict justice mechanisms utilized or their efficacy. One would have expected the United Nations to have kept a single record of victimization and both international and national responses to conflicts but this has not been the case. While there are a variety of public and private sources that mention victimization numbers and analyze post-conflict justice, none are definitive or all-inclusive. The International Institute of Higher Criminal Sciences (ISISC) has undertaken the task of performing a worldwide survey of conflicts which have occurred between 1948 and 2008, evidenced in the following section. To aid in the subsequent analysis this preliminary research was undertaken on a regional basis. The research and data amassed shows that between 1948 and 2008, some 311 conflicts whose total victimization fluctuates, depending on the estimates, between 85-170million casualties.[1] At the lower end of the estimates, it is twice the number of victims cumulatively produced by both World Wars I and II. Notwithstanding, this staggering level of victimization, the States involved and the international community have only sporadically applied any post-conflict modalities with respect to these conflicts. Surprisingly, not to say shockingly, the overwhelming majority of these conflicts have resulted in total impunity for the perpetrators of large scale victimization corresponding to well-established international crimes.

Impunity for international crimes and serious violations of fundamental human rights have been a matter of concern to the world community since the end of World War II.[2] Most of the victimization occurred in conflicts of a non-international character, purely internal conflicts and tyrannical regime victimization. In part, because international humanitarian law has gaps in its normative coverage applicable to these types of conflicts and victimization contexts, most of the perpetrators have evaded international accountability. National legal systems, which have, however, sufficient justice and enforcement capabilities, seldom prosecute persons who commit such crimes as genocide, crimes against humanity and war crimes. As a result, perpetrators of these crimes also evade national accountability.

Recent tragic events such as those that occurred in Cambodia, the former Yugoslavia, Rwanda, Liberia and Sierra Leone have raised world consciousness to new heights, and, in response, the United Nations Security Counsel established *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda. The experience of these tribunals has demonstrated both the need and the feasibility of establishing a permanent criminal court. In 1995, the United Nations General Assembly established first an *ad hoc* Committee and then in 1996, a Preparatory Committee to prepare a draft statute for an international criminal court. In 1997, it called for a Diplomatic Conference to be held in Rome, 15 June-17 July 1998 to adopt a Convention establishing an international criminal court.

Since then, other tragic conflicts have occurred, some still ongoing, in the Democratic Republic of the

[1] The following section which looks at specific victimization numbers estimates total casualties between 92-101million.
[2] *See* 594 LAW & CONTEMP. PROBS. (1996) This publication was completed in February 1998, even though the year of publication appearing in the journal is 1996. This is due to a backlog in the journal's publication program.

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Congo, Uganda and Darfur, Sudan. International criminal prosecutions are only one of the modalities of accountability, but they are not necessarily the most appropriate of the various accountability modalities for all types of conflicts. Indeed, there is a range of modalities, used individually or in combination that may be more appropriate to a given situation. Among them are truth and reconciliation commissions, investigatory commissions, compensation mechanisms, national prosecutions and lustration mechanisms. Which one of these modalities or a combination thereof will be appropriate in a given post-conflict situation will depend on a variety of factors such as the ultimate goals of the parties to the previous conflict, their willingness to reconcile, the extent of the harm done, the duration of the conflict, as well as other external and internal circumstances that may bring about, in the best of cases, reconciliation, and in the worst cases, partitions.

No matter what the accountability modalities may be, there is no doubt that some form of accountability is necessary as a way of healing the wounds of the past and paving the way towards future reconciliation. But accountability also embodies justice, a fundamental value shared by all peoples of the world. This fundamental value can neither be ignored nor sidestepped in the pursuit of expedient political solutions. To do so would be merely to invite the resumption of conflict. Since justice is one of the ways of dampening the embers of revenge, it is, therefore, an essential element in the achievement of both peace and reconciliation. Justice, however, must be pursued with transparency, impartiality, integrity, political independence and fairness.

2. GENESIS OF THE PROJECT

In order to advance the humanitarian values mentioned above, as well as the twin policy objectives of peace and justice, ISISC and IHRLI began their collaboration eleven years ago. Since that time, the project has involved over 300experts from over 38 countries. It began with expert discussions of the problem of impunity culminating in a series of meetings and publications.[3] The first stage was the preparation of a number of research papers which were previously published.[4] This was followed by a first meeting of experts in 1997 at the Holocaust Memorial Museum in Washington, D.C. The draft post-conflict justice guidelines developed at that meeting were discussed at a 1998 meeting at ISISC in Siracusa, Italy, cosponsored by twenty-six leading organizations and attended by 120 persons from thirty-nine countries. The participants, speakers and rapporteurs were among the world's most renowned experts. Their intellectual contribution, as well as their commitment and dedication to the cause of international criminal justice gives hope to all who are concerned with its progress. The proceedings of the Siracusa meeting were published in 14 Nouvelles Études Pénales 1998, published by the AIDP, and the preliminary guidelines were revised and published in this writer's book entitled POST-CONFLICT JUSTICE.[5]

Beginning in 2003, IHRLI and the Chicago Council on Foreign Relations held a series of three meetings to discuss post-conflict justice and review the draft principles, which were renamed the Chicago Principles on Post-

[3] Information in this section is taken from M. Cherif Bassiouni, *Preface, in* INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE, ET AL., THE CHICAGO PRINCIPLES VII-IX (2008).
[4] LAW & CONTEMP. PROBS., *supra note 2*.
[5] POST-CONFLICT JUSTICE (M. Cherif Bassiouni, ed. 2002). *See also* M. Cherif Bassiouni, *Preface: Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Siracusa Conference 17-21 September 1998*, 14 NOUVELLES ÉTUDES PENALES, 5 (1998).

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Conflict Justice. From 2003 through 2005, various versions of these draft principles were circulated for comment. During this process, more than 180 experts from 30 countries were consulted. In this way, the Chicago Principles on Post-Conflict Justice benefited from the input of a diverse group of distinguished individuals representing distinct personal, professional, and cultural backgrounds and experiences. The Chicago Principles on Post-Conflict Justice are designed to contribute to the international movement to address past violations of human rights and humanitarian law. Post-conflict justice embodies a fundamental commitment to truth, peace, reconciliation, the rights of victims, and the basic sanctity and inherent value of human life.

3. BASIC PREMISES

From the mid-20th century to the present, wars, insurgencies, ethnic unrest, and the repressive actions of authoritarian regimes have produced enormous human suffering and the deaths of tens of millions, the majority of whom have been civilians. These conflicts often involve significant and systematic violations of fundamental human rights, including genocide, torture, disappearances, massacres, rape, and mass displacement. In general, institutionalized impunity protects perpetrators while victims' demands for accountability are ignored. More often than not, justice for past atrocities is sacrificed for political expediency, often as a means to negotiate the end of a conflict.

However, there is a growing international acknowledgment that building a responsive and democratic society in the wake of atrocity requires an open engagement with the demands of victims and a corresponding commitment to truth, justice, and reconciliation. Increasingly, the international community, governments, and civil society organizations seek accountability for past atrocities as expressed through a diverse set of ideas and practices known as "post-conflict justice." The development of post-conflict justice represents a significant shift in the international politics of peace, security, and national reconstruction, as well as an important stage in the evolution of the global movement to protect and defend fundamental human rights.

Post-conflict justice is premised on an understanding that domestic stability, security, and democratic governance in the aftermath of atrocity are strengthened by a commitment to justice and accountability. Openly facing the legacy of past violence is essential for preventing future victimization, achieving peace and reconciliation, and protecting human rights.

Despite the growing policy significance of these ideas and a steady increase in resources for specific post conflict justice initiatives, the international community remains largely unprepared for each new challenge. The Security Council, other United Nations entities, governments, regional bodies, and non-governmental organizations generally respond to transitional situations in a reactive, improvised, and often inefficient manner. All too often, these key actors fail to coordinate programs and funding, resulting in post-conflict justice strategies that are poorly integrated and inadequately address the specific demands of local culture and context.

In part, this problem results from the absence of clear and widely accepted principles on post-conflict justice. The lack of basic guidelines makes it difficult for international and domestic actors to efficiently design policies and determine which combinations of strategies are most effective for addressing particular social, political, and cultural needs. In addition, guiding principles could help establish a clear, common language for discussing post-conflict justice. The use of uniform terminology, definitions, and concepts could improve

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communication, analysis, and coordination among United Nations entities, governments, regional bodies, and non-governmental organizations.

The Chicago Principles on Post-Conflict Justice are designed to address these problems. The first part provides overview of the fundamentals of the field, presenting post-conflict justice as a set of ideas and practices based upon a number of foundational ideas. The section also provides a series of general concepts to assist in designing and implementing post-conflict justice strategies. The following section presents seven guiding principles on post-conflict justice involving: prosecutions; truth-telling and investigations of past violations; victims' rights, remedies and reparations; vetting, sanctions and administrative measures; memorialization, education and the preservation of historical memory; traditional, indigenous and religious approaches to justice and healing; and, institutional reform and effective governance. Each principle is followed by a review of concrete recommendations regarding the design and implementation of post-conflict justice strategies, policies, and programs. The text uses the term "shall" to indicate an established obligation under international law and the term "should" to reference a suggested action based on international norms.

The Chicago Principles on Post-Conflict Justice are designed to encourage improved focus and greater coherence regarding strategies for addressing past atrocities. The term "post-conflict justice" is used with an understanding that there exist a number of similar or related concepts including "transitional justice", "strategies for combating impunity", "peace building", and "post-conflict reconstruction". These terms and their definitions overlap and their diversity reflects both the evolving nature of the field and links with particular institutions rather than substantial differences in understanding or ideology.

The Chicago Principles on Post-Conflict Justice present the search for accountability in the aftermath of conflict as a complex, multifaceted, interdisciplinary process that extends beyond a formal legalistic approach. Domestic and international prosecutions on their own rarely provide victims and a suffering society with adequate justice for past atrocities. Relying solely on formal legal action generally fails to fully address victims' needs and may reveal serious limitations within a transitional government that ultimately weakens society's faith in the legitimacy of judicial processes. If prosecutions are not integrated into a broad strategy of accountability, they can appear as political acts and may run the risk of allowing perpetrators to become martyrs or otherwise creating barriers to a more socially coherent vision of justice. Similar criticisms may be leveled at any isolated, sector-specific approach to justice, particularly within a society that has suffered severe and systematic violations.

The Chicago Principles on Post-Conflict Justice acknowledge substantial differences between international humanitarian law, international human rights law, and international criminal law. However, the document does not address the complex and often technical legal questions that arise from these distinctions. This is partly because key differences between these bodies of law reflect an understanding of international wars as distinct from domestic conflicts and an acceptance of clear divisions between state and non-state actors. Recent conflicts have substantially blurred these differences rendering prior legal categories insufficient. Rather than resolving these legal disputes, the Chicago Principles on Post-Conflict Justice embrace a victim-centered rather than conflict-centered approach as a means of improving the design and implementation of policies to address human suffering in the aftermath of conflict.

The Chicago Principles on Post-Conflict Justice have been prepared at a time of intense international

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discussion regarding these issues. This can be seen in a growing number of important contributions by scholars, activists, and organizations, including a series of major United Nations studies reviewing peacekeeping operations, policies to combat impunity, victims' rights, and comparative analyses of fieldwork experiences. The Chicago Principles on Post-Conflict Justice link theory and practice, providing a valuable reference for those directly engaged in peace processes, national reconstruction, peacekeeping operations, and the development and implementation of policies to defend and protect fundamental rights. The document may also be of use to scholars, activists, politicians, journalists, and others interested in accountability, justice, and human rights.

4. EVOLUTION OF THE CONCEPT OF POST-CONFLICT JUSTICE

Recent history has shown that enhancing accountability and minimizing impunity are important elements for peace and stability and for building democratic states in the wake of conflict. Post-conflict justice modalities are also essential for establishing the rule of law, respecting human rights, honoring the suffering of victims, and preventing the recurrence of future violations.

Post-conflict justice is a relatively new concept whose coherence is only now emerging after two decades of theoretical and practical development. The essential commitments of post-conflict justice are grounded in the foundational global promises that established the modern human rights system over fifty years ago. However, the specific processes described by the term represent a significant and relatively recent development. The intellectual roots of post-conflict justice can be traced to the period following World War I when the emerging international community began to seriously consider the value of seeking justice in the aftermath of conflict, despite taking little substantive action. After World War II, the international community established key institutions of post-conflict justice, including the International Military Tribunals at Nuremberg and Tokyo and supported related domestic war crimes prosecutions in Europe and Asia.

These initiatives were linked to the birth of the modern human rights system through the creation of the United Nations and the broad acceptance of the Universal Declaration of Human Rights from 1948. From the 1950s through the 1980s, human rights commitments continued to develop. However, the Cold War demands of real politik and the profound ideological and political divisions of the time prevented the implementation of more substantial policies of accountability and justice. During this time, there were major advances in treaty law, significant development of international institutions and a growing engagement with the substance of human rights obligations.

From the mid-1980s on, there was a surge of interest in post-conflict justice associated with a number of political transitions from authoritarian to democratic regimes. In South and Central America, many countries initiated processes of openly engaging the legacy of past systematic repression. Newly democratic governments implemented domestic prosecutions, truth commissions, reparations policies, and mechanisms of memorialization, often motivated by popular pressure, civil society, and local human rights groups. In Eastern and Central Europe, governments created related initiatives involving public debate, memorialization, opening security archives, and instituting administrative sanctions known as "lustration" or "vetting." In general, these post-conflict justice strategies emerged from the bottom up, arising out of popular movements and developing in response to local experiences and local demands.

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By the mid-1990s, a broad international consensus had developed regarding the need to link justice and reconciliation with the end of conflict and support for democratic transitions. This historic shift grew out of the increasing legitimacy of human rights discourse, the activities of international and domestic non-governmental organizations and a general expansion of states' legal commitments to fundamental human rights. The international acceptance of post-conflict justice ideas and strategies was also related to expanding United Nations operations, including peacekeeping and human rights missions as well as a growing institutional recognition of the link between human rights and international development. This process advanced through the Security Council's establishment of the Commission to Investigate War Crimes in the former Yugoslavia, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the creation of the International Criminal Court. Other related United Nations initiatives included support for truth commissions, vetting, institutional reforms, and the creation of mixed national/international tribunals in Sierra Leone, Kosovo, East Timor and Cambodia.

However, the United Nations' engagement with post-conflict justice typically lacks central coordination which has led to inefficiency, excessive costs, and poor implementation. Post-conflict justice interventions have generally been managed by too many distinct and disconnected United Nations bodies, including the High Commissioner for Human Rights in Geneva, the Department of Peacekeeping Operations in New York, the Office on Drugs and Crime in Vienna, the United Nations Development Program in New York, as well as other offices within the Secretary General. The UN agencies involved in these processes generally operate with established internal bureaucracies, limited coordination or integration, and the lack of a unifying master plan.

These problems are heightened by the role of the Security Council which presently devotes a disproportionate amount of its valuable time and resources to a small number of post-conflict issues, such as the two ad-hoc tribunals. In addition, the Security Council is not well positioned for managing coordinated post-conflict justice programs because successful policies require a sensitive and flexible engagement with local conditions, including substantial input by NGOs, IGOs and community representatives.

Alongside these international processes, many countries implemented their own post-conflict justice strategies, at times independently and at other times with outside support and guidance. These strategies included domestic prosecutions of both high and low-level perpetrators and a variety of institutional reforms, including new constitutions, judicial reform, and the creation of formal human rights monitoring bodies. Governments in dozens of countries have also implemented truth commissions, a practice unique to the evolution of post-conflict justice, as well as vetting policies, systems of reparation, and mechanisms of memorialization.

In recent years, post-conflict justice ideas, strategies, and processes have gained substantial momentum. These diverse practices mark a shift in the way the nations and the international community understand national reconstruction, peace, and democracy. Issues of truth-telling, reconciliation, and legal and moral accountability are now viewed as essential elements of peace negotiations and form the foundation of many national reconstruction programs. As a result of the widespread implementation of post-conflict justice policies around the world, it is now possible to draw upon and learn from prior experiences. Alongside growing global consensus regarding the validity and necessity of a commitment to post-conflict justice, there is a pressing need for increased comparative research as well as the establishment of clear guidelines and principles.

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5. BALANCING PEACE, JUSTICE AND RECONCILIATION

Post-conflict justice involves a delicate balance between peace, justice, and reconciliation. Managing these issues is difficult, especially within highly divisive political contexts following wars, civil unrest, and authoritarian rule. The situation is especially complex where addressing victims' needs involves confronting political actors directly or indirectly responsible for past atrocities. Despite the tensions inherent in balancing competing goals, it is inappropriate and inaccurate to assume that countries must choose between political security and a failure to engage past atrocities or instability coupled with accountability and reconciliation. One of the goals of the movement for post-conflict justice is to demonstrate that peace and justice are complementary.

Ending hostilities and establishing peace is often a difficult, tenuous process involving protracted negotiations and the intervention and assistance of various governments, the United Nations and other multinational organizations. More often than not, peace is simply viewed as the absence of war. However, genuine peace requires the creation of a positive foundation for social, political and economic growth grounded in the respect for fundamental human rights.

Peace processes and the formation of new governments frequently involve the participation of perpetrators who seek to evade accountability for past atrocities. However, if those involved in transitional negotiations accept impunity for past violations as legitimate, perpetrators may be allowed to trade full protection from responsibility for past crimes in return for various promises. The Chicago Principles on Post-Conflict Justice highlight the long-term value of a firm commitment to accountability integrated within a broad- based plan for national reconstruction and reconciliation. A series of guiding principles that establish clear foundational commitments regarding post-conflict justice may help negotiators resist the temptation to avoid an engagement with questions of justice in order to achieve expedient political settlements.

After a conflict is formally resolved, a country's transitional process often requires interventions to ensure security, demobilize armed groups, rebuild key state institutions, and encourage economic development and overall stability. These objectives cannot be achieved simultaneously or implemented quickly. Instead, they depend on a number of factors which vary from conflict to conflict, and are often bound to the support of the international community and its willingness to contribute expertise and resources.

A serious approach to post-conflict justice requires balancing pressing moral demands for action with the recognition of the practical and political limitations that characterize transitional contexts. This is particularly true in the aftermath of conflict and authoritarian rule where nations often face collapsed infrastructure, continued insecurity, the presence of armed groups, a traumatized population, a devastated economy, endemic poverty, and a transitional government with limited resources. The Chicago Principles on Post-Conflict Justice recognize that legal systems in these contexts are often dysfunctional or nonexistent and that peacekeeping operations are generally not well-suited to addressing the demands of victims and other pressing justice needs. Establishing social order and basic governance in such contexts presents a serious challenge to domestic and international actors.

Over the last two decades it has become increasingly clear that restoring peace and security in the aftermath of conflict requires a long-term commitment based on careful planning and effective implementation as well as the coordination of support mechanisms. This has rarely occurred especially in the areas of governance,

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justice, and rule of law. Recent United Nations efforts express an awareness of this need and a growing commitment to a more comprehensive and integrated approach to post-conflict justice.

Of special interest is the acknowledgment of the fundamental link between post-conflict justice, global peace, and sustainable development. The Chicago Principles draw on an expanding number of United Nations documents as well as field experiences from various international missions.[6] Addressing these issues requires coordinated program design and implementation, substantial and consistent funding, increasing and fostering local input and control, and the formal elaboration and adoption of basic guidelines on post-conflict justice.

It is essential that rule of law strategies are implemented soon after formal peace is established and that there is adequate international funding and support. General reconstruction efforts should be managed with great sensitivity to the fundamental commitments of post-conflict justice. This encourages greater policy integration as well as an acknowledgment that rebuilding a society in the wake of destruction is itself an act of reconciliation and a mode of seeking justice.

Developing and implementing post-conflict justice policies is always contested, both domestically and internationally. While the specifics of each intervention are necessarily subject to debate, the overall vision of post-conflict justice should always be victim-centered, linked with social reconciliation, and based not on short-term objectives, but on a firm moral and legal commitment to fundamental human rights.

6. DEVELOPING A COMPREHENSIVE PLAN

Designing appropriate post-conflict justice strategies requires a high degree of flexibility and an open and evolving engagement with the specific demands of local reality. Meaningful post-conflict justice policies must have a high degree of legitimacy and require substantial political will on the part of leaders inside and outside of the government. While complete accountability is the desired ideal, this is rarely practical or possible. For this reason, successful post-conflict justice interventions require a creative engagement with political realities. Post-conflict justice strategies must always seek to maximize accountability and minimize impunity. An appropriate post-conflict justice strategy will reveal as much truth as possible; achieve as much reconciliation as is feasible; provide as full and complete reparations as are affordable; and, address past violence in an open, transparent, and truthful manner.

The development of comprehensive post-conflict justice strategies requires that vulnerable groups, such as women, children, refugees, the elderly, and disempowered religious or ethnic minorities, be provided with special

[6] At the 2005 World Summit the General Assembly adopted G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005) reaffirming, among other things, the need for post-conflict justice and accountability. Most recently, the desire for accountability can be found in the annual from the Secretary General and the UN High Commissioner for Human Rights urging the General Assembly adoption of the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as well as the International Convention for the Protection of All Persons from Enforced Disappearances. *See* The Secretary General, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General, delivered to the Human Rights Council*, U.N. Doc. A/HRC/8/14 (June 3, 1008). Additionally, the Human Rights Council has received numerous reports encouraging actions to eliminate impunity, including: successful prosecutions, preventative systems, vetting and creating new national human rights institutions, among others. *See generally* Mr. Titinga Frédéric Pacére, *Technical Assistance and Capacity-Building: Report of the Independent Expert on the Situation of Human Rights in the Democratic Republic of the Congo, delivered to the Commission on Human Rights*, U.N. Doc A/HRC/7/25 (Feb. 29, 2008).

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protections and adequate means to engage in the process of addressing the past. In particular, programs should be established with a clear understanding of the often gendered nature of political violence and the special needs of women, whether as widows, primary caregivers, or community leaders. Post-conflict justice requires great sensitivity to social and cultural context and a clear understanding of local political interests. Policymakers need to engage in national consultations and seek significant local input from non-governmental organizations, community groups, traditional or tribal leaders, religious organizations, and others. The process of rebuilding the justice system should be undertaken with a commitment to adequately accommodating local input and needs.

Just as conflicts arise from distinct local issues and involve different types of repression and violence, post-conflict situations vary dramatically. Rebuilding in the aftermath of an international war differs from reconstruction in the wake of an internal conflict. Further distinctions exist between conflicts of an ethnic or religious nature, or political transitions following the fall of a tyrannical regime.

Post-conflict justice is also highly dependent on the processes through which a conflict was brought under control. Some conflicts terminate with the overwhelming victory of one side over another, providing the prevailing force with near-complete control over the management and implementation of national reconstruction. While this may simplify the creation of strategies to address past violence, it fosters an imbalance of interests that can negatively impact the creation of fair and impartial policies. Other conflicts end through negotiated settlements which often reflect the demands and needs of various parties, but present their own challenges. Negotiated settlements may involve significant equality in the power and influence of conflicting parties or substantial disparities. In addition, a variety of external issues and constituencies often play a role in shaping peaceful outcomes.

The suffering arising from repressive authoritarian regimes and violent conflicts— particularly those involving genocide, crimes against humanity, war crimes, mass killing, institutionalized torture, and other severe and systematic human rights violations—is ultimately unanswerable. No true remedy exists for these brutal acts. However, in the wake of conflict, societies and governments should acknowledge past suffering and take action to address claims for justice arising from past violence. Post-conflict justice arises from a profound human need to acknowledge the truth of suffering and to press for accountability as a means of building for the future.

It remains possible to improve the world's response to past violations of human rights and humanitarian law. However, a substantial change in enabling post-conflict justice requires political will, resources and long-term commitments. The Chicago Principles on Post-Conflict Justice encourage a comprehensive, integrated approach to addressing past atrocities involving quick action, long-term planning, national consultations, the participation of diverse constituencies, sensitivity to local context and culture, broad institutional reform, and a domestic and international commitment to linking justice, peace and reconciliation.

7. PURPOSES OF THE PROJECT

The ISISC has undertaken this research project on *Fighting Impunity and Promoting International Justice* with the objective of promoting the development of an integrated approach to post conflict justice and link interaction and domestic strategies to the evolving role of the International Criminal Court. The project uses a combination of comparative research and global advocacy as a means of assisting governments, inter-

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governmental organizations and civil society in reviewing various post-conflict justice experiences and modalities and thus determines the most appropriate policy responses. One of the project's established goals is to enhance accountability and to reduce impunity for international crimes. Thus, the project aims at strengthening the international commitment to justice evidenced by the creation of the International Criminal Court and links support for this new body to a broad process of institutional support to forge a general framework for promoting accountability, reconciliation, and rehabilitation and to strengthen national institutions in countries emerging from conflict. Such a process is based on the complementarity of national judicial institutions and international bodies, particularly the International Criminal Court. The final report is to serve those who are concerned with promoting peace and security in the PC environment and to develop. It will therefore be part of a comprehensive peace-building strategy for countries emerging from conflict. In this respect, the project supports and complements the United Nations' efforts in enhancing the Rule of Law in post-conflict justice situations.

8. PROJECT PARTNERS

A. PROJECT FUNDERS

- *EuropeAid Office of the European Commission*

The European Commission's EuropeAid cooperation office manages EU external aid programs and ensures that development assistance is delivered worldwide. EuropeAid's main mission is to implement the Commission's external aid instruments, both those funded by the Union's budget and the European Development Fund. To ensure coherence, complementarity and coordination in implementing external assistance programs worldwide, EuropeAid works in close collaboration with its various partners. The overall aim is to make external aid more effective. Civil society, international organizations and governments of EU Member States are all important actors in this field.

B. PROJECT CO-SPONSORS

- *Association International de Droit Pénal (AIDP)*

The Association International de Droit Pénal was established in 1924 to continue the activities of the International Union of Penal Law (1889). The AIDP is worldwide the oldest association of specialists in penal law and one of the oldest scientific associations. Its field of actions covers: 1) criminal policy and codification of penal law; 2) comparative criminal law; 3) international criminal law (with a specialization in international criminal justice) and 4) human rights in the administration of criminal justice. It is open to all those who in the different countries devote themselves to the study of criminal law or are concerned with its application and tend to promote the development of legislation and institutions with a view towards improving a more humane and efficient administration of justice.

- *Irish Centre for Human Rights (ICHR)*

The Irish Centre for Human Rights is one of the world's premier university-based institutions for the study and promotion of human rights and humanitarian law. Since its establishment in January 2000, the Centre has developed a global reputation for excellence in the field of human rights teaching, research and advocacy, which

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has enabled the institution to attract high quality students to its acclaimed Masters programs and to build a thriving community of doctoral researchers. Whilst the Centre is autonomous in both its physical location and day-to-day operations, its academic staff are members of the Faculty of Law at the National University of Ireland, Galway, with whom the Centre is linked and maintains a close and cooperative working relationship.

- *International Human Rights Law Institute (IHRLI)*

The International Human Rights Law Institute is at the forefront of contemporary human rights and rule of law research, training and advocacy. Since its founding in 1990, the Institute has engaged in post-conflict justice programs and large-scale human rights documentation projects throughout the world. IHRLI conducts scholarly research on human rights, international criminal law and international humanitarian law. The Institute also prepares DePaul law students, activists and scholars for careers in human rights through fellowship programs, special courses, internships and research opportunities in Chicago and abroad.

C. REGIONAL CONFERENCE CO-SPONSORS

Arab World Regional Conference

- *Arab Organization for Human Rights*

The Arab Organization for Human Rights works for the respect of human rights and fundamental freedoms of all citizens and residents of the Arab world, defending any individual whose human rights are subjected to violations or whose freedom is restricted in any way.

- *Cairo University, Faculty of Law*

Cairo University, established in 1908 as the result of an effort to establish a national center for educational thought, is a comprehensive institution of higher learning committed to preparing students for the challenges of a rapidly changing workplace.

- *Egyptian National Council for Human Rights*

The National Council of Human Rights, subsidiary to the Shoura Council, aims at promoting and developing human rights, consolidating their values, spreading awareness of these rights and ensuring their practice.

- *League of Arab States*

The League of Arab States is a regional organization of 22 Arab States in Southwest Asia, and North and Northeast Africa whose main goal is to draw closer the relations between member States and coordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.

- *MacArthur Foundation*, funding for the conference

Through the support it provides, the MacArthur Foundation fosters the development of knowledge, nurtures individual creativity, strengthens institutions, helps improve public policy, and provides information to the public, primarily working to defend human rights, advance global conservation and security, and understand how technology is affecting children and society.

- *University of Ain Shams, Faculty of Law*

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Ain Shams University, as the third Egyptian university, was founded in July 1950. Being a major scientific and cultural institution, Ain Shams University has played an undeniable role in developing the cultural and scientific life in Egypt and enriching human knowledge in general, and legal knowledge in particular.

Americas Regional Conference

- *Instituto Interamericano de Derechos Humanos*

Created in 1980, the Interamerican Institute for Human Rights is one of the most important world centres for teaching, research and promotion of human rights. Its mission is to promote and to strengthen respect for the human rights set out in the American Convention on Human Rights.

Africa Regional Conference

- *Institute for Justice and Reconciliation*

The Institute for Justice and Reconciliation was established to promote reconciliation, transitional justice and democratic nation-building in Africa by means of research, analysis and selective intervention.

Asia Regional Conference

- *International Commission of Jurists*

The International Commission of Jurists is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights, providing legal expertise to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level.

Europe Regional Conference

- *Grotius Centre for International Legal Studies*

The Grotius Centre for International Legal Studies is a Hague based centre of Leiden University, which houses a variety of activities and programs, covering all aspects of international law, at the highest levels of academia.

- *T.M.C. Asser Instituut*

Over forty years, the T.M.C. Asser Instituut has developed into a leading scientific research institute in the field of International Law, cooperating with Dutch law faculties as well as with other national and foreign institutions.

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10. GENESIS OF THE PROJECT

In order to advance the humanitarian values mentioned above, as well as the twin policy objectives of peace and justice, ISISC and IHRLI began their collaboration eleven years ago. Since that time, the project has involved over 300experts from over 38 countries. It began with expert discussions of the problem of impunity culminating in a series of meetings and publications.[7] The first stage was the preparation of a number of research papers which were previously published.[8] This was followed by a first meeting of experts in 1997 at the Holocaust Memorial Museum in Washington, D.C. The draft post-conflict justice guidelines developed at that

[7] Information in this section is taken from M. Cherif Bassiouni, *Preface, in* INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE, ET AL., THE CHICAGO PRINCIPLES VII-IX (2008).
[8] LAW & CONTEMP. PROBS., *supra note 2*.

meeting were discussed at a 1998 meeting at ISISC in Siracusa, Italy, cosponsored by twenty-six leading organizations and attended by 120 persons from thirty-nine countries. The participants, speakers and rapporteurs were among the world's most renowned experts. Their intellectual contribution, as well as their commitment and dedication to the cause of international criminal justice gives hope to all who are concerned with its progress. The proceedings of the Siracusa meeting were published in 14 Nouvelles Études Pénales 1998, published by the AIDP, and the preliminary guidelines were revised and published in this writer's book entitled POST-CONFLICT JUSTICE.[9]

Beginning in 2003, IHRLI and the Chicago Council on Foreign Relations held a series of three meetings to discuss post-conflict justice and review the draft principles, which were renamed the Chicago Principles on Post-Conflict Justice. From 2003 through 2005, various versions of these draft principles were circulated for comment. During this process, more than 180 experts from 30 countries were consulted. In this way, the Chicago Principles on Post-Conflict Justice benefited from the input of a diverse group of distinguished individuals representing distinct personal, professional, and cultural backgrounds and experiences. The Chicago Principles on Post-Conflict Justice are designed to contribute to the international movement to address past violations of human rights and humanitarian law. Post-conflict justice embodies a fundamental commitment to truth, peace, reconciliation, the rights of victims, and the basic sanctity and inherent value of human life.

11. PROJECT'S METHODOLOGY

The project combines international and comparative research as a means of assisting governments, inter-governmental organizations and civil society in reviewing various post-conflict justice experiences in order to better assess what needs to be done in ongoing and future situations. This required undertaking regional and thematic studies converging both vertical and horizontal studies.

A. PREPARATORY MEETINGS

Between July 2007 and May 2008, three preparatory meetings between the project's Steering Committee and project experts took place. These preparatory meetings served to clarify the methodology for the project and solidify the tasks to be undertaken by the project experts. These preparatory meetings also served to help concretely explain the Chicago Principles as they were chosen to provide the framework within the research would take place, ultimately leading to the actual implementation of post-conflict mechanisms in countries that experienced, or are likely to experience, conflicts and gross violations of human rights.

The essential aim of the project is to produce a manual which will critically look at the possible modalities for providing post-conflict justice, and provide template strategies that remain aware of political and social realities without sacrificing the quest for accountability and international justice. This manual will serve as a guideline to assist the UN and Governments in advancing accountability and avoiding impunity. Existing examination of post-conflict justice is often based on a limited number of cases and circumstances. One of the

[9] POST-CONFLICT JUSTICE (M. Cherif Bassiouni, ed. 2002). *See also* M. Cherif Bassiouni, *Preface: Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Siracusa Conference 17-21 September 1998*, 14 NOUVELLES ÉTUDES PENALES, 5 (1998).

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major objectives of this report is to include the many conflicts that have often been avoided or forgotten. A summary of this manual will be distributed at five regional conferences around the world to practitioners, government officials, members of civil society and NGOS to promote the struggle against impunity.

B. REGIONAL, THEMATIC AND SPECIAL REPORTS

The thematic reports focus on a global comparative analysis of particular post-conflict mechanisms. They provide broad overviews to the mechanism as well as point out global trends and patterns that appear throughout. They include individual assessments of the various modalities, as well as a comparison between them. The thematic experts communicated with each other to include assessment of influences between their respective examined modalities, for example the influence that truth commissions may have had on later prosecutions.

The regional reports include a section containing a general survey (ie: inventory) of as many countries as possible within an expert's given region that objectively show what post-conflict modalities took place and which ones were not utilized. This descriptive section is measured against the Chicago Principles. The second section of the regional reports contains both case studies as well as an analytical section. For the in depth case studies, regional experts choose a few situations that are particularly indicative of various post-conflict mechanisms and address whether a specific mechanism was used or why a particular mechanism was not used. This focus is limited to a select few case studies that are representative of larger trends, based on typology of conflicts (e.g. interethnic, independence etc), sub-regions, and other criteria identified by the experts. This is followed by an analytical section that regionally examines the use of different post-conflict modalities. Moreover, the regional reports include information on situations in which no post-conflict justice modalities were used, and attempt to offer reasoning for this.

In the preparation of all regional and thematic reports, attention was be given to the following factors:

- Different institutions were created with differing goals in mind (e.g. bringing out the truth or prosecuting specific persons). The aims with which the modalities were introduced are therefore presented, together with an analysis of whether they were met.
- The 'success' of certain modalities in some situations but not in others.
- The participation of victims in the post-conflict justice process.
- The need to include the views and reality as perceived by the populations concerned and to not force a top-down approach that ignores these views and needs.
- The impact of the modalities examined and their role in enhancing justice and accountability, as well as promoting reconciliation.
- The time-frame in which the modalities occurred, and how this impacted upon their results.
- National mechanisms that do not fall into the traditional categories of truth commissions and prosecutions, such as state commissions of inquiry.
- The extent to which the institutions were able to address the involvement of non-state actors in the conflict.
- The dissemination of the work and results of the examined modalities and institutions.

It became apparent that some special reports would need to be included but that they would not fall within the categories of regional or thematic reports. These reports look at broader concepts and issues such as philosophical notions of justice or the changing nature of victimization. They are in a separate section of the overall report entitled 'Special Reports'.

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Throughout the entire research phase of the project, experts were encouraged to communicate to avoid the creation of unresolved gaps. These efforts were aided by the existence of a Google Groups page where all associated with the project could discuss problems they encountered, seek advice and post their work products.

12. REGIONAL REPORTS

The regional reports include a section containing a general survey and another containing in-depth case studies of selected conflicts and analysis of the post-conflict justice mechanisms utilized. The following reports with particular attention to the following specific countries or conflicts are included:

- **Africa** (Dr. Jose Doria, Dr. Dawn Rothe and Dr. Christopher Mullins) - Angola, Nigeria, Senegal, Burundi, Rwanda, Cote d'Ivoire, Sudan, Chad, Demoratic Republic of the Congo, Liberia, Uganda, Mozambique, Central African Republic, Ghana, Kenya, Zimbabwe, Sierre Leone, South Africa and Ethiopia

- **Americas** (Professor Victor Rodriguez) - El Salvador, Guatemala, Chile, Argentina, Uruguay and Paraguay

- **Asia** (Professor Suzannah Linton) - Afghanistan, Cambodia, China, East Timor, India, Indonesia, Japan, Nepal, Pakistan, the Philippines and South Korea.

- **Arab World** (Judge Khaled M. Ahmed, Dr. Mohammed Ayat, Hicham Cherkaoui, Michael Hanna and Mr. Ayman Salama) - Algeria, Iraq, Israel-Palestine, Lebanon, Mauritania, Morocco and Western Africa

- **Europe** (Lord John Alderdice, Dr. Floribert Baudet, Professor José Luis de la Cuesta, Dr. David Donat Cattin, S.A.M. Huberts-van Dijk, Professor Göran Sluiter, S.V. Vasiliev) – The regional report for Europe studied closely those conflicts in Yugoslavia, Northern Ireland, Czech Republic, Poland, Russia, East Germany, and Francoist Spain

13. THEMATIC AND SPECIAL REPORTS

The thematic reports focus on a global comparative analysis of a particular post-conflict mechanism and include the following reports with particular attention to the following specific countries or conflicts, while the special reports reflect various general aspects of post-conflict justice:

- **Prosecution** (Dr. Nadia Bernaz and Dr. Rémy Prouvèze) – International Military Tribunal – Nuremberg, International Military Tribunal of the Far East – Tokyo, International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, Special Crimes Panel for East Timor, Regulation 64 Panels – Kosovo, Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia, War Crimes Chamber in Bosnia-Herzegovina, Special Tribunal for Lebanon, International Criminal Court; domestic experiences related to World War II, Augusto Pinochet, Hissène Habré, Alberto Fujimori, Saddam Hussein, Ethiopia – Mengistu, France – Javor and Munyeskyaka

- **Mixed Model Tribunals** (M. Cherif Bassiouni) – Regulation 64 Panels in Kosovo, War Crimes Chamber in Bosnia and Herzegovina, Special Court for Sierra Leone, Special Panel for Serious Crimes in East Timor, Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon

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- **Revenge in Post-Conflict Justice** (Dr. Anja Matwijkiw) - This report examines post-conflict justice at the meta-level and in the light of the distinction between strict and non-strict accountability-securing measures. This report also looks at the relationship between victim based revenge and a broader post-conflict justice. Accommodating general jurisprudence, the author shows how a compromise is reached pertaining to the issue of justice *versus* revenge and, furthermore, how vetting can outperform revenge.

- **Global Principles of Justice** (Professor Simon Caney) – This report argues that there are universal human rights and principles of justice and examines what institutional structures would best protect these universal principles.

- **Truth Commission** (Dr. Eric Brahm) - Argentina, Bolivia, Chile, Ecuador, El Salvador, Guatemala, Haiti, Panama, Paraguay, Peru, Uruguay, East Timor, Indonesia, Nepal, the Philippines, Morocco, Central African Republic, Chad, Democratic Republic of the Congo, Ghana, Liberia, Nigeria, Sierra Leone, South Africa, Serbia and Montenegro

- **Reparation** (Professor Naomi Roht-Arriaza) – post-World War II in Europe, post-communist restitution, Canada, United States, Chile, Argentina, Brazil, Haiti, Bolivia, Guatemala, Peru, El Salvador, Colombia, South Africa, Ghana, Rwanda, Sierre Leone, Sudan, Uganda, Iraq, Morocco, Algeria, Turkey, China, Japan, Burma, Indonesia, the Philippines, East Timor, Nepal, New Zealand, Bosnia-Herzegovina and Australia, International Criminal Tribunals and Victims Trust Fund and U.N. Claims Commissions (Iraq, Ethiopia and Eritrea)

- **Victim Redress in Post-Conflict Justice** (Ambassador J.D. Bindenagel) - This report discusses post-conflict modalities using various lessons learned from post-World War II Germany, while highlighting victim reparations, sanctions and reconciliation techniques. This report specifically deals specifically with forced labor situations.

- **Lustration** (Dr. Monika Nalepa) – Austria, France, Germany, Greece, Italy, UK, the Netherlands, Venezeula, Dominican Republic, El Salvador, Bolivia, Argentina, Panama, Ecuador, Brazil, Cyprus, Portugal, Spain, Bulgaria, Czechoslovakia, Poland, Hungary, Albania, Romania, Bosnia and Herzegovina, Algeria, Uganda, Ghana, Lebanon, Central Africa, Afghanistan, Chad, Iraq, Japan, the Philippines, Thailand, Yugoslavia and Serbia

- **Amnesty** (Dr. Louise Mallinder) - Argentina, Chile, Colombia, El Salvador, Guatemala, Haiti, Uruguay, Afghanistan, Cambodia, Indonesia, East Timor, Bosnia-Herzegovina, FYR Macedonia, Spain, Algeria, Iraq, Angola, Mozambique, Sierra Leone, South Africa and Uganda

- **Neverending Civil Wars** (Dr. Ann Hironaka) - This report explores the characteristics of civil wars which have taken over as the largest producer of victims. This special report comments on the lack of organization, infrastructure and resources that greatly affect these civil wars which occur mostly in less-developed countries.

14. GENEVA MEETING

On 10 November 2008, the project held its first conference in Geneva, Switzerland. This conference served to present the draft report, in its entirety, to the international community for consultation. Over 80 participants were brought together representatives of the Permanent Missions in Geneva, IGOs, NGOs, and experts in the field of international criminal law, human rights and post-conflict justice. At the conference, we assessed post-conflict justice modalities in connection with their effectiveness in different situations as well as a worldwide study undertaken by this project. The conference highlighted the need for enhancing post-conflict justice mechanisms with a view towards reducing impunity and enhancing compliance with international law.

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See Appendix I for a detailed report of the Geneva Meeting.

15. REGIONAL CONSULTATIONS

After the first consultation meeting in Geneva, 10 November 2008, to discuss the general report and regional reports, ISISC will host five regional meetings. These meetings will serve to disseminate the report amongst five regions around the world while simultaneously collecting specific recommendations for future implementation of these post-conflict modalities. These regional conferences will take place in the first five months of 2009.

ARAB WORLD REGIONAL CONFERENCE
15-17 January 2009
Cairo, Egypt

AMERICAS REGIONAL CONFERENCE
20-21 February 2009
San José , Costa Rica

AFRICA REGIONAL CONFERENCE
24-25 March 2009
Cape Town, South Africa

ASIA REGIONAL CONFERENCE
27-28 April 2009
Bangkok, Thailand

EUROPE REGIONAL CONFERENCE
7-8 June 2009
The Hague, The Netherlands

16. FINAL REPORT

Following the regional conferences ISISC will then create a summary report of the recommendations and conclusions reached which will be included in the final publication. The final publication, consisting of a General Rapporteur's report, summary report, thematic reports, regional reports and special reports, will bring attention to the fact that numerous conflicts have occurred with a vast number of victims, in which there was no adequate post-conflict mechanism providing for justice and accountability. All of these reports will be published. It is the belief of those who have worked on the project that it will contribute to peace and justice, prevent victimization and help alleviate the sufferings of victims and societies in the thralls of post-conflict trauma.