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# THE FUNCTIONS OF JUSTICE AND ANTI-JUSTICE IN THE PEACE-BUILDING PROCESS

*Michael P. Scharf*[†] *and Paul R. Williams*[††]

*If you want peace, work for justice.*
Pope Paul VI on January 1, 1972,
in a homily on World Peace Day.[1]

*To end the war is the primary responsibility of the peace negotiator. To assign responsibility and call for justice is the responsibility of the fact-finder--but she or he must not expect the peace negotiator to turn prosecutor.*
Anonymous UN official[2]

## *I. Introduction*

The norm of justice applied through the approach of accountability can be an extremely useful tool for the diplomat or peace-builder. Traditionally, peace-builders have relied upon the approach of either accommodation or the use of force in an effort to accomplish desired ends. In most cases, the tool of justice/accountability was neglected, or, if used, not employed in a constructive manner. Recently, however, there has been increasing use of the tool of justice/accountability in the peace-building process, including in South Africa, the former Yugoslavia, Sierra Leone, Rwanda, East Timor, Cambodia, and Iraq.

Yet, the norm of justice, while increasingly invoked, is seldom defined in the context of peace-building. To understand the role that justice has

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[1] Pope Paul XI, Homily on World Peace Day (Jan. 1, 1972).

[2] Anonymous, *Human Rights in Peace Negotiations*, 18 HUM. RTS. Q. 249, 256 (1996).

played and has the potential of playing in the peace-building process, it is important first to define the norm as well as articulate its functions. This article therefore serves as an introduction to *The Case Western Reserve Journal of International Law's* "Role of Justice in Building Peace" Symposium Issue by providing a detailed definitional description of the justice norm. In addition, it identifies the variety of functions performed by the norm of justice and the approach of accountability during the peace-building process. This is followed by an examination of the perceived conflict between the approaches of accountability and accommodation, which lies at the core of the common belief that it is sometimes necessary to swap justice for peace.

In our examination of the functions of justice in the peace-building process, we use the former Yugoslavia as an illustrative case study. Reference to the Yugoslavia experience provides a particularly useful touchstone for this analysis because in no other peace-building process in history has there been so much political emphasis placed on the need to employ the norm of justice, and so much energy devoted to creating and utilizing justice-based institutions. The Yugoslav conflict is a particularly fertile research ground for accurately assessing the role of justice in peace-building given the UN Security Council's creation of the United Nations War Crimes Commission for Yugoslavia and the subsequent creation of the Yugoslav War Crimes Tribunal; the utilization of the World Court by the government of Bosnia to allege genocide by the government of the Federal Republic of Yugoslavia ("FRY"); the application of a plethora of minor institutions such as human rights rapporteurs, domestic truth commission and criminal prosecutions; and the extensive deployment of human rights monitors to prevent violations of international humanitarian law.

## *II. Defining Justice and Anti-Justice in the Context of Peace-Building*

> *Justice being done, and being seen to be done, is the difference between a lasting peace and an interval between hostilities.*
>
> Ed Vulliamy,
> Correspondent for *The Guardian*[3]

The word "norm" refers to collectively established guides for action; it originates from a Greek word referring to a carpenter's square. When the norm of justice is applied to the peace-building process, it operates as a carpenter's square in that it constrains the actions of state and sub-state parties to the dispute, including the actions of third party actors. The norm

[3] Ed Vulliamy, *Bosnia: The Crime of Appeasement*, 74 INT'L AFFAIRS 73, 89 (1998) (quoting Justice Goldstone).

of justice also guides and in some cases dictates the actions to be taken by the parties, and may in some instances dictate specific terms to be included in a peace agreement or actions to be undertaken to aid the peace-building process. The sides of the carpenter's square of justice are comprised of truth, fairness, rectitude, and retribution/requital.

As important as understanding the definition of justice, it is essential to understand the nature of certain acts which undermine the effectiveness of the norm of justice, or acts which may be deemed to constitute the norm of "anti-justice." We use the term anti-justice, rather than the more narrow term injustice, to describe a peace-building approach characterized by intentional falsehoods and propaganda, perpetual impartiality and moral equivalence, the active erosion of the moral imperative to take action, and impunity and de facto or de jure immunity.

### A. The Essence of Justice

In the context of peace-building, truth relates to an accurate understanding and recording of the causes of a conflict, as well as which parties are responsible for which actions, and which parties, including individuals, may be characterized as the victims or the aggressors (including the possibility that both parties are the aggressors). Truth also requires an understanding and articulation of the objectives of the various parties, including those of third parties, and an assessment of those interests in light of generally accepted rules of international behavior—in particular, those set forth in the UN Charter and other legal instruments.[4]

An example of the use of truth to influence the peace process is the report of the War Crimes Commission created by the United Nations in 1993 to assess the nature of the conflict in Yugoslavia and the extent to which the various parties were responsible for war crimes. This report, consisting of over 3,000 pages, paints a fairly accurate portrayal of the nature and extent of the crimes committed by all the parties, finding that although representatives of each party had committed crimes, warranting the creation of an international tribunal, it was clear the Serbian forces were acting as aggressors and they had committed the vast majority of crimes.[5] This may be contrasted with what the authors were told were efforts of David Owen, the co-chair of the UN/EU peace process, to persuade the chairman of the War Crimes Commission to find that all three of the parties

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[4] *See* Richard J. Goldstone, *Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals*, 28 N.Y.U. J. INT'L L. & POL. 485, 486 (1996).

[5] *Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, U.N. SCOR, 46th Sess., U.N. Doc. S/1994/674 (1994).

had committed a roughly equal number of crimes and all were therefore equally culpable.

Fairness relates to an initial approach of impartiality—which can and must be adjusted in light of the truth about the conflict. Thus, while fairness requires that at the initiation of the conflict third parties approach peace-building in an impartial manner, it also requires that once elements of truth are ascertained, they not be misrepresented in order to maintain artificial impartiality, but rather that they be incorporated into the decision-making process and policy be adjusted accordingly. An example of the use of fairness to guide the peace process is the State Department's attempts in the spring of 1999 to provide extensive detail to the public as to the nature of the crimes being committed by the Serbian regime in Kosovo,[6] even to the extent of naming names of suspected war criminals.[7]

Fairness also requires that third parties do not seek to apply undue pressure on the victims of a conflict in order to achieve an expedient political objective. This application is best exemplified by the U.S. efforts at the Rambouillet/Paris negotiations to openly acknowledge the victim status of the Kosovars. Thus, although the United States sought to persuade the Kosovar delegation to accept major concessions sought by the Serbian side, it did not initially seek to exploit their victim status. This can be contrasted with the approach of the United States four years earlier in the Dayton negotiations, where the United States threatened to close the talks and blame their failure on the Bosnian delegation if the Bosnians failed to agree to a number of concessions, which the Bosnians thought might undermine any serious effort to build peace—knowing that if the Bosnians were blamed for the failure of the negotiations, this would erode international support for protecting them from the continued campaign of genocide.

Rectitude encompasses a sense of moral virtue, integrity, and righteousness, requiring the parties to "do the right thing" based in part on

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[6] U.S. DEP'T OF STATE, ERASING HISTORY: ETHNIC CLEANSING IN KOSOVO (1999), *available at* http://www.state.gov/www/regions/eur/rpt_9905_ethnic_ksvo_toc.html; James Rubin, U.S. Dep't of State, *Press Briefing on Massacre of Kosovar Albanians* (May 19, 1999), *available at* http://www.fas.org/man/dod-101/ops/docs99/990519_rubin_massacre_htm (last visited Oct. 12, 2003); Amb. David Scheffer, U.S. Dep't of State, *On-the Record Briefing on Atrocities in Kosovo* (Apr. 9, 1999), *available at* http://www.state.gov/www/policy_remarks/1999/990409_scheffer_kosovo.html (last visited Oct. 12, 2003); U.S. DEP'T OF STATE, THE ETHNIC CLEANSING OF KOSOVO: FACT SHEET BASED ON INFORMATION FROM U.S. GOVERNMENT SOURCES (May 14, 1999), *at* http://www.state.gov/www/regions/eur/rpt_990514_ksvo_ethnic.html.

[7] JAMES P. RUBIN, U.S. DEP'T OF STATE, RESPONSIBILITY OF INDIVIDUAL YUGOSLAV ARMY AND MINISTRY OF INTERNAL AFFAIRS COMMANDERS FOR CRIMES COMMITTED BY FORCES UNDER THEIR COMMAND IN KOSOVO (Apr. 7, 1999), *available at* http://secretary.state.gov/www/briefings/statements/1999/ps990407.html (last visited Oct. 11, 2003).

their assessment of the truth and the application of fairness, but also including the legitimate interests of the third-party states and institutions—the legitimacy of which is defined by principles of international law and generally accepted norms of state behavior. Although rectitude may seem subjective, in matters of armed conflict involving ethnic aggression and crimes against humanity it is usually possible to draw certain boundaries around the behavior of state and sub-state actors.

A peace process influenced by rectitude, for example, would likely find the peace-builders reluctant to substantially accommodate or appease those responsible for orchestrating crimes against humanity as this legitimizes those actors and their methods, while also providing an opportunity for them to ratify at the negotiating table the fruits of their crimes. Moreover, the likelihood of building a meaningful peace on the promises and commitments of individuals and institutions responsible for crimes against humanity is greatly diminished, as evidenced by the multitude of failed cease-fires negotiated by various UNPROFOR generals with Serbian leaders Ratko Mladic and Radovan Karadzic, who were indicted by the Yugoslav Tribunal for genocide.[8]

The guide of rectitude may also lead third parties to adopt appropriate policy responses to the conflict. For instance, in the Bosnian conflict and the early stages of the Kosovo conflict, the United States and its allies sought a negotiated settlement with those directly responsible for orchestrating the ethnic aggression. Failing to heed the guide of rectitude resulted in five atrocity-filled years of conflict, and a peace settlement in Bosnia many critics believe ratifies the gains of ethnic cleansing, widespread war crimes, and crimes against humanity. In contrast, when, in the case of Kosovo, the United States and its allies ascertained negotiations with the perpetrators would no longer suffice as a viable policy, they embarked on the use of force to defeat the Serbian military forces operating in Kosovo. As a result, the gains of ethnic cleansing were reversed, and there appears to be a greater likelihood for a meaningful peace in Kosovo.

Retribution/requital comprises notions of compensation for victims, punishment of aggressors, recompense for physical damage, de-legitimization of responsible institutions, and re-imposition of the rule of law. It does not encompass notions of revenge, retaliation, or reprisals. Institutions frequently associated with this norm include war crimes tribunals and truth commissions. Retribution/requital is particularly important in peace-building as, according to one notable commentator, "[i]n the fragile political climate that exists following a settlement, the temptation for retribution and revenge are considerable."[9]

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[8] Prosecutor v. Karadzic and Mladic, Indictment, I.C.T.Y., No. IT-95-5 ¶ 17 (1995), *available at* http://www.un.org/icty/indictment/english/kar_ii950724e.htm (last visited Sept. 19, 2003).

[9] Fen Osler Hampson, *Can Peacebuilding Work?*, 30 CORNELL INT'L L.J. 701, 714 (1997).

Retribution/requital and associated institutions "bring an element of impartiality that is necessary to restore faith in the judicial process and in the rule of law," something the parties and their domestic institutions are unlikely to accomplish on their own.[10]

An example of the influence of retribution/requital on the peace process is the establishment of the Yugoslav Tribunal to try those responsible for war crimes within the territory of the former Yugoslavia. Other examples include the case against the FRY brought in the World Court by Bosnia and a similar case pending by Croatia, the Dayton Accords' creation of a property restitution commission, and discussions about a possible Bosnian Truth Commission.

### B. The Essence of Anti-Justice

The antithesis of truth is falsehood, often spread by propaganda. For example, as detailed in U.S. Department of State cables, and a number of more recent publications, Slobodan Milosevic relied upon a highly capable propaganda machine to at first stir the nationalist feelings of the Serbian population into support for his objective of an ethnically pure greater Serbia and then to promote recruitment into the paramilitary forces responsible for many of the brutal acts of ethnic cleansing.[11] As noted by U.S. Ambassador Warren Zimmermann, through a barrage of propaganda via the state-owned media,[12] Milosevic played on Serb fears and feelings of victimization, going back to their defeat by the Ottomans at Kosovo in 1389, and emphasizing their treatment at the hands of the Ustasha during World War II. "The virus of television," Ambassador Zimmermann recounts, "spread ethnic hatred like an epidemic."[13]

Slobodan Milosevic then turned his propaganda enterprise toward the international community and successfully imbued Western foreign policymakers with falsehoods such as the war was caused by the bubbling over of "ancient ethnic hatreds," all the parties were in effect "warring

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[10] *Id.*

[11] For a concise summary of the Milosevic propaganda campaign, *see* Georgie Anne Geyer, *How the Conscience of the West Was Lost, in* THE CONCEIT OF INNOCENCE: LOSING THE CONSCIENCE OF THE WEST IN THE WAR AGAINST BOSNIA 74, 91-95 (Stjepan G. Meštović ed., 1997).

[12] For a review of the use of media by all three parties, *see* MARK THOMPSON, FORGING WAR: THE MEDIA IN SERBIA, CROATIA AND BOSNIA-HERCEGOVINA (Ann Naughton ed., 1994).

[13] Warren Zimmermann, Origins of a Catastrophe: Yugoslavia and Its Destroyers-America's Last Ambassador Tells What Happened and Why 121 (1996). According to Ambassador Zimmermann, "Those who argue that 'ancient Balkan hostilities' account for the violence that overtook and destroyed Yugoslavia ignore the power of television in the service of officially provoked racism." *Id.* at 120.

factions" equally responsible for the commission of atrocities, the conflict was a "civil war" not involving Serbia, and the Bosnian government was prone to killing its own civilians in order to garner international sympathy and intervention.[14] The adoption of these falsehoods greatly undercut the influence of the norm of justice.[15]

While the U.S. embassy in Belgrade accurately reported on the efforts of the Serbian regime to use propaganda to influence the international community,[16] a number of foreign policymakers succumbed to these efforts.[17] In particular, David Owen readily adopted the notion of warring factions equally responsible for atrocities as it promoted his objective of a negotiated settlement of the conflict without the complicated involvement of the norm of justice. Similarly, Secretary of State Warren Christopher adopted Milosevic's notion of ancient ethnic hatreds along with the notion of warring factions,[18] to create the impression that the conflict was

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[14] For a comprehensive refutation of the myth of the bubbling over of "ancient ethnic hatreds," *see* ROBERT J. DONIA & JOHN V.A. FINE, JR., BOSNIA-HERCEGOVINA: A TRADITION BETRAYED (1994). For a more concise refutation, *see* GEYER, *supra* note 11, at 91-95.

[15] For example, according to Carol Hodge, Robert Wareing, a member of the House of Commons Select Committee on Foreign Affairs, publicly informed the House of Commons that the 1992 bread line massacre in Sarajevo, which killed twenty Muslim civilians, was carried out by Muslims to gain sympathy from the world community and increase antipathy toward Serbia. CAROL HODGE, THE SERB LOBBY IN THE UNITED KINGDOM 13 (Henry M. Jackson School of Int'l Stud., The Donald W. Treadgold Papers No. 22, 1999).

[16] For examples of the U.S. State Department reporting on Serbian propaganda, *see* Telegram from American Embassy in Belgrade to Secretary of State (Feb. 15, 1994) (Document Number 94BELGRA01209); *see also* Telegram from American Embassy in Belgrade to Secretary of State (Feb. 15, 1994) (Doc. No. 94BELGRA01232), *available at* http://www.foia.state.gov/documents/foiadocs/554a.pdf (last visited Sept. 19, 2003); *see also* Telegram from American Embassy in Belgrade to Secretary of State (Oct. 1994) (Doc. No. 94BELGRA05955), *available at* http://www.foia.state.gov/documents/foiadocs/5524.pdf (last visited Sept. 19, 2003).

[17] For a dense, but useful, assessment of the extent to which Serbian misrepresentations found their way into the political decision-making process, *see* DAVID CAMPBELL, NATIONAL DECONSTRUCTION: VIOLENCE, IDENTITY AND JUSTICE IN BOSNIA (1998). *See* KJELL ARILD NILSEN, EUROPAS SVIK: ET OPPGJØR MED VESTLIG UNNFALLENHET I BOSNIA (1996); *see also* PAOLO RUMIZ, MASCHERE PER UN MASSACRO 166 (1996). A typical example of the absorption of Serbian propaganda by government officials is former U.S. Secretary of State Lawrence Eagleburger's statement in July 1995 just after the Srebrenica massacre that, "they have been killing each other with a certain amount of glee in that part of the world for some time now." Interview by Charlie Rose with Lawrence Eagleburger, U.S. Secretary of State, Charlie Rose Transcript #1420 (July 13, 1995), *cited in* MICHAEL A. SELLS, THE BRIDGE BETRAYED: RELIGION AND GENOCIDE IN BOSNIA 124 (1996).

[18] *See, e.g.*, U.S. Secretary of State Warren Christopher, Special State Department Briefing on the Conflict in the Former Yugoslavia (Feb. 10, 1993), *in* FED. NEWS SERVICE, Feb. 10, 1993 ("These circumstances in the former Yugoslavia have deep roots. The death of [Yugoslav] President Tito and the end of communist domination of the former Yugoslavia

inevitable and the American government could therefore not be faulted for failing to prevent the conflict or the continuing atrocities.[19] And the propensity for UNPROFOR commander General Janvier to "believe Serb propaganda," according to his aides, was in part responsible for his rejection of close air support to defend the UN declared safe area of Srebrenica, which could prevented the subsequent massacre of 7,000 civilians.[20]

Not all those involved in seeking a resolution of the conflict fell victim to Milosevic's propaganda ploys, as illustrated by General Wesley Clark's assessment that "[a]bove all, I recognized that fundamentally, quarrels in the region were not really about age old religious differences but rather the

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raised the lid on the cauldron of ancient ethnic hatreds. This is a land where at least three religions, at least a half a dozen ethnic groups have vied across the centuries. It is the birthplace of World War I. It has long been the cradle of European conflict. And so it is today."). *See also* Interview by Roger Mudd with Warren Christopher, Secretary of State, "MacNeil/Lehrer Newshour" (Aug. 11, 1993) (Warren Christopher declared, "In Bosnia, there are such ancient hatreds that evidently the ethnic groups want to try to divide it and be in separate enclaves. That will be a decision that they will have to make, and it's very hard to dictate that from a distance."). *See also* U.S. Secretary of State Warren Christopher, Address at the Conference on Security and Cooperation in Europe Plenary Session (Nov. 30, 1993) ("We call upon all warring parties to stop their unconscionable conduct that blocks the delivery of critically needed supplies through [Tuzla airport]. We also call upon the warring parties to live up to their recently signed agreements to permit secure land access for relief convoys. The warring parties must see that this is in their best interests. Full access will serve the vital needs of all Bosnia's factions."). Even President Clinton found himself adopting the notions of warring factions and civil war in an exchange with reporters, where he declared: "But there will not be–the killing is a function of a political fight between three factions. Until they agree to quit doing it, it's going to continue. And I don't think that the international community has the capacity to stop people within the nation from their civil war until they decide to do it." Exchange with Reporters (Jan. 24, 1994), *in* 1 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON 121, 122 (1995).

[19] See Geyer, *supra* note 11, at 91.

[20] According to David Rohde:

> A key element in Janvier's thinking was an apparent belief that he could do business with the Bosnian Serbs. Janvier may have turned down the crucial request for Close Air Support on the night before the town fell because he sincerely believed General Tolimir's promise the Serb attack had stopped. Janvier was quick to believe Serb propaganda and Mladic's complaints about Muslim provocations, according to aides. Janvier argued in the June 9 meeting in Split that the Serbs would no longer defy the UN if they were treated with respect.

DAVID RHODE, ENDGAME: THE BETRAYAL AND FALL OF SREBRENICA, EUROPE'S WORST MASSACRE SINCE WORLD WAR II 367 (1997).

result of many unscrupulous and manipulative leaders seeking their own power and wealth at the expense of ordinary people in their countries."[21]

The antithesis of fairness is artificial impartiality and moral equivalence. An example of moral equivalence created through falsehoods occurred when, immediately after the Sarajevo market was struck by an artillery shell in 1995 killing 68 Bosnians, General Michael Rose threatened that, unless the Bosnian government signed up to yet another cease-fire, the general would disclose to the media the Bosnian government had killed its own people in an attempt to gain international sympathy. General Rose's threat was made with full knowledge that a UN investigation had determined the shell had in fact been fired by Serbian forces, and that the U.S. embassy in Belgrade had reported that the conspiracy theory of Bosnian government responsibility had in fact originated in Belgrade as part of its propaganda effort.[22]

The antithesis of rectitude is behavior intended to erode the moral imperative to take action. For example, Secretary Christopher sought to erode the moral imperative to use force or take other aggressive action, when he testified before the U.S. Congress in the spring of 1993 that all parties to the conflict were equally responsible for the atrocities, which did not amount to a campaign of genocide. At the time internal CIA and State Department reports—subsequently leaked to the *New York Times*—indicated over 90 percent of the atrocities were being committed by Serbian forces, and the campaign very likely constituted attempted genocide.[23]

The antithesis of retribution/requital is political legitimization and de facto or de jure immunity. Political legitimization occurs when individuals responsible for war crimes are embraced by the international mediators or others as "partners in peace," and essential to the peace process. For instance, David Owen repeatedly legitimized Radovan Karadzic by embracing him as a legitimate partner in the ICFY negotiations in Geneva, despite Karadzic's clear culpability at the time for attempted genocide. Similarly, Richard Holbrooke's now famous quote just before the negotiation of the Dayton Accords, "[y]ou can't make peace without President Milosevic,"[24] reestablished Milosevic as a legitimate partner in peace despite his orchestration of genocide against non-Serbs. De facto immunity is best represented by NATO's initial reluctance to apprehend indicted war criminals at large in Bosnia and what may be perceived as

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[21] WESLEY K. CLARK, WAGING MODERN WAR: BOSNIA, KOSOVO, AND THE FUTURE OF COMBAT 68 (2001).

[22] Telegram from American Embassy in Belgrade to Department of State (Feb. 16, 1994) (Doc. No. 94BELGRA01232).

[23] *See* MICHAEL P. SCHARF, BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG 31 (1997).

[24] Jurek Martin, *US Fears Wider War in Balkans if Bosnia Talks Fail*, FIN. TIMES (London), Nov. 2, 1995, at 3.

Slobodan Milosevic's immunity, until the spring of 1999, from his international crimes.

*III. The Functions of Justice*

Within the context of creating stable, peaceful societies out of war-torn states, the norms and institutions of justice may serve several functions. These include establishing individual responsibility and denying collective guilt, dismantling and discrediting institutions and leaders responsible for the commission of atrocities, establishing an accurate historical record, providing victim catharsis, and promoting deterrence.

### A. Establishing Individual Responsibility and Denying Collective Guilt

The first function of justice is to expose the individuals responsible for atrocities and to avoid assigning guilt to an entire people. If foreign policymakers fail to grasp the notion of individual responsibility, they are likely to assign collective responsibility to an entire population. Not only is such an assignation of guilt inappropriate and unfair, but it will likely skew the policy options under consideration for managing the crisis.

Importantly, by assigning guilt to specific perpetrators on all sides, the Tribunal was designed to avoid the assignment of collective guilt which had characterized the years following World War II and in part laid the foundation for the commission of atrocities during the 1990s Balkan conflict. "Far from being a vehicle for revenge," the first President of the Yugoslav Tribunal, Antonio Cassese, explains, by individualizing guilt in hate-mongering leaders and by disabusing people of the myth that adversary ethnic groups bear collective responsibility for the crimes, "[the Yugoslav Tribunal] is a tool for promoting reconciliation."[25]

The assignment of individual guilt to government leaders would also serve the purpose of providing the justification for any use of force to prevent the continued commission of atrocities. As noted by Michael Walzer:

> [t]he assignment of responsibility is the critical test of the argument for justice. . . . If there are recognizable war crimes, there must be recognizable criminals. . . . [T]he theory of justice should point us to the men and women from whom we

[25] *Report of the 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*, U.N. SCOR, 49th Sess., at 12, U.N. Doc. A/49/342 (1994).

> can rightly demand an accounting, and it should shape and control the judgments we make of the excuses they offer (or that are offered on their behalf). . . . There can be no justice in war if there are not, ultimately, responsible men and women.[26]

While this function requires prosecution of responsible leaders, where the norms and institutions do not attach individual liability to a significant number of the individuals responsible for the commission of war crimes, they run the risk that they will be unable to perform the function of denying collective guilt, as many victims and observers will still believe that large or important sections of the group associated with the atrocities are still at large and will thus tend to blame the entire group rather than risk inadvertent impunity. Moreover, those persons who escape individual responsibility will feel emboldened by their impunity and are more likely to commit future crimes or interfere with the peace-building process in other ways. This risk is particularly acute in the former Yugoslavia where the Office of the Prosecutor has indicted only approximately 100 individuals of the over 7,000 it estimates are indictable.

### B. Dismantling Institutions and Discrediting Leaders Responsible for Atrocities

The second function of justice is to provide a foundation for dismantling institutions and discrediting leaders and their ideology that have promoted war crimes. When a government pursues policies of ethnic cleansing or systematically denies human rights, it is often done through legal structures. South Africa's apartheid government used its constitution to oppress, and special government forces to torture and murder, members of black opposition groups. The South African Truth and Reconciliation Commission was later given the task of documenting the full extent of government involvement in racial killings and incidents of torture to help remove the stigma of past wrongs from new governmental institutions. In Yugoslavia, too, government leaders and government forces were a driving force behind much of the ethnic killing.

Through the work of various justice-based institutions, in particular the Tribunal, it becomes possible to promote the dismantling of the institutions and a discrediting of the leaders who encouraged, enabled, and carried out the commission of humanitarian crimes. Drawing on his experience as the head of South Africa's Goldstone Commission (a predecessor to the South African Truth and Reconciliation Commission), Justice Goldstone observes that "exposure of the nature and extent of human rights violations

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[26] MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS 287-88 (1977).

frequently will reveal a systematic and institutional pattern of gross human rights violations. It will assist in the identification and dismantling of institutions responsible [for these crimes] and deter future recurrences."[27]

In the case of Serbia, there is particular benefit to laying bare to Serbs unscathed in Belgrade the consequences of nationalistic rhetoric.[28] Even for those who continue to support Bosnian Serb leader Radovan Karadzic and former Serb President Slobodan Milosevic, "it will be much more difficult to dismiss live testimony given under oath than simple newspaper reports," the Tribunal's deputy prosecutor, Graham Blewitt points out. "The testimony will send a reminder in a very dramatic way that these crimes were horrendous,"[29] and presumably aid in the continued democratic transformation of Serbia. A notable effect to date of the norm of justice has been to discredit the concept that it is permissible to commit atrocities in the effort to create a greater Serbia. For instance, the Serbian Orthodox Patriarch Pavle, speaking in Kosovo in June 1999, declared, "'If the only way to create a greater Serbia is by crime . . . then I do not accept that, and let that Serbia disappear. And also if a lesser Serbia can only survive by crime, let it also disappear. And if all the Serbs had to die and only I remained and I could live only by crime, then I would not accept that, it would be better to die.'"[30]

By failing to make sufficient information available about the individuals, institutions, and ideologies associated with the commission of atrocities, there is a significant risk that these individuals, institutions, and ideas may in fact attain some degree of de facto legitimization. For instance, the Office of the Prosecutor's prolonged failure to publicly indict the leaders of the Serbian political and military regime responsible for the atrocities in Bosnia and the failure of the United States to consistently identify certain political leaders as suspected war criminals—and in fact publicly rehabilitating them—served the purpose of legitimizing the Serbian regime, which then committed nearly identical atrocities in Kosovo. Moreover, the failure of the United States and its allies to provide the Tribunal with the resources and evidence to indict Slobodan Milosevic prior to the Dayton negotiations enabled him not only to substantially influence the institutional structure of post-war Bosnia in a manner which furthered his objectives but also legitimized him as a partner in peace.

The need for the mechanisms of justice to de-legitimize the perpetrators of international crimes is all the more crucial given the

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[27] Goldstone, *supra* note 4, at 490.

[28] *See* PETER MORGAN, A BARREL OF STONES: IN SEARCH OF SERBIA 51-53 (1997) (offering an important discussion of how the citizens of Serbia have managed to psychologically shield themselves from the atrocities committed in their name).

[29] Interview with Graham Blewitt, Deputy Prosecutor, International Criminal Tribunal for the Former Yugoslavia, in The Hague, Netherlands (July 25, 1996).

[30] Carlotta Gall, Serb Orthodox Leaders Denounce Milosevic's Policies as Criminal, N.Y. TIMES, June 29, 1999, at A9.

propensity of international peace negotiators to either avoid assigning responsibility for such crimes or to actually praise the behavior and personal characteristics of war criminals. A telling example is a previously classified State Department demarche to Radovan Karadzic in April 1994 concerning the commission of war crimes in Banja Luka and the UN safe area of Gorazde, which declares, "those responsible for committing these crimes should be apprehended and punished. We expect you to do so."[31] As noted in the Tribunal's indictment of Karadzic for genocide, he was in fact the individual known to be responsible for orchestrating these crimes. More damaging to the peace process and the operation of the norm of justice may be frequent accolades, such as David Owen's description of Radovan Karadzic (later indicted for genocide) as a "gracious host," with "excellent English." Other examples of this include Warren Christopher's characterization of Slobodan Milosevic (later indicted for crimes against humanity and genocide) as "[t]hough unscrupulous and suspected of war crimes, Milosevic has a rough charm, and he appealed to some Western European leaders as a bulwark against an Islamic tide."[32] Richard Holbrook similarly characterized Milosevic as willing to walk the extra mile for peace in Dayton. One of the more vivid journalistic accounts, according to Carol Hodge, was a Milosevic-friendly BBC program aired during the Kosovo air campaign titled "In the Mind of Milosevic," which portrayed him as a man who "'talks, laughs, is a good singer, and likes a drink occasionally and who, unlike President Clinton, doesn't cheat on his wife.'"[33] Finally, a senior British army officer characterized General Mladic (indicted for genocide) in the following terms, "he has presence, and when he had power he wielded it ruthlessly. That brought him some grudging respect, if not admiration."[34]

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[31] Telegram from Secretary of State to American Embassy in Vienna (Apr. 1994).

[32] WARREN CHRISTOPHER, IN THE STREAM OF HISTORY: SHAPING FOREIGN POLICY FOR A NEW ERA 352 (1998).

[33] HODGE, supra note 15, at 32.

[34] Unnamed British UNPROFOR officer, Reuters, Nov. 10, 1996. *But see* CLARK, *supra* note 21, at 58 (noting that "[Mladic] carried a reputation among the U.N. forces for cunning and forcefulness, I found him coarse and boastful. He knew far less than he thought about NATO, airpower, and the capabilities of the United States.").

### C. Establishing an Accurate Historical Record

The third function served by justice is to establish an accurate accounting of the actions of all parties and to create an accurate historical record. If, to paraphrase George Santayana, a society is condemned to repeat its mistakes if it does learn the lessons of the past, then a reliable record of those mistakes must be established if we wish to prevent their recurrence. Michael Ignatieff recognizes that the "great virtue of legal proceedings is that [their] evidentiary rules confer legitimacy on otherwise contestable facts. In this sense, war crimes trials make it more difficult for societies to take refuge in denial; the trials do assist the process of uncovering the truth."[35] The chief prosecutor at Nuremberg, Supreme Court Justice Robert Jackson, underscored the logic of this proposition when he reported to President Truman that one of the most important legacies of the Nuremberg trials following World War II was that they documented the Nazi atrocities "with such authenticity and in such detail that there can be no responsible denial of these crimes in the future and no tradition of martyrdom of the Nazi leaders can arise among informed people."[36]

In both Guatemala and El Salvador, truth commissions were established to resolve disputes between the former combatants as to who was responsible for which atrocities. In each case an objective historical record led to the establishment of credible judicial systems that then helped to sustain peace.[37] The problems of accurately assessing blame for war crimes in the former Yugoslavia is especially acute. In Richard Goldstone's words, "It doesn't take hours after human rights violations for the denials to begin. . . . Justice plays a vital role in stopping that fabrication, in stopping that cover-up, which is inevitable."[38]

The need for an accurate accounting of the conflict is all the more compelling in the case of the former Yugoslavia as according to Natasha Kandic, head of the Humanitarian Law Fund in Belgrade, "when I tried to talk about what I had seen and experienced [concerning atrocities in Kosovo], people would get impatient and change the subject. It's as if people here simply don't want to know the truth about what happened in

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[35] Michael Ignatieff, *Articles of Faith*, INDEX ON CENSORSHIP, Sept.-Oct. 1996, *reprinted in The Elusive Goal of War Trials*, HARPER'S MAG., Mar. 1997, at 15, 16.

[36] *Report to the President from Justice Robert H. Jackson, Chief of Counsel for the United States in the Prosecution of Axis War Criminals*, Oct. 7, 1946, quoted in 49 AM. J. INT'L L. 44, 49 (1955).

[37] *See* Neil J. Kritz, *The Rule of Law in the Postconflict Phase: Building a Stable Peace*, *in* MANAGING GLOBAL CHAOS: SOURCES OF AND RESPONSES TO INTERNATIONAL CONFLICT 587, 598-99 (Chester A. Crocker et al. eds., 1996).

[38] Justice Richard J. Goldstone, *Healing Wounded People*, Speech at the United States Holocaust Memorial Museum (Jan. 27, 1997).

Kosovo. Even the intellectuals are under the influence of official propaganda."[39]

If the institution of the Yugoslav Tribunal operates as designed, the Tribunal should generate a comprehensive record of the nature and extent of crimes against humanity and genocide in the Balkans, how they were planned and executed, the fate of individual victims, who gave the orders and who carried them out. By carefully proving these facts one witness at a time in the face of vigilant cross-examination by distinguished defense counsel, the international trials would produce a definitive account that can pierce the distortions generated by official propaganda, endure the test of time, and resist the forces of revisionism.

Failure to create a comprehensive record will undermine many, if not all, of the benefits associated with creating an accurate record. This risk is heightened when only one institution of justice is employed, or where others are minimized. For instance, although the Yugoslav Tribunal is capable of creating a lengthy record for cases on its docket, there is no official process for summarizing findings, and no process for including facts not relevant to the specific cases before the Tribunal. In addition, where a defendant is not present before the Tribunal the indictment and Rule 61 hearing provide only a minimal basis for assessing the truth of the alleged actions. In other cases, the death of defendants prior to judgment led to a dismissal of their case, thereby erasing the official history of atrocities.

### D. Victim Catharsis

The fourth function of justice is to acknowledge the victims of crimes—an often overlooked but equally important element to the success of any peace process as is punishing the offenders. Offering victims an opportunity to state their injuries publicly can "provide victims with a sense of justice and catharsis—a sense that their grievances have been addressed and can more easily be put to rest, rather than smoldering in anticipation of the next round of conflict."[40]

In South Africa, the Truth Commission heard tearful testimony from thousands of victims as well as the confessions of many who played a role in brutal killings for the apartheid regime. Although some of this testimony was offered in exchange for amnesty, the overall effect was to purge the national consciousness of past racial killings so that the society may be rebuilt. In Yugoslavia the same logic was used in the International Criminal Tribunal's creation. According to the Yugoslav Tribunal's first president, Antonio Cassese, the pursuit of justice "is essential to the restoration of

[39] Michael Dobbs, *Serbs Shun Discussion of Atrocities*, WASH. POST, June 24, 1999, at A1.

[40] Ambassador David Scheffer, Address at Dartmouth University (Oct. 1998).

peaceful and normal relations especially for people who have had to live under a reign of terror [because] [i]t breaks the cycle of violence, hatred, and extra judicial retribution."[41]

As Richard Goldstone noted, "the Nuremberg Trials played an important role in enabling the victims of the Holocaust to obtain official acknowledgment of what befell them."[42] Such acknowledgment constitutes a partial remedy for their suffering and a powerful catharsis that can discourage acts of retaliation. According to Antonio Cassese, the "only civilized alternative to this desire for revenge is to render justice" for otherwise "feelings of hatred and resentment seething below the surface will, sooner or later, erupt and lead to renewed violence."[43] As confirmed by Munira Subasic, who lost her husband and one son in the Srebrenica massacre, "if we are deprived of the right to justice, then we shall seek the right to revenge."[44]

If the norm of justice is employed, but not effectively, it can have the disadvantage of raising the expectations of victims, and then causing them additional psychological trauma as they come to perceive themselves as abandoned, or worse, used by the international community to clear its own conscience. As Justice Goldstone noted in response to the persistent failure of the international community to arrest indicted war criminals Radovan Karadzic and Ratko Mladic, "[i]magine [the victims'] disappointment at the failure of the international community to follow through with the arrest of those indicted. If this situation is not corrected, the establishment of the Yugoslav Tribunal will have caused more harm than good to the persons it was intended to benefit."[45]

### E. Deterrence

Finally, in the case of criminal prosecutions, the execution of justice ideally acts as a deterrent against future humanitarian crimes, or at least sets a precedent for accountability. As observed by David Scheffer, the U.S. ambassador at large for war crimes issues, "[w]e know from experience in Bosnia that local authorities—camp commanders and temporary local

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[41] Yugoslav Tribunal, *Joint Statement By the President and the Prosecutor,* U.N. Doc. CC/PI0/027-E (Nov. 24, 1995).

[42] Richard J. Goldstone, *Fifty Years After Nuremberg: A New International Criminal Tribunal for Human Rights Criminals, in* CONTEMPORARY GENOCIDES: CAUSES, CASES, CONSEQUENCES 215, 215-16 (Albert J. Jongman ed., 1996).

[43] First Annual Report of the 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,* U.N. GAOR, 49th Sess., Agenda Item 152, ¶ 15, U.N. Docs. A/49/342, S/1994/1007 (1994).

[44] *Survivors Condemn 'Lenient' Verdict* (BBC television broadcast, Aug. 2, 2001).

[45] Goldstone, *supra* note 4, at 499.

'officials'—sometimes do what they can to improve the circumstances of those under their care once they know that the international community will investigate and punish those who fail to respect human rights standards.'"[46] Richard Goldstone adds that the existence of the Tribunal may have deterred widespread human rights violations during the Croatian army offensive against Serb rebels in August 1995. "Fear of prosecution in The Hague," he said, "prompted Croat authorities to issue orders to their soldiers to protect Serb civilian rights when Croatia took control of the Krajina and Western Slavonia regions of the country."[47]

Unfortunately, as the Tribunal was not at the time perceived to be a meaningful threat, these "orders" were generally ignored with the consequence that the Serbian population was subject to numerous atrocities. Goldstone also argued that by broadcasting televised highlights of the trials throughout Bosnia and Serbia, that message could get through directly to the citizenry, "people don't relate to statistics, to generalizations. People can only relate and feel when they hear somebody that they can identify with telling what happened to them. That's why the public broadcasts of the Tribunal's cases can have a strong deterrent effect"[48]

Moreover, the international prosecution of responsible individuals can become "an instrument through which respect for the rule of law is instilled into the popular consciousness."[49] As Judge Gabrielle Kirk McDonald, who presided over the Tribunal's first trial, succinctly put it, "[w]e are here to tell people that the rule of law has to be respected."[50] The establishment of the rule of law is particularly important since a dominant characteristic of the post-Cold War era in international affairs is that conflicts occur among peoples of different ethnic and religious backgrounds *within* states, not between them. In war-torn societies, one of the most basic obstacles to reconciliation is a lack of trust on the part of citizens between each other and with their government. And one of the most effective ways to institutionalize that trust is to establish a stable legal system and the rule of law.[51]

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[46] David J. Scheffer, *International Judicial Intervention*, FOREIGN POL'Y, Spring 1996, at 34, 39.

[47] *War Crimes Prosecutor Says Tribunal May Have Deterred Violations*, DEUTSCHE PRESSE-AGENTUR, Jan. 26, 1996, LEXIS, News Library, DPA File.

[48] Interview with Richard Goldstone, Justice of the Constitutional Court of South Africa, in Brussels, Belgium (July 20, 1996).

[49] See Payam Akhavan, Justice in the Hague, Peace in the Fonner Yugoslavia? *A Commentary on the United Nations War Crimes Tribunal*, 20 HUM. RTS. Q. 737, 749 (1998).

[50] William W. Horne, *The Real Trial of the Century*, AM. LAW., Sept. 1995, at 5.

[51] By rule of law, one generally assumes the presence of an independent judiciary that is transparent, predictable, and impartial to the parties involved. The rule of law also relies upon a legitimate, representative government to enforce the judiciary's decisions. This should be distinguished from rule *by* law, through which authoritarian governments often

Although the punishment of crimes committed in the Balkans would send the message, both to potential aggressors and vulnerable minorities, that the international community will not allow atrocities to be committed with impunity, if a Tribunal is established and is unable to indict those responsible for orchestrating the campaign of terror—as the case with the inability to timely indict Mr. Milosevic for war crimes in Bosnia, then it may in fact encourage them to feel free to commit atrocities in a future conflict—as in Kosovo, believing they possess some degree of de facto immunity.

In many cases, however, the nature of injustice and internal pressures militate toward the establishment of a truth commission often accompanied by grants of amnesty to bring the dark practices of civil violence into the light without necessarily prosecuting the guilty.[52] Versions of this system has been adopted in South Africa, El Salvador, Chile, and Argentina, where the calculation was made that the benefits of healing wounds through the establishment of the truth outweighed the benefits of retributive justice.[53] But the particular circumstance of the crimes committed in the former Yugoslavia required the formation of an ad hoc criminal tribunal for both moral and practical reasons. First, the genocide, rape, and torture that occurred were of a nature and scale so horrific that nothing short of full accountability for those responsible would provide justice.[54] Second, the domestic legal systems in some of the republics of the former Yugoslavia had been so thoroughly corrupted that they were not competent to conduct a fair trial of the war's perpetrators, many of whom are still in power.

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use the legal system to legitimate their oppression. *See* Neil J. Kritz, *The Rule of Law in the Postconflict Phase: Building a Stable Peace, reprinted in* TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT 801-02 (Chester A. Crocker et al. eds., 2001).

[52] In the cases of Chile and Argentina, for example, "the prospect of trials for the gross violations of human rights perpetrated under the old regime provoked bald threats of military intervention." Kritz, *supra* note 37, at 595.

[53] The South African Truth Commission is the most successful example of this type of justice. Established with a two-year mandate, the Commission has strict criteria for whether or not applicants qualify for indemnity in return for their testimony. There has to have been a political motive for the applicant to have committed human rights violations and there must be some degree of proportionality between that motive and the offenses committed. At the time of this writing over 4,500 applications for indemnity had been received by the commission. *See* Goldstone, *supra* note 4.

[54] For a detailed accounting of "Serbian rape warfare" constructed from interviews with victims of mass rape, *see* SEADA VRANIC, BREAKING THE WALL OF SILENCE: THE VOICES OF RAPED BOSNIA (1996); MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA (Alexandra Stiglmayer ed., 1994); MARIA VON WELSER, AM ENDE WUNSCHST DU DIR NUR NOCH DEN TOD: DIE MASSENVERGEWALTIGUNGEN IM KRIEG AUF DEM BALKAN (1993); and BEVERLY ALLEN, RAPE WARFARE: THE HIDDEN GENOCIDE IN BOSNIA-HERZEGOVINA AND CROATIA (1996).

Given that the norm of justice is based upon near universally accepted principles and serves a variety of policy relevant functions ranging from deterrence to victim catharsis, one might expect that it would play a central if not determinative role in the peace-building process. The norm of justice must, however, compete for influence with other highly relevant and practicable approaches such as accommodation, economic inducement, and the use of force, which are based on equally compelling principles, and which have a longer history of use by peace builders.

## *IV. Accountability versus Accommodation*

### A. Defining the Approach of Accommodation

The approach of accommodation seeks to reduce conflict by accommodating the interests of adversarial states or parties. In most instances, the approach of accommodation instructs a negotiator to seek to end the conflict by meeting as many of the objectives of each party as possible, thereby accommodating their interests and satiating their appetite for more conflict. If applied appropriately, the norm can lead to the creation of win-win gaming situations where each party is able to attain its objectives without unduly prejudicing the interests of the other party. Such an outcome is most probable in a prisoners' dilemma and related situations, and least possible in deadlock situations. To achieve political support for accommodation, peace builders often employ the tools of anti-justice. If applied recklessly or forced on a deadlock situation, such as the situation in the former Yugoslavia, the norm of accommodation can ratify illegitimate actions of a party and enhance its appetite for similar gains through further conflict.

Institutions and individuals most frequently associated with the approach of accommodation tend to be those most closely associated with peace negotiations and thus include special envoys such as Yasushi Akashi and Richard Holbrooke; and UN/EU peace conference co-chairs Lord Carrington, Cyrus Vance, David Owen, Carl Bildt, and Thorvald Stoltenberg. Accommodation is frequently the approach of choice because it is the approach around which it is the easiest to build political will, and it is the approach most likely to lead to a formal agreement among the parties.

The brokering of the Washington Agreement between Croatia and Bosnia represents an example of the appropriate utilization of the accommodation norm in that it was used to craft a relationship between Bosnia and Croatia which sought to meet the needs, as far as possible, of both parties while creating a system of democratic government capable of preserving those interests. Unfortunately the system has in practice proven difficult to implement, and may have represented too much of an accommodation of minority interests.

One of the more committed applications of the accommodation norm was the proposed Vance/Owen Peace Plan which intended to bring peace by essentially partitioning Bosnia into ethnically based cantons and permitting the Serbian cantons to de facto confederate with Serbia proper. The proposal thus sought to achieve peace at the expense of ratifying the aims of the campaign of ethnic cleansing and legitimizing the anti-multicultural nationalism propagated by the Serbian and Croatian combatants. In fact, earlier David Owen had proposed that as EU mediator he actively engage the parties in redrawing their territorial boundaries. When this was rejected by eleven of the EU states he believed "[t]he refusal to make these borders negotiable greatly hampered the EC's attempt at crisis management in July and August 1991 and subsequently put all peacemaking from September 1991 onwards within a straitjacket that greatly inhibited compromises between the parties in dispute."[55]

As it was, the Vance/Owen Peace Plan was widely perceived as the catalyst for the conflict between Bosnian Croats and the Bosnian government as the Bosnian Croats sought to capture land "promised" them under the peace plan.[56] Similarly, with the aim of peace, the peace negotiators embarked on an approach until 1995 of continually redrafting peace plans to offer more and more favorable terms to the Serbian party when it rejected earlier "take it or leave it" offers by the Contact Group.[57] Some critics have even argued UNPROFOR commander General Janvier deliberately denied close air support to the UN Dutch defenders of Srebrenica in order to make a negotiated settlement more feasible.[58] Other

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[55] DAVID OWEN, BALKAN ODYSSEY 33 (1995).

[56] *See* YVES HELLER, DES BRASIERS MAL ETEINTS: UN REPORTER DANS LES GUERRES YOUGOSLAVES 1991-95 (1997). For a firsthand account by a British officer of the conflict resulting from the Vance/Owen Peace Plan, *see* BOB STEWART, BROKEN LIVES: A PERSONAL VIEW OF THE BOSNIAN CONFLICT (1994).

[57] *See* 1.7 BALKAN WATCH: ACTION COUNCIL FOR PEACE IN THE BALKANS (Washington, D.C.), Oct. 24, 1994, *available at* http://www.publicinternationallaw.org/programs/balkans/archives/1994/BW17.DOC.

[58] According to David Rhode, "The series of statements and proposals made by Janvier before, during and after Srebrenica's fall indicate he may have intentionally allowed the safe area to fall." RHODE, *supra* note 20, at 364. Rhode acknowledges though that:

> Taking the extraordinary step of deciding to sacrifice a UN safe area on his own without the permission of his superiors does not fit into Janvier's character, according to supporters and detractors. 'This was a man who should've been selling roasted chestnuts on the streets of Paris,' said one former UNPROFOR official. 'Not making these kinds of decisions.'

RHODE, *supra* note 20, at 368. Rhode also noted:

commentators note air strikes were also blocked by the French government as it had promised General Mladic it would seek to prevent air strikes in exchange for the release of two French pilots and several hundred UNPROFOR peacekeepers held hostage by Bosnian Serb forces in the spring of 1995.[59]

The perspective of those supporting unfettered accommodation when faced with the criticism that the approach of accommodation might reward the use of force and ethnic cleansing, is typified by Canadian general Lewis MacKenzie, the former head of the UN forces in Bosnia when he testified before the U.S. Congress that "[n]ow, obviously the critics will say this rewards force and sets a bad example. I can only say to them, read your history. Force has been rewarded since the first caveman picked up a club, occupied his neighbor's cave and ran off with his wife."[60]

Unfortunately, the over reliance on the approach of accommodation can create situations where once diplomacy alone fails, policymakers are reluctant to move on to or incorporate other norms, creating even more intractable conflicts. As noted by former British defense minister Sir John Nott in 1994, "[w]e will not bring about a diplomatic solution. Even if there is peace obtained, it cannot hold. We have given these diplomats, these committees . . . two and a half years to bring about peace, and they have failed. . . . I would remove the arms embargo [on the Bosnian Government] straight away because it is only a military balance now in that part of the world that can restore stability."[61] Similarly, Ed Vulliamy, the correspondent for the *Guardian* during the Bosnian conflict, argued that an early use of force against Serb military targets designed to neutralize their artillery and destroy their communications system would have brought them to the negotiating table, and then "the Serbs would have been required

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> Suspicions about what U.S. intelligence knew about the attack on Srebrenica and subsequent executions have been high. The CIA, the theory goes, knew of the pending attack and knew the town would fall. The United States then stood by as Srebrenica fell and an enclave that didn't fit into Anthony Lake's endgame strategy was eliminated. Aerial photos of suspected mass graves, according to the theory, were suppressed until after the executions were well over to avoid embarrassment and the United States being called on to stop the killing.

*Id.* at 368-69.

[59] Chuck Sudetic, The Reluctant Gendarme: Why Is France Protecting Indicted War Criminals in the Sector of Bosnia It Controls?, THE ATLANTIC MONTHLY, Apr. 2000, at 91, 97.

[60] *Hearing of the House Armed Services Committee: U.S. Policy Toward Bosnia*, FED. NEWS SERVICE, May 26, 1993, LEXIS, FEDNEW File (statement of Major General Lewis MacKenzie).

[61] Sir John Nott, Reuters, Nov. 26, 1994, *reprinted in* 1.12 BALKAN WATCH: ACTION COUNCIL FOR PEACE IN THE BALKANS (Washington, D.C.), Nov. 28, 1994, *available at* http://www.publicinternationallaw.org/programs/balkans/archives/1994/BW112.DOC.

to dismount the sieges and to accept international supervision in a complete reversal of ethnic cleansing. This would have been infinitely easier in 1992 than the imposition of the Dayton plan—with its pledge to return all refugees—is now."[62] This assessment was supported by Manfred Woerner, the then NATO Secretary-General.[63]

In the end, the primary risk associated with the approach of accommodation is that it can become one of appeasement, and possibly even coercive appeasement.[64] While accommodation may be a useful and valuable tool, appeasement is characterized by an artificial moral equivalence, neutrality in the face of aggression, active efforts to erode the moral imperative to become involved, and the total exclusion of the use of force and the norm of justice, with the effect of often encouraging further violence and atrocities.

The approach of coercive appeasement is more nuanced and entails appeasement within the context of the perceived use of force and the perceived incorporation of the norm of justice. Coercive appeasement is characterized first by a general diplomatic deficit which entails the failure to create the conditions for effective leadership or the articulation of a clear policy objective coupled with the inability to structure a coordinated or capable diplomatic process for peace-building. This diplomatic deficit is augmented by a failure to adequately undergo institutional and personal "learning" during the peace-building process. Often the diplomatic deficit encompasses the unintentional misuse of diplomatic signaling, and the readily transparent articulation of intentions by the peace-builders. Coercive appeasement is also characterized by aggressive accommodation, which entails the pursuit of actions designed to meet the needs and interests of the aggressor, coupled with intentional or unintentional obfuscation of the aggressor's true objectives.

Moral duplicity is also an element of coercive appeasement, consisting of the application of pressure on the victims designed to compel their acquiescence to the primary demands of the aggressor, coupled with intentional and unintentional actions designed to create division among the political representatives of the victim state. Moral duplicity also frequently entails declarations and actions designed to create the perception of moral equivalence among the parties, thereby eroding the distinction between aggressor and victim and spreading culpability among all parties.

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[62] Vulliamy, *supra* note 3, at 81.

[63] Geyer, *supra* note 11, at 82-83.

[64] *Serb leaders "engaged in high-level negotiations with representatives of the international community while their forces on the ground, executed and buried thousands of men and boys within a matter of days. . . . At various points during the war, these negotiations amounted to appeasement."* Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica, *U.N. GAOR, 54th Sess., Agenda Item 42, ¶¶ 468, 500, U.N. Doc. A/54/549 (1999).*

Frequently these official pronouncements are designed to actively erode the moral and strategic imperative to adopt approaches other than that of accommodation. Finally, coercive appeasement may be characterized by constrained use of force, which entails activities designed to constrain and minimize the use of legitimate force, and marginalized justice, which entails actions designed to minimize and obfuscate the role of justice, including the political resurrection of culpable partners in peace.

### B. Forcing a False Choice Between Justice and Accommodation

Traditionally, many foreign policy practitioners and scholars have perceived of justice and peace in conflicting terms. The choices are often cast in terms of either working toward peace and ignoring justice or seeking justice at the price of jeopardizing any chance for peace.[65] Proponents of peace are typically characterized as "more aware, more worldly," while those in favor of justice are characterized as "living in an unreal world, shall we say, a metaphysical or idealistic realm."[66]

While this distinction is overly artificial, historically, amnesty or de facto immunity from prosecution has often been the price for peace. The Turks, who many considered responsible for the genocidal massacre of over one million Armenians during World War I, were given amnesty in the 1923 Treaty of Lausanne;[67] the French and Algerians responsible for the slaughter of thousands of civilians during the Algerian war were given amnesty in the Evian Agreement of 1962; and Bangladesh gave amnesty in 1973 to Pakistanis charged with genocide in exchange for political recognition by Pakistan.[68]

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[65] Keith Doubt, *"We Had to Jump Over the Moral Bridge": Bosnia and the Pathetic Hegemony of Face-work*, *in* THE CONCEIT OF INNOCENCE: LOSING THE CONSCIENCE OF THE WEST IN THE WAR AGAINST BOSNIA 121 (Stjepan G. Mestrovic ed., 1997).

[66] *Id.*

[67] *See* Vahakn N. Dadrian, *The Historical and Legal Interconnections between the Armenian Genocide and the Jewish Holocaust: From Impunity to Retributive Justice*, 23 YALE J. INT'L L. 503, 510-11 (1998). Initially, the Allied Powers sought the prosecution of those responsible for the massacres. The Treaty of Sevres, which was signed on August 10, 1920, would have required the Turkish government to hand over those responsible to the Allied Powers for trial. *See* Treaty of Peace Between the Allied Powers and Turkey (Treaty of Sevres), Aug. 10, 1920, art. 142, *reprinted in* 15 AM. J. INT'L L. 179, 209 (Supp. 1921). The Treaty of Sevres, however, was not ratified and did not come into force. It was replaced by the Treaty of Lausanne, which not only did not contain provisions respecting the punishment of war crimes, but also was accompanied by a "Declaration of Amnesty" of all offenses committed between 1914 and 1922. *See* Treaty with Turkey and Other Instruments Signed at Lausanne (Treaty of Lausanne), July 24, 1923, *reprinted in* 18 AM. J. INT'L L. 1, 37, 50-52, 92-95 (Supp. 1924).

[68] *See* M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 228-30 (1992). During the war of Bangladesh's independence, West Pakistan troops killed approximately one million East Pakistanis who supported efforts to establish the

During the 1980s, to facilitate a transition to democracy, the governments of Argentina, Chile, El Salvador, Guatemala, and Uruguay each granted amnesty to members of the former regime who commanded death squads that tortured and killed thousands of civilians within their respective countries.[69] To this list must be added the modern practice of the United Nations, which in the early 1990s worked to block inclusion of provisions in the Cambodia peace accords providing for the prosecution of former Khmer Rouge leaders for their atrocities, pushed the Mandela government to accept an amnesty for crimes committed by the apartheid regime in South Africa, and helped negotiate, and later endorsed, a broad amnesty for the leaders of the Haitian military regime in order to induce them to relinquish power.[70]

Even the Nuremberg experience eventually involved the bartering away of accountability as the cost for German support of the Western alliance during the beginning of the Cold War. Within ten years of the conclusion of the Nuremberg Trials, all 150 of the convicted German war criminals (including several who were serving life sentences and a few who were sentenced to death) were released from Landsberg prison pursuant to a controversial clemency program.[71] While this program removed a "diplomatic pebble from the State Department's shoes," it had the effect of undermining the purpose of the Nuremberg Trials. In a nation-wide survey conducted by the U.S. State Department, West Germans overwhelmingly indicated their belief that the reason for American leniency was that "[t]hey realize the injustice of the trials."[72]

As explained by an anonymous UN official, the quest for justice and retribution is traditionally believed to hamper the search for peace, which in turn prolongs the conflict, enables the continuation of atrocities, and increases human suffering. The UN official also asserts that the intrusion of fact-finding missions seeking to investigate crimes committed by one side

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independent nation of Bangladesh. India and Bangladesh initially agreed to bring charges of genocide and crimes against humanity against 195 of the 10,000 Pakistani troops who had been captured by India. Meanwhile, Pakistan filed a case before the International Court of Justice to compel India to repatriate the Pakistani troops. Ultimately, political considerations prevailed and in 1973 Bangladesh and India agreed not to prosecute the Pakistani prisoners in exchange for political recognition of Bangladesh by Pakistan and the withdrawal of Pakistan's case against India before the International Court of Justice. *See id.*

[69] *See* Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, CAL. L. REV. 449, 458-61, 484 (1990).

[70] *See* Naomi Roht-Arriaza, *Conclusion: Combating Impunity*, *in* IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE 299-300 (Naomi Roht-Arriaza ed., 1995).

[71] *See* PETER H. MAGUIRE, LAW AND WAR: AN AMERICAN STORY 217, 221, 223 (2000). The Nuremberg Trials include the trial of the major Nazis before the International Military Tribunal and the twelve subsequent trials at Nuremberg (August 1946-April1949).

[72] *Id.* at 229.

may complicate the task of peace negotiations to the point where they become prolonged or impossible.[73]

Efforts to build peace in the former Yugoslavia were not exempt from the conflict between justice and accommodation.[74] According to Payam Akhavan of the Office of the Prosecutor of the Tribunal, "from its very inception in 1993, the International Criminal Tribunal for the former Yugoslavia was surrounded by the so-called 'peace versus accountability' controversy." According to Akhavan, "It was argued indicting political and military leaders such as Radovan Karadzic and Ratko Mladic would undermine the prospects of a peace settlement because they were indispensable to ongoing negotiations, and because they would have no incentive to put an end to the fighting without assurances of immunity or amnesty."[75] In fact, during his tenure as co-chairman of the Yugoslav Peace Conference, David Owen expressly opposed the prosecution of Serbian officials engaged in the peace negotiations on the basis that this would undermine his efforts to craft a settlement.[76]

Even after the massacre in Srebrenica and the clear pattern of genocide, policymakers doubted the compatibility of justice and accommodation. As noted by Richard Goldstone, "[p]articularly at the time of the negotiations at Dayton, Ohio, in September, 1995, there were many astute politicians and political commentators who suggested that, in fact, peace and justice were in opposition, and that the work of the Yugoslav Tribunal was retarding the peace process in the Balkans."[77] Some commentators even noted that with Radovan Karadzic's alleged approval rating among Bosnian Serbs of 79%, any NATO efforts to capture him would undermine the implementation of the Dayton Peace Accord and foster the Serbian people's belief that they were subject to perpetual injustice and persecution.[78] Goldstone rightly expressed surprise at this view, especially in light of the atrocities which had been committed over four years.[79]

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[73] Anonymous, *supra* note 2, at 256.

[74] *See* Jean E. Manas, *The Impossible Trade-off: "Peace" versus "Justice" in Settling Yugoslavia's Wars*, *in* THE WORLD AND YUGOSLAVIA'S WARS 42-43 (Richard H. Ullman ed., 1996).

[75] Akhavan, *supra* note 49, at 738.

[76] *See* Laurie A. Cohen, Application of the Realist and Liberal Perspectives to the Implementation of War Crimes Trials: Case Studies of Nuremberg and Bosnia, 2 UCLA J. INT'L L. & FOREIGN AFF. 113, 154 (1997-1998) (citing Mirko Klarin, The Moral Case for a War Crimes Tribunal, WALL ST. J. EUR., Mar. 17, 1994, at 8. According to Mirko Klarin,

[77] Goldstone, *supra* note 4, at 488.

[78] *See* Charles G. Boyd, *Making Bosnia Work*, FOREIGN AFF., Jan.-Feb. 1998, at 42, 50-51.

[79] *See* Goldstone, *supra* note 4, at 488. *See also* Floyd Abrams & Diane F. Orentlicher, *In Cambodia, as in Bosnia, Issue Is Punish or Pardon*, L.A. TIMES, Sept. 15, 1996, at M1.

In some cases, the existence of a mechanism of justice, such as a tribunal, may be used to further the efforts of those pursuing an approach of accommodation by indicating that the norm of justice plays a role outside the peace process and that questions of culpability belong solely with that mechanism. For instance, in February 1994, when Secretary of State Warren Christopher was under pressure by the media to identify those responsible for the commission of war crimes in Bosnia, which would have limited his ability to accommodate the interests of those individuals, his standard press guidance was: "I would like to emphasize that no conclusion can or should be drawn at this stage as to the culpability of particular individuals. This is a question that should be reserved for the War Crimes Tribunal or other court, where the question of culpability will be considered on a case-by-case basis."[80]

Still others, like Richard Holbrooke, asserted that in order to achieve the aims of justice, it was necessary to negotiate with and if necessary accommodate/appease those who were responsible for the commission of atrocities.[81] As such, the insistence on a role for justice was characterized as something which undermined the effectiveness of the negotiator. When asked by Senator Smith during his confirmation hearing why he had systematically declined to ever indicate Milosevic's guilt for the war and atrocities in the former Yugoslavia, Holbrooke responded, "This is tough slogging, and my job was not to make moral judgments. I leave that to moralists and political pundits and columnists, most of whom think they're moralists anyway. . . . I was well aware of the fact that I might have to continue to be engaged on other issues. And the highest goal here was to avoid war, bring peace."[82]

Many peace-builders also assert that the conflict between accommodation and justice reflects the perspectives of those on the ground trying to save lives versus those more distant from the conflict. For instance, during his confirmation testimony, Ambassador Holbrooke responded to criticisms of his persistent failure to acknowledge Milosevic's culpability as made "by people who haven't been there, who haven't tried to end wars and prevent wars."[83] Similar statements were made by numerous generals serving in UNPROFOR, who also invoked the mantra of "saving lives" over pursuing justice.[84] In fact, as reported by Cambridge

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[80] Department of State, *Final Genocide q/a*, Press Guidance, drafted Oct. 25, 1993 (released Dec. 13, 1998).

[81] *See* RICHARD HOLBROOKE, TO END A WAR 367 (1997).

[82] *Hearing of the Senate Foreign Relations Committee: Nomination of Richard Holbrooke as U.S. Ambassador to the United Nations*, FED. NEWS SERVICE, June 24, 1999, LEXIS, FEDNEW File (statement of Richard Holbrooke).

[83] *Id.*

[84] BRENDAN SIMMS, UNFINEST HOUR: BRITAIN AND THE BOSNIAN WAR 173-222 (2001) (discussing the approach of "saving lives" and the "man on the ground" argument).

historian Brendan Simms, many of the actual troops on the ground in the safe areas, and particularly SAS troops, were keenly aware of the failings of accommodation and urged for a stronger use of force in the pursuit of justice.[85]

The "saving lives" rational, while encapsulated in only two words, is a powerful tool used by the negotiators to undermine the influence of the norm of justice. By characterizing accommodation/appeasement of war criminals in the cloak of "saving lives," it automatically infers that those interested in justice are not interested in saving lives, or at least are willing to permit more killing in order to accomplish an idealistic objective. This view is succinctly stated by an anonymous UN official who criticized the then Yugoslav Tribunal prosecutor and president at the time for their public pressure on the Dayton negotiators. The UN official argues that their "ill-considered statements" could have led to a breakdown of delicate negotiations in Dayton.[86] "Everyone who was at the Dayton proximity talks knew that if this issue [mandatory cooperation with the Tribunal] were pressed it could have ruined the talks."[87] He declared that they were acting "irresponsibly" and asked, "in the name of what moral principle would one be able to defend those [further] deaths?"[88] As evidenced by the subsequent conflict in Kosovo, it was in fact the act of accommodation at Dayton that resulted in further deaths, and that only the use of force, coupled with the indictment of Milosevic, brought an end to ethnic cleansing perpetrated by Serbian forces.

Some scholarly commentators assert that the tension between justice and accommodation is inherent in that "[t]he need to establish power sharing structures that accommodate rival factions and interests may well clash with the desire to punish perpetrators of human rights abuses" and "the need to reform the police and the military may be at odds with the practical need to bring those powerful groups into the peace process."[89] In their eyes, the inherent tension "prompt[s] the question of which model works best in a given situation, the power-sharing conflict manager's model, or the democratizer's political justice model? Empirical evidence suggests that a concern for justice must be tempered by the realities of negotiation and by the parties' interests in reaching a political settlement."[90]

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[85] *Id.*

[86] Anonymous, *supra* note 2, at 257.

[87] *Id.* at 256.

[88] *Id.* at 257.

[89] Hampson, *supra* note 9, at 712.

[90] *Id.* (citing generally ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WAR (I. William Zartman ed., 1995)). *See also* DONALD L. HOROWITZ, ETHNIC GROUPS IN CONFLICT (1985); TIMOTHY D. SISK, POWER SHARING AND INTERNATIONAL MEDIATION IN ETHNIC CONFLICTS (1996); David A. Lake & Donald Rothchild, *Containing Fear: The Origins and Management of Ethnic Conflict*, INT'L SECURITY, Fall 1996, at 41; TRANSITIONAL JUSTICE:

In response, defenders of the justice norm have argued, "[i]n short, there is a grudging but emerging widespread acceptance—even among the so-called realists—that regional peace and stability, democratization, and multiethnic coexistence in Bosnia-Herzegovina are at best precarious without the arrest and prosecution of indicted persons," and that "[t]he [Yugoslav Tribunal] demonstrates that far from being irreconcilable, peace and accountability, realities and ideals, are inextricably interlinked."[91] According to Richard Goldstone, "if one is talking about short term cease-fires, short term cessation of hostilities, it could be that the investigation of war crimes is a nuisance. But if one is concerned with real peace, enduring and effective peace, if one is talking about proper reconciliation, then, in my respectful opinion, there is and can be no contradiction between peace and justice."[92]

Despite the tradition of an apparent overwhelming preference for accommodation over justice, there is no clear evidence that this approach promotes lasting peace.[93] In fact, the opposite may be the case. For example, history records that the international amnesty given to the Turkish officials responsible for the massacre of the Armenians during World War I encouraged Adolf Hitler some twenty years later to conclude that Germany could pursue his genocidal policies with impunity.[94] In 1939, in relation to the acts of genocide and aggression committed by German forces, Hitler remarked, "Who after all is today speaking about the destruction of the Armenians?"[95] As David Matas, a Canadian expert on international law, observed, "Nothing emboldens a criminal so much as the knowledge he can get away with a crime. That was the message the failure to prosecute for the Armenian massacre gave to the Nazis. We ignore the lesson of the Holocaust at our peril."[96]

Richard Goldstone declared that in the case of the former Yugoslavia the failure of the international community to prosecute Pol Pot (Cambodia), Idi Amin (Uganda), Saddam Hussein (Iraq), and Mohammed Aidid (Somalia), among others, encouraged the Serbs to launch their policy of ethnic cleansing with the expectation that they would not be held accountable for their

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HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES (Neil J. Kritz ed., 1995); *cf.* Timothy D. Mak, *The Case Against an International War Crimes Tribunal for Former Yugoslavia*, 2 INT'L PEACEKEEPING 536 (1995).

[91] Akhavan, *supra* note 49, at 739-40.

[92] Richard Goldstone, *The United Nations' War Crimes Tribunals: An Assessment*, 12 CONN. J. INT'L L. 227, 233-34 (1997).

[93] For a review of the failings of amnesties, *see* ARYEH NEIER, WAR CRIMES: BRUTALITY, GENOCIDE, TERROR, AND THE STRUGGLE FOR JUSTICE (1998).

[94] *See* Dadrian, *supra* note 67, at 532, 534, 538, 542.

[95] Adolf Hitler, Speech to Chief Commanders and Commanding Generals (Aug. 22, 1939), *quoted in* BASSIOUNI, *supra* note 68, at 176 n. 96.

[96] David Matas, *Prosecuting Crimes Against Humanity: The Lessons of World War I*, 13 FORDHAM INT'L L.J. 86, 104 (1989-1990).

international crimes.[97] When the international community encourages or endorses an amnesty for human rights abuses, it sends a signal to other rogue regimes that they have nothing to lose by instituting repressive measures; if things start going badly, they can always bargain away their crimes by agreeing to peace. The apprehension of Slobodan Milosevic in the spring of 2001 and his trial before the International Criminal Tribunal for the Former Yugoslavia may be the first step in the reversal of this long history of accommodation and de facto immunity.

Given the poor track record for accommodation, there has been increasing demand for an inclusion of the norm of justice in peace-building since the end of the Cold War.[98] For example, since 1989, some level of justice, in the form of international tribunals and truth commissions, has been pursued in Argentina, Cambodia, Chile, East Timor, El Salvador, Ethiopia, Guatemala, Honduras, Rwanda, Sierra Leone, and South Africa, as well as the former Yugoslavia.

## *V. Conclusion*

This article has illustrated how the approach of justice/accountability can aid the peace-building process by denying collective guilt through the establishment of individual responsibility, enabling the dismantling of institutions responsible for perpetuating the commission of atrocities, establishing an accurate historic record, providing a cathartic process for victims, and deterring atrocities in similar conflicts elsewhere.

While human rights and peace advocates have come to treat the norms and institutions of justice as a panacea for conflict and atrocities, professional diplomats generally continue to dismiss justice as at best mere moral window dressing and at worst an impediment to peace–which can best be pursued through the approaches of accommodation and/or use of force. Reared in the school of realism, peace-builders are often perplexed by the mantra of human rights advocates claiming there can be no peace without justice, when in fact history appears to be replete with many instances of peace based on injustice, as well as situations where pursuing justice has thwarted the quest of peace.

The case study of the Former Yugoslavia examined in this article demonstrates that the truth lies somewhere in between. Although plagued by disorganization, a lack of coherency, the pursuit of short term interests, and the frequent willingness to settle for public relations successes and

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[97] Michael Scharf, *The Case for a Permanent International Truth Commission*, DUKE J. COMP. & INT'L L. 375, 398 & n.128 (1997).

[98] For more on the increased demand for and ability to provide justice to those who have become victims of international war crimes, *see* Scheffer, *supra* note 46, at 34-51.

political victories rather than meaningful action, the injection of the norm of justice and approach of accountability into the Yugoslav peace-building process did have some measure of success. This is reflected in the creation of the first ever United Nations War Crimes Tribunal, the requirements to cooperate with the Tribunal built into the Dayton and Paris Peace Accords, the fall from power and eventual prosecution of officials responsible for international crimes, and the deployment of multi-national force to stop ethnic aggression and international peacekeepers to promote the protection of human rights in the area.

The effectiveness of the justice-based institutions developed for the Yugoslav crisis, however, was seriously undermined by an outdated perception held by the peace builders of the relationship between justice and peace-building, the lack of experience of peace-builders in creating and operating institutions of justice, and the lack of an understanding of the important role of justice by some of the key individuals tasked with operating the institutions of justice. The effect of this can be seen in the watering down of the justice provisions in the Dayton and Paris Accords, the failure to give a mandate to the military forces to apprehend indicted war criminals, the Tribunal's unnecessary delay in indicting Slobodan Milosevic, and the refusal of the Security Council to impose sanctions on Serbia for its many instances of non-cooperation with the Tribunal. Consequently, to date, few of the functions of justice have been fully realized in the former Yugoslavia. As a result of the mixed record of the approach of accountability in the Yugoslav crisis, many foreign policy practitioners and international relations scholars continue to view the role of justice in peace-building with significant skepticism.

But to turn away from the justice/accountability approach for this reason, would be to take the wrong lesson from the Yugoslav experience. Rather, the lesson of peace-building in the former Yugoslavia is that if applied and implemented adeptly, justice is compatible with peace, and in fact may be critical to attaining a meaningful and durable peace.