University College Maastricht

Academic year 2017-2018, period 5

Code: SSC 3052

The Aftermath of Atrocity: A Course on Transitional Justice and Post-Conflict Reconstruction

Course book

Inhoud

Course information

General course objectives

This course aims to achieve the following objectives:

- An understanding of transitional justice and how to deal with grave historical injustices from the past. Although the course addresses the roles of many different actors, the role of the victim will receive more substantial attention.
- To examine different approaches to post-conflict justice (retributive, restorative and transformative approaches) and their policy implications.
- To provide for a critical overview of different instruments for transitional justice, such as, apologies and forgiveness, memorialization and commemoration, truth telling and truth commissions, impunity, pardons and amnesties, compensation, restoration, international and regional criminal courts and tribunals, lustration and vetting, etc. and to critically examine their impact and effectiveness.
- An understanding of some key issues in post-conflict reconstruction which focuses on the challenges (military, political, and social) that post-conflict societies are facing and how they impact on the consolidation of peace and stability.

Description of the course

Part I of the course will first introduce and define the field of transitional justice. We will consider its historical evolution and address the rationales underlying it. The introduction furthermore includes an overview of the main mechanisms/components that can be part of the process of transitional justice and how they are interrelated.

Before we examine various transitional justice mechanisms in Part II to VI, the course first considers the needs and interests of the victims of gross human rights violations. Victims (and survivors) are not only a group, but also individual human beings and their wishes and interests in the aftermath of large scale conflict can be very diverse and even contradict the wishes of other victims or the group as such. What are their interests and what are their views on transitional justice including possibilities of remedy and reparation?

Throughout the course critical attention is paid to the following justice mechanisms:

- International criminal justice - ad hoc tribunals and the ICC
- National criminal justice - hybrid and local approaches
- Lustration, vetting and expiation
- Truth commissions
- Apologies and forgiveness
- Reparation - restitution and compensation
- Holistic and integrated approaches

In addition to the above-mentioned justice mechanisms we will also critically on strategies and policies that focus on silence, forgetting, historical amnesia, impunity and amnesty.

The above analysis will be concluded with a discussion of the various justice mechanisms and their potential to contribute to (or jeopardize) sustainable peace. How effective are these approaches in breaking cycles of violence? Can they bring reconciliation?

In addition to issues such as justice and reconciliation, other matters are also significant in post-conflict societies as they greatly affect the consolidation of peace and stability. Justice and reconciliation only form one pillar of reconstruction, but also in other areas constructive action is required. Such other areas of concern include, for instance, security, wellbeing, and governance. The course therefore considers the process of reconstruction and discusses which actions are required to move from the precarious early stages of post conflict transition to a more sustainable situation which allows for the consolidation of peace and stability. Here we pay attention to social, economic and cultural rights and their connection to development. We furthermore consider the disarmament, demobilization and reintegration of combatants.

Several lectures will be held during this course. These lectures will be used to illustrate the discussed materials and to provide the participants with a deeper understanding of the subject matter by presenting the linkage between theory and (research) practice. During the lectures we will screen several documentaries that will be analysed during the post-discussion. We hope that, through these documentaries, the subject matter of this course will become more accessible and less abstract. Occasionally the lectures will also feature guest speakers who will address the subject matter from the practitioner's perspective.

Case studies play an important role throughout the course and we will therefore pay attention to a wide variety of cases including The Holocaust and other cases of genocide (Armenia, Australia, Cambodia, Rwanda, Srebrenica, Darfur, etc.). Although cases of genocide will play an important role in this course, the caseload is certainly not limited to genocide and other violent conflicts will be addressed as well. Here one could think of the following cases, Chili, Argentina, Guatemala, Indonesia, East Timor, Iraq, Syria, Congo, Central African Republic, etc. Not to forget the torture practices of the U.S.

Literature

During the course we will make use of the following handbook: **Malcontent, P. (ed),** ***Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice,*** **Intersentia: Cambridge, 2016.** The book can be ordered directly from the publisher for a reduced price via www.intersentia.com. Please, note that to receive the discount you will

need to register for a student account. Since the book is 'printed on demand' it will take 7 – 10 days for the book to be delivered. So, please order it on time!

In addition to texts from the abovementioned handbook, additional materials are proscribed for each meeting, which are either available on Student Portal/EleUm or directly accessible through the links in the course book.

In addition to the prescribed literature, the following articles, books and websites are very helpful to consult in the context of this course:

- States of Denial, Knowing about Atrocities and Suffering, Stanley Cohen, Polity Press, Cambridge, 2001.
- Teitel, R. G. (2000). Transitional justice. Oxford: Oxford University Press.
- Out of the Ashes, Reparations for Victims of Gross and Systematic Human Rights Violations, edited by De Feyter, Parmentier e.a., Intersentia, 2005.
- Clark, P., & Kaufman, Z. D. (2009). After genocide: Transitional justice, post-conflict reconstruction and reconciliation in Rwanda and beyond. New York: Columbia University Press.
- Teitel, R. G. (2014). Globalizing transitional justice: Contemporary essays. Oxford: Oxford University Press.
- Vos, C. M. d., Kendall, S., & Stahn, C. (2015). Contested justice: The politics and practice of the International Criminal Court interventions. Cambridge, United Kingdom: Cambridge University Press.
- Vanfraechem, I., Pemberton, A., Ndahinda, F. M., Aertsen, I., Jammers, V., Leferink, S., ... Parmentier, S. (2014). Justice for victims: Perspectives on rights, transition and reconciliation. London: Routledge, Taylor & Francis Group.
- Findlay, M., & Henham, R. J. (2005). Transforming international criminal justice: Retributive and restorative justice in the trial process.
- Morison, J., McEvoy, K., & Anthony, G. (2007). Judges, transition, and human rights. Oxford: Oxford University Press.
- The international journal of transitional justice. (2007). Oxford: Oxford University Press.
- Bloomfield, D., Barnes, T., & Huyse, L. (Eds.). (2003). Reconciliation after violent conflict: A handbook. International Idea. Link: http://www.un.org/en/peacebuilding/pbso/pdf/Reconciliation-After-Violent-Conflict-A-Handbook-Full-English-PDF.pdf

Attendance

The minimum attendance requirement is 85%. In this course we will have 4 lectures and 11 tutorial meetings that students are required to attend. The 4 lectures and all the 11 tutorial meetings are compulsory i.e you are not allowed according to UCM rules to miss more than two meetings so the attendance requirement is for 13 out of the 15. Any additional assignments for failure to attend these meetings will be according to UCM rules. Students who have not met the attendance requirement, but who have not missed more than 30% of the group (thus attended at least 11 meetings), will be given a provisional overall grade, but will not receive credits for the course until they have successfully completed an additional assignment. To qualify for an additional assignment a student may not have missed more than 30% of the group meetings and must submit a completed request form 'additional assignment because of insufficient attendance' to the Office of Student Affairs, within 10 working days after completion of the course. If a student misses more than 30% of the group meetings, s/he automatically fails the course, skills or project.

Please Note:

- Both the lectures and tutorials count in the number of compulsory meetings.
- Students already need to be prepared for the first tutorial!

Course Program

Week 1

Lecture 1: Introduction to course + documentary (details t.b.a.)

Tutorial 1: Transitional justice

Tutorial 2: International criminal justice - Ad hoc tribunals and the ICC

Week 2

Lecture 2: Documentary Details t.b.a.

Tutorial 3: National criminal justice – hybrid, local (trans) national approaches

Tutorial 4: The Truth, truths and truth commissions

Week *3*

Lecture 3: Documentary Details t.b.a.

Tutorial 5: Apologies and forgiveness

➔ hand out questions mid-term exam paper

Week 4

Tutorial 6: Corporations

Tutorial 7: Lustration and vetting

Week 5

Tutorial 8: Reparations

Week 6

Lecture 4: Documentary Details t.b.a.

Tutorial 9: denial, silence, impunity and amnesty

Tutorial 10: "Post-conflict" reconstruction

Week 7

Tutorial 11: Holistic approach…?

➔ Handout topics end-term exam paper

Student requirements and evaluation

Students must be present and well prepared for all sessions. The course will start on Monday the 9th of April 2018 and students are expected to read the listed materials for the first lecture and tutorial in advance of that session. It is furthermore essential that students participate actively in the group discussions.

The course will be evaluated by ***two take home assessments*** consisting of one mid-term and one final end-term assessment. The midterm assessment entails an exam which covers the first half of the course (3000 words). The end-term assessment consists of a paper assignment concerning a topic that was addressed during the second half of the course (3500 words). Due to the limited time you will have for the mid-term paper, the course coordinator will provide the concrete research questions that you will need to explore. With regard to the end-term exam paper, two to three themes will be delineated by the course coordinator from which students can choose. Students will be marked on their acquired knowledge of the subject matter of the course, i.e. the core contents of the course and their ability to explain and apply this knowledge by showing their ability to build up a persuasive, coherent and logical line of analysis and argumentation. Note that students will have to perform additional research for the exams. Both exams will count towards 45% of the final grade. The remaining 10% will be determined by ***participation***, for which you will also receive a grade. This participation grade will be based on the overall performance during the tutorials and includes the following aspects: preparation of the course material, doing tasks/assignments, taking roles (like discussion leadership, note taking, etc.), attitude and participation during the pre- and post-discussions (presenting insights concerning the literature, joining discussions, contribution to understanding subject matter, etc.). This grade is calculated for the meetings that a student is present. Note, however, that participation is awarded not mere attendance. Also, contributions that are not related to the course literature are not appreciated. We want to know what you learned in this course, not what you learned in other courses.

Resits

Any resits for failure of either the mid-term exam or the final exam (or both) will be administered according to UCM rules.

Course coordination

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Tutorial 1: Transitional justice

Since this is the first tutorial meeting, no pre-discussion has taken place. Therefore, the relevant learning goals that should be prepared for the first tutorial are listed below.

Task 1

As becomes clear from the introduction, this course addresses how actors, such as the "international community", states, societies, groups, and individuals, deal with the perpetration of gross human rights violations or historical injustices more broadly. Regarding how these actors deal with the aftermath of atrocities, a broad field of expertise has been developed that is generally referred to as transitional justice. Before we continue to address the field in more detail, it is important to first clarify what the term 'transitional justice' means.

Learning goals

1. Can you define the term transitional justice?
2. What does the element of 'transition' indicate?
3. What does the element of 'justice' refer to?
4. Can transitional justice play a role in non-transitional societies when trying to achieve justice for past wrongs?

Literature

- Malcontent, P. (2016), 'Introduction' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 3 – 26.
- Jung, C. (2009). Transitional justice for indigenous people in a non-transitional society. Research Brief. New York: International Center for Transitional Justice. Link: https://www.ictj.org/sites/default/files/ICTJ-Identities-NonTransitionalSocieties-ResearchBrief-2009-English.pdf

Task 2

Wiedergutmachung is a way of financial compensation offered by the German Government to the victims of the Nazi persecution of the Jews. Another way of recognition of the past was shown in 1970 when the German Chancellor Willy Brandt kneeled down in front of the monument for Jewish victims – at the site of the former ghetto – in Warsaw. These are only two concrete examples of remedying and repairing harm, but there are many more ways how in the aftermath of violence justice reparation can be achieved for the victims, such as,

compensation, redress, restitution, rehabilitation in both a material and a non-material way. These may also include affirmative action for the descendants of the victims for instance in better possibilities for health care or education possibilities entailing reallocation of economic resources. Be aware that, for instance, the widows of Srebrenica are among the poorest in the region. Even truth telling is part of rehabilitation of the former victims transforming these persons in survivors acknowledged and honoured by the successive state. Truth telling is sometimes linked with reconciliation, see for instance the many TRC's of which South Africa (coupled confessions with amnesty) after the Apartheid is the most well-known. However, the widow of Steve Biko – freedom fighter killed by the Apartheid regime - was not happy with this restorative justice when she stated that testifying for her would be an insult because the perpetrators should be put in jail whereas reconciling is only possible after justice is done. The above shows that the range of remedies and reparations is extensive, which is of course necessary due to the wide scope of the negative impact that victimization has on victims. Acts have a diverse range of devastating effects not only physical, but also social and psychological. As a result, the interests and the needs of victims involve a wide range of elements. However, forms of reparation and remedy can also conflict, or maybe even the interests and needs of the victims are incompatible as the last example illustrated.

Learning goals

1. What are victim's expectations and needs after gross human rights violations have been perpetrated?
2. To which remedies and reparations are victims entitled once they have suffered serious human rights violations?

Literature

- Zwanenburg, M. (2006). Van Boven/Bassiouni Principles: An Appraisal, The. Neth. Q. Hum. Rts., 24, 641. Link: http://heinonline.org/HOL/Page?handle=hein.journals/nethqur39&div=49&g_sent=1&collection=journals
- UN GA Resolution on Remedy and Reparation 2005. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx
- Schotsmans, Victims' expectations, needs and perspectives after gross and systematic human rights violations, in: De Feyter, Parmentier e.a., Out of the Ashes, Reparations for Victims of Gross and Systematic Human Rights Violations, pp. 105-109, 114-133, Intersentia, 2005. (Available on Eleum)

Case illustration

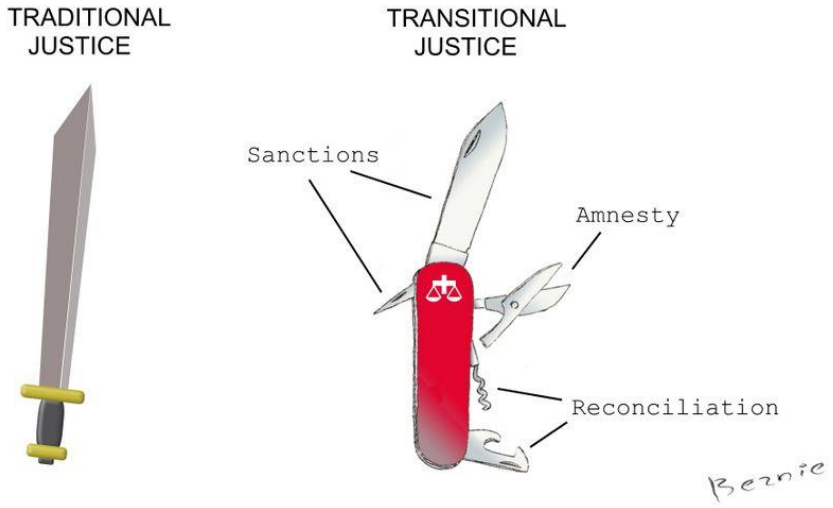
Cambodia

It was heralded as the most important trial since the Nazis were confronted at Nuremberg, an opportunity to ask the men who orchestrated the deaths of nearly 2 million Cambodians a simple question: Why? The extraordinary chambers of the courts of Cambodia (ECCC) began sitting in 2006 and have so far cost more than $200m, but the tribunal has been plagued with charges of corruption, obstruction and interference; and judges and investigators have resigned. It has produced just one verdict in eight years, convicting Kaing Guek Eav, aka Comrade Duch, of crimes against humanity, and sentencing him to life imprisonment. Kaing oversaw the Tuol Sleng prison where an estimated 15,000 Cambodians were tortured and executed. During the Khmer Rouge's murderous reign from 1975 to 1979, men, women and children were marched out of their schools and homes all over Cambodia and sent to rural work camps under re-education programmes. Many died of disease and starvation. Others were detained in overcrowded centres, tortured and executed as part of a programme to create a communist agrarian utopia. By the time Vietnam liberated the nation, a quarter of the population had been killed. For many Cambodians, reconciling the past is impossible while former Khmer Rouge cadres still act as government ministers and head the armed forces. The prime minister, Hun Sen, is a former Khmer Rouge commander. Many survivors have tried to forget their childhood by refusing to talk about it, while those who actively search out answers can find themselves harassed, detained and threatened by the state. It took nearly 10 years from the UN's offer of help in 1997 to establish a hybrid court, manned by Cambodian and international judges and prosecutors. It was hoped that senior Khmer Rouge members would be tried for war crimes, crimes against humanity and genocide. Many of the former cadres closest to Hun, however, including the senate president, Chea Sim, and the national assembly chairman, Heng Samrin, have been prevented from testifying, apparently to avoid embarrassing the government. Such obstructions do not necessarily render the entire process a sham, as some critics have said. "Justice is extremely important," said Youk Chhang, who survived the Khmer Rouge and now heads the Documentation Centre of Cambodia. "It is the most important thing for a country like Cambodia. Nobody wants to live with the past. The whole point of the tribunal is to move on." The court's plodding proceedings mean time is running out to deliver sentences and find answers. Of the four senior figures on trial under the current case, 002, one has already died and another has been declared mentally unfit to stand trial. That leaves just Pol Pot's righthand man, Nuon Chea, now 87, and the former head of state, Khieu Samphan, 82. Both are weak and unwell. The ECCC expects case 002 to take another year, and hearings for cases 003 and 004 have been delayed. For some victims, the trial has thrown up perhaps the most pressing question of all: what constitutes justice? "Justice is so much more than whether Khieu Samphan or Nuon Chea have lawyers defending them," said Theary Seng, a human rights lawyer who lost both his parents in the genocide. "I and other victims never

demanded nor expected perfect justice. What the Khmer Rouge tribunal is producing now is beyond the pale of anything resembling justice. To the contrary, the farce, the deceit, is damaging and is laying the dangerous groundwork for future instability and impunity." (The Guardian, 24th of June 2014)

Tutorial 2: International criminal justice: Ad hoc tribunals and the ICC

In discussions on the legitimacy of international criminal justice, various rationales and aims have been promoted that justify the prosecution of those who perpetrated gross human rights violations. Several issues arise from this. Firstly, considering what each of these specific rationales attempts to achieve the question rises whether they are always mutually compatible or might tensions arise in practice. Secondly, one of the key implications of criminal justice is that sanctions are being meted out, but does the punishment satisfy the avowed aims proclaimed by the international tribunals. The development of international criminal justice has resulted in the establishment of the International Criminal Court (ICC). The workings of the ICC have triggered vigorous debate as to whether it is successful or not. Given the challenges faced, it remains to be seen what we can learn from the brief period that it has been operational. Another important aspect concerning international criminal justice and the efficiency of international courts relates to how they are perceived by the local communities that they are supposed to serve. Is the work of the courts deeply connected with the societies and populations whose injustices and sufferings the courts are trying to address? Or is there a disconnect and does it remain difficult to make it meaningful and relevant to local populations?



Literature

- Cryer, Frieman, Robinson and Wilmshurst, 2010, An Introduction to International Criminal Law and Procedure, Cambridge: Cambridge University Press, pp. 22 – 40. (Available on EleUM).
- Rodman, K.A. (2016), 'Pacting the Law within Politics: Lessons learned from the International Criminal Court's First Investigations' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 91 – 114.

- Taylor, D. (2016), 'Beyond the Courtroom: The Objectives and Experiences of International Justice at the Grassroots' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 139 – 165.

Case illustration

Lord's Resistance Army commander faces 70 war crimes charges.

"Lord's Resistance Army commander, Dominic Ongwen, was the "tip of the spear" of the group which sowed terror in northern Uganda, prosecutors told the international criminal court, as they unveiled 70 war crimes charges against him. "For well over a decade until his arrest in January 2015, Dominic Ongwen was one of the most senior commanders in the LRA," prosecutor Benjamin Gumpert told the court in The Hague on Thursday. Ongwen was a key figure in the brutal rebel movement led by fugitive chief Joseph Kony, who has evaded a years-long international search. Images of LRA victims, burned-out huts and the abandoned corpses of children were shown on the opening day of a hearing during which prosecutors sought to convince ICC judges that the evidence was solid enough to put him in the dock. The judges will then have to determine whether Ongwen should stand trial, while 10 of the charges against Ongwen were kept secret for "security reasons". Prosecutors allege that from 2002 to 2005, Ongwen bears significant responsibility for terrifying attacks in northern Uganda when civilians were treated by the rebel group as the enemy. "This was not just a civil war between people in uniform," Gumpert said. "The LRA attacked ordinary Ugandan citizens who wanted no more than to live their lives." In a brief address to the court, Ongwen said reading out the charges was "a waste of time". Gumpert showed a video of bodies in a grave, saying the court would also see other evidence of the ferocity of the attacks by the LRA. Ongwen, who is about 40 years old, ordered attacks and killings of civilians and the abduction and enslavement of children to be rebel soldiers, Gumpert said. Witnesses said Ongwen ordered his hostages "at least on one occasion to kill, cook and eat civilians". Prosecutors also played recorded intercepts of LRA radio communications, which they said would help judges step into the mind of Ongwen and other LRA commanders. A child-soldier-turned-warlord, Ongwen was Kony's one-time deputy. The LRA is accused of slaughtering more than 100,000 people and abducting 60,000 children in its bloody rebellion against Kampala that began in 1986. The prosecution is focusing on four attacks on camps housing people forced to flee from the LRA. More than 130 people – many of them children and babies – died in these attacks and dozens of others were abducted, prosecutors said. The LRA first emerged in northern Uganda in 1986, where it claimed to fight in the name of the Acholi ethnic group against the government of Ugandan president, Yoweri Museveni. Over the years it has moved freely across porous regional borders, shifting from Uganda to southern Sudan

before heading into the Democratic Republic of Congo, before crossing into Central African Republic in March 2008. Combining religious mysticism with guerrilla tactics and ruthlessness, Kony has turned scores of young girls into his personal sex slaves while claiming to be fighting to impose the Bible's Ten Commandments. Born in 1975, Ongwen was transferred to The Hague a year ago shortly after he unexpectedly surrendered to US special forces operating in CAR. Experts believe Ongwen fled after falling out with Kony and almost being killed. But rights groups say Ongwen was himself initially a victim – abducted at 14 by the LRA as he was walking to school – which may prove a mitigating factor in sentencing if he is found guilty at trial. "The tragedy of this case is the fact that Dominic Ongwen was a perpetrator but also a victim," Gumpert said. "But this is no reason to expect that crimes can be committed with impunity." (The Guardian 21 January 2016)

Tutorial 3: National criminal justice: Hybrid, local, (trans)national approaches

Over the last two decades we have witnessed the development and proliferation of alternative justice mechanism on the local, national and transnational level. These developments were partly triggered by the downsides of the international criminal justice approaches, such as tribunals, that were discussed during the last tutorial. But also, the national and local contexts of conflict situations have contributed to this development, because these unique contexts demanded alternative ways of achieving justice. When looking into the efforts at the local, national and transnational level, the questions remains whether these justice mechanisms are able to overcome the problems related to international tribunals and criminal courts and whether they are able to achieve the goals set out and live up to the expectations of those participating in it. In the development and proliferation of alternative justice mechanism four developments stand out. Firstly, the use of local traditional justice mechanism, such as for instance the Gacaca courts in Rwanda. Experts are however divided about the effects of Gacaca. Some are positive, other are more sceptical and deem it controversial for various reasons. Secondly, we have witnessed the development of so called hybrid courts, such as for instance in Cambodia. Experiences again reveal that that there are positive and negative sides to attempting to achieve justice this way. Thirdly, we also see that gross human rights violations are being addressed in national courts, like in Guatemala. Apparently, in Latin America countries such as Guatemala, but also Argentina the barriers that usually prevented successful prosecution disintegrating and now these countries have made inroads into trying these crimes in national courts. This development entails a complex process that is fragile and maybe still too fragile, as the case of Guatemala illustrates. Lastly, another interesting phenomenon are transnational courts in which national courts claim jurisdiction over crimes perpetrated in other countries. Not much attention is paid to these transnational cases and we remain largely in the dark as what their effects are.

Literature

- McGonigle Leyh, B. (2016), 'National and Hybrid Tribunals: Benefits and Challenges' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 115 – 137.
- Oomen, B. (2016), 'From Gacaca to Mato Oput: Pragmatism and Principles in Employing Traditional Dispute Resolution Mechanisms' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 167 – 185.
- Rettig, M. L. (2012). Transnational trials as transitional justice: lessons from the trial of two Rwandan nuns in Belgium. Wash. U. Global Stud. L. Rev., 11, 365. URL: http://heinonline.org/HOL/Page?handle=hein.journals/wasglo11&g_sent=1&id=373

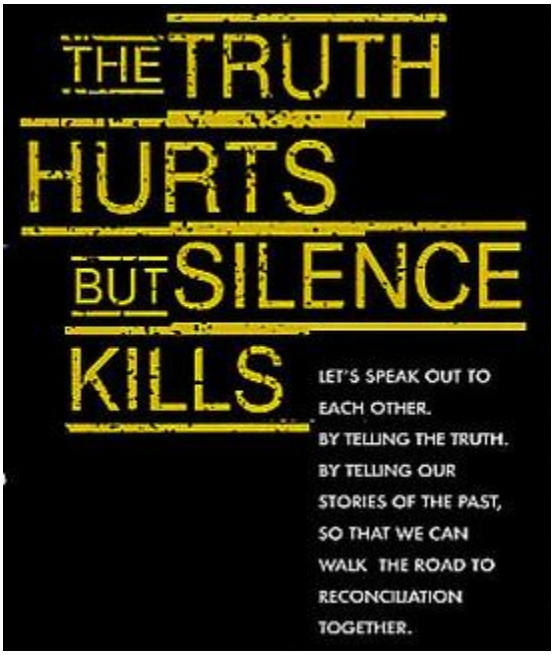
Case illustration

Nuns jailed for genocide role

“A court in Belgium has sentenced two nuns to 12 and 15 years in prison for their part in the Rwanda genocide seven years ago. The Rwandan nuns were found guilty of homicide on Friday. Sister Gertrude Mukangango received a 15-year sentence for her role in the massacre of some 7,000 people seeking refuge at her convent in southern Rwanda. Sister Maria Kisito Mukabutera received a 12-year sentence. Two men accused of helping plan and carry out the killings received 20 years and 12 years respectively. The prosecution in the war crimes trial had called for all four defendants to receive life sentences. They were being tried for their complicity in the 13-week genocide in 1994 that resulted in the death of 800,000 Tutsis and moderate Hutus. Rwanda's Government welcomed the guilty verdict. "It is highly positive that Belgium, a foreign country, pursues and punishes crimes against humanity committed in Rwanda," Rwandan Justice Minister Jean de Dieu Mucyo told the Reuters news agency. "Other countries should follow this example." A lawyer for the victims of the genocide also expressed his satisfaction with the convictions. "We are obviously very satisfied. I think the jury's verdict is balanced, even if it might seem severe on the whole for the four defendants, of course. So it is balanced and it recognises, I think, everybody's guilt," said the lawyer, Eric Gilet. The 12 jury members reached their decision after deliberating into the early hours of Friday morning. They are the first civilians to have judged war crimes suspects from another country. The court heard how the two nuns handed over thousands of people who had

sought refuge in their convent. They even supplied cans of petrol to the Hutu militias, who set fire to a garage sheltering some 500 refugees. Two other defendants - former university professor Vincent Ntezimana and former Transport Minister Alphonse Higaniro - were also found guilty. The Belgian trial took place outside the United Nations Rwanda tribunal process in Arusha, Tanzania. It was the first time Belgium had used a law passed seven years ago, allowing its courts to hear cases of alleged human rights violations even if they were committed abroad. The court heard how the two nuns enthusiastically embraced genocide when they handed over up to 7,000 Tutsis sheltering in the convent in southern Rwanda. In the two months that the trial has lasted, the jury has heard evidence from many survivors of the Rwandan genocide. The defendants, who all now live in Belgium, had maintained their innocence throughout the trial. Their lawyers claimed they were the victims of a conspiracy. Human-rights groups hope the trial will set a precedent and make it harder for war criminals to seek sanctuary abroad. Belgium is the former colonial power in Rwanda, and its willingness to stage the trial may come in part from concerns here that it did not do enough to stop the genocide." (http://news.bbc.co.uk/2/hi/europe/1376692.stm)

Tutorial 4: The Truth, truths and truth commissions



In debates on transitional justice it is often proclaimed that there can be no justice if there is no truth with regard to what happened. Some even argue that based on international principles and case victims have a right to truth. The 'truth phase' is deemed of great importance to 'transition'. The problem is however that 'truth' is a complex concept and in the context of transitional justice it can have a variety of relevant meanings. So, instead of having **T**he **T**ruth there might be several different truths. The importance of 'truth' in the context of transitional justice is highlighted by the popularity of so called truth commissions. Although such commissions are often for various reasons positively received, because they have certain advantages over criminal trials, experts have also pointed to the intrinsic and instrumental reasons why such commissions may not be effective in achieving their goals. Truth commissions come in various shapes/modalities and in order for them to be able to perform efficiently various requirements need to be fulfilled. Truth commissions are often promoted on the basic assumption that the truth heals (it will set you free). As such the process of truth telling contributes to reconciliation. Some however argue that truth commissions are simply politically usable reconstructions of the past in an attempt to legitimize the new authority and consolidate its power

Literature

- Cohen, S. (1995). State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past. Law & Social Inquiry, 20(1), **Read only pp. 12 - 22.** Retrieved from http://www.jstor.org/stable/828856
- Truth and Reconciliation Commission of South Africa Report, Vol 1. **Read only pp. 110 – 114.** Available at: http://www.justice.gov.za/trc/report/index.htm
- Parmentier, S. and Aciru, M. (2016), 'The Whole Truth and Nothing but the Truth: On the Role of Truth Commissions in Facing the Past' in Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice, Intersentia, Cambridge, pp. 225 – 246.
- Daly, E. (2008). Truth skepticism: An inquiry into the value of truth in times of transition. International Journal of Transitional Justice, 2(1), 23-41. Stable URL: http://dx.doi.org/10.1093/ijtj/ijn004

- Brouneus, Karen 2008. Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts, in: Security Dialogue 39, 1, 55-76. Link: http://www.pcr.uu.se/digitalAssets/66/66768_1truth-telling-as-talking-cure.pdf

Case illustration

Sri Lanka's new government said Monday that it would set up a truth, justice and reconciliation commission and draft a new constitution to stabilize the country and address the bitter grievances left by its decades-long civil war.

The foreign minister, Mangala Samaraweera, announced the measures in a speech to the United Nations Human Rights Council here. His address came three days before the release of a long-awaited United Nations report on the killing of an estimated 40,000 ethnic Tamil civilians in 2009 by armed forces under President Mahinda Rajapaksa. The report was supposed to have been presented to the council in March but was delayed to give President Maithripala Sirisena, who had defeated Mr. Rajapaksa in an election two months earlier, time to come up with plans for achieving reconciliation and accountability and for cooperating with international investigators. According to Mr. Samaraweera, the government planned to set up the reconciliation commission with advice from South Africa. It also proposed the creation of an Office of Missing Persons to identify the fate of people who disappeared during the civil war, and an Office of Reparations to address compensation. It also planned to create a "constituent assembly of Parliament" to prepare a new constitution in order to avoid a recurrence of conflict, he said. But after years of delays and opposition while the Rajapaksa government was in power, many in Sri Lanka and abroad say the degree of international participation in the investigation will be a litmus test for the new government." (The New York Times, 16 September 2015)

Tutorial 5: Apologies and forgiveness

Apologies by states are becoming more popular. Scholars have even noted that we live in an 'age of apology'. The British political philosopher Michael Freeman wrote: "acknowledging the past, telling the truth to the best of one's ability and admitting injustices done, recognizes the dignity of survivors and those whose identity is linked with them'. States can use such apologies to address past wrongs. Apologies can serve a variety of different purposes and therefore come in different types, but they generally are complex speech acts that in order to work need to proceed in a certain order and fulfil certain variables/requirements. It is said that when done successfully, apologies can help personal healing but also contribute to restoring relations in the global arena. They can thus play a positive role in the reconciliation proces. Some would however call certain apologies empty gestures such as Pope John Paul II who apologised on no fewer than 94 occasions and asked for forgiveness but these apologies were not made to the victims or their descendants, but to a third party, to God. These are requests for absolution to wrongs committed by the Church but have hardly anything to do with the real victims. Apologies are not something you only can give because it is incomplete until the individual is willing to receive and accept it. For instance, many Jews refused to accept the 'Wiedergutmachung' from Germany. On the other hand, you can view the acceptance of an apology made by the wrongdoer as empowerment of the former victim. This view has also been criticised and it has been mentioned that the process of apologizing and especially asking forgiveness from victims can have damaging effects. Also, in reality to forgive is often to forget, but that is not what forgiveness is about, although the political reality could be like that. In this context experts also talk about apology diplomacy undertaken by states. Here we see that apologies, while cloaked in moral rhetoric, are often the outcomes of political bargains that are determined by a variety of conditions.

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Case illustration

Netherlands apology for Indonesia 1940s killings

"The Netherlands has made a formal public apology for thousands of summary executions carried out by Dutch troops in its former colony of Indonesia. Dutch ambassador to Indonesia Tjeerd de Zwaan apologised for the "excesses committed by Dutch forces" between 1945 and Indonesia's independence in 1949. A UN report at the time condemned the killings as deliberate and ruthless. The Hague has previously apologised and paid compensation in certain cases, but this was the first general apology. The ceremony took place at the Dutch embassy in Jakarta, with several relatives of the victims and embassy workers in attendance. None of the victims' widows was present as they live in Sulawesi and were too frail or ill to travel to the capital, Dutch public broadcaster NOS reported. The Indonesian government was not represented. "The Dutch government is aware that it bears a special responsibility in respect of Indonesian widows of victims of summary executions," Mr Zwaan said. "Sometimes it is very important to be able to look back in order to be able to look one another straight in the eyes and be able to move forward together - and that of course is what this public apology and ceremony is all about," he said. Fight for independence Clashes between the Dutch army and Indonesians began in 1945. South Sulawesi was the scene of one of the worst Dutch atrocities. In January 1947, more than 200 Indonesian men were executed on a field in front of a local government office in what was then known as Celebes. That same year, at least 150 people were killed by Dutch forces in Balongsari village, formerly known as Rawagede. Two high-profile court cases in the Netherlands have resulted in 20,000 euros ($26,600; £16,800) being awarded to the widows of some of the victims. No Dutch soldiers have faced prosecution over the deaths. Most of current-day Indonesia was ruled by the Netherlands from the 19th Century until World War II, when the Japanese army forced out the Dutch. When the Dutch attempted to reassert control after the defeat of the Japanese, they met fierce resistance. The Netherlands finally recognised Indonesia's independence in 1949." (BBC 12 September 2013)

After this tutorial the mid-term exam paper topics will be uploaded on Eleum/Student Portal

Tutorial 6: Corporate actors

Historical injustices are not only perpetrated by repressive regimes. Other actors, such as corporations can also play a major role in these injustices. Governments might be the main culprits when to comes to the responsibility for the crimes committed, but they often need to rely on the support of other actors. Case studies have revealed that corporations can get involved in the perpetration of gross human rights violations for different reasons and in various ways. However, despite their deep involvement, holding corporations accountable for their role in the perpetration of the crimes turns out to be a challenge due to several factors. Once challenges to accountability can be overcome then there are different ways in which corporations can be held accountable, but also these accountability mechanisms have their weaknesses. All in all, it seems that corporate actors, somehow slip between the cracks as national and international law traditionally appears to focus on regulating the behaviour of persons and states and not corporate actors.

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Case illustration

Dutch dealer gets 15 years for chemical sales to Saddam

A Dutch businessman was yesterday jailed for 15 years after a court in The Hague found him guilty of complicity in war crimes for selling chemicals to Iraq that Saddam Hussein's regime used in lethal gas attacks on Kurdish villages.In the first case of its kind, the Dutch war crimes court ruled that Saddam's attack on the villages, including Halabja where 5,000 Kurds died in March 1988, did constitute genocide. Its verdict could have repercussions on the trial of Saddam in Baghdad, where the former Iraqi dictator is charged with crimes against humanity for the killing of 148 people in a Shia village - and could open the floodgates for other cases, including in Britain. But Frans van Anraat, 63, Saddam's chief weapons ingredients supplier,

was acquitted of complicity in genocide. Van Anraat was absent from the court when the verdict was read out but scores of Kurds, including relatives of Halabja victims, clapped and cheered as it was translated into Arabic and English. The court said that Van Anraat supplied the ingredients knowing that they would be used to make poison gas used by Iraq in the 1980-88 war with Iran and in the attacks on Kurdish villages. The weapons were part of a "a political policy of systematic terror and illegal action against a certain population group," its ruling said. "His deliveries facilitated the attacks and constitute a very serious war crime. He cannot counter with the argument that this would have happened even without his contribution," the presiding judge said. "Even the maximum sentence [15 years] is not enough to cover the seriousness of the acts." He found Van Anraat guilty on multiple counts of war crimes, violating the laws and customs of war and causing death and serious bodily harm to the entire Kurdish population. Saddam, ultimately responsible, could be prosecuted under international law. But he added that Van Anraat could not be held responsible for another charge of genocide for supplying more than 1,000 tonnes of thiodiglycol. Van Anraat, who took refuge in Baghdad before his arrest after the March 2003 invasion, has admitted supplying the chemicals but said he was unaware they would be used to make chemical weapons. He has complained of being unfairly singled out while other suppliers of Saddam have not been prosecuted. (https://www.theguardian.com/world/2005/dec/24/iraq.warcrimes)

Tutorial 7: Lustration and vetting.

We have witnessed the pursuit of administrative justice in the aftermath of a range of conflicts. After 1945 after the Second World War, in the 80ies and 90ies in former East European and Communist countries and more recently in countries such as Iraq. In these countries we saw processes of vetting and lustration on a large scale. However, due to their far-reaching consequences, one could wonder whether these are permissible and efficacious tools of transitional justice. Although experts seem to affirm that these measures can be justified and defended on certain grounds, they are nonetheless sceptical with regard to what extend they are really effective means for achieving legitimate transitional objectives. Such objectives range from protecting the new politico-economic order of the state to remedying past discrimination and reconciliation. Do these measures really help to restore societal relations and foster democratization or is reality more complex… Apparently different lustration systems can be distilled and some are argued to be more preferable than others.

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Tutorial 8: Reparations

After gross human rights violations have been perpetrated, victims need reparation, which can take a variety of forms. One of the main forms of reparation is financial compensation and although it has certain advantages, it certainly also has its limitations. But reparation can also include other measures, such as education. It has been argued that for various reasons history education can be a powerful form of repair for historical injustices. When it comes to effectuating reparation, legislation often plays an important role as it specifies the rights and duties involved. How complex the relationship between the law and reparations is can be illustrated by the case of Australia and how it "addressed" its colonial past. Historically, law has been instrumental to the perpetration of the crimes against the indigenous population. Currently, it remains to be seen whether contemporary legislative structures really empower the victimized communities and enable them to achieve justice.

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Case illustration

Armenian Groups Are Increasingly Focused on Reparations for Genocide

Behind the Turkish government's denials of the century-old Armenian genocide lurks the possibility that survivors and their descendants could be deemed legally entitled someday to financial reparations, perhaps worth tens of billions of dollars or more. The Turkish authorities take the position that there is nothing that needs to be repaid. Moreover, no judicial mechanism exists in which claims of such magnitude, from events 100 years ago, could be litigated. But Armenian activists have nonetheless increasingly focused on the issue of compensation in recent years. The activists have pressed smaller-scale lawsuits against Turkish and other defendants, in Turkey and elsewhere. They have followed precedents set by victims of other atrocities of modern history, most notably Holocaust-era claims against Germany. They have drawn parallels between their struggle for reparations and those of

Native Americans and African-Americans. They have commissioned studies to evaluate plundered and seized assets, including land that is now part of Turkey. (The New York Times, 23rd of April 2015)

Tutorial 9: Denial, silence, impunity and amnesty

In the aftermath of conflict often peace vs. justice debates arise. When it has to be decided to prioritize the one (peace) over the other (justice) – or the other way around - we are confronted with a big dilemma. The central issue in these debates is whether, getting to the truth about what happened or trying to create peace and stability, requires measures that jeopardize achieving justice for the crimes committed. We see these discussions often when it comes to immunity policies such as pardons and amnesties. Some see amnesties solely as a peace mechanism that create impunity and therefore come at the cost of justice, while others argue that if implemented correctly it can facilitate achieving justice. Closely related to the above issues about truth and justice is the debate on historical denial and historical amnesia. Such processes have been criticised because they also contribute to impunity and because wrongs are not acknowledged one runs the danger that they might become causes of future conflict. In contrast some argue that we have a right to forget and maybe forgetting or denial might be helpful in dealing with past traumatic events. The idea is that time heals all wounds. These discussions are often theoretical and highly philosophical and when looking at grass roots local settings realities are much more complex and things are not that straightforward. The contrast between remembering and forgetting obscures the complexities of actors (perpetrators, victims, bystanders) on the ground. Sometimes chosen amnesia might be required to be able to live together and maybe silence is more complex and is not always simply about forgetting.

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Case illustration

Silence over Franco broken by new Spanish generation

"Spain is suffering from collective amnesia about the rule of fascist dictator General Francisco Franco, according to the makers of a controversial documentary released last week. The film, Between The Dictator and Me, will fuel demands that something be done to compensate Franco's victims and recognise the full horrors of the 40-year regime. Almost all those who were in Spain during the regime who were interviewed in the films retreated into silence or denial. 'They are things that should not really be spoken about,' said one. Yesterday, left and right-wing protesters marched through Madrid on the eve of the 30th anniversary of Franco's death, showing old rivalries from Spain's civil war are still deeply felt. But nobody had ever spoken to her about life under the man whose regime dominated the lives of her parents and her grandparents. Like most of her generation, she had never really been taught about him. 'I inherited a falsified history imposed by silences,' says Ruesga, whose generation is now questioning the silence that has surrounded the man they call El Caudillo since his death from natural causes 30 years ago.Her comments, and harsh questioning of her parents' attitude to a man who was responsible for the deaths of tens of thousands of opponents, matched the experience of half a dozen other young film-makers brought together to make the documentary. Silence about Franco, and about the military uprising he led against the Republican government, was part of a 'pact of forgetting' that underpinned the transition to democracy after his death. But now, in a country that has avoided truth commissions or prosecution of members of Franco's regime, the socialist government of Prime Minister José Luis Rodríguez Zapatero has pledged to do something but has already missed several deadlines for announcing a package of measures'It keeps delaying coming up with measures for elderly people who have little time left to wait for the compensation they deserve,' the Association for the Recovery of Historical Memory, which has dug up 500 victims of Franco's death squads from mass graves in the past five years, said yesterday.The association wants the sentences of Franco's military tribunals overturned and history teachers obliged to tell their pupils the truth about the repressive nature of his regime. Among those to have backed its calls is Amnesty International. But Spain's right wing has demanded that the deceased dictator, whose handful of faithful followers were due to attend a mass beside his grave in the specially excavated basilica at the Valley of the Fallen near Madrid, be left alone.'I have no doubt that the judgment of history on Franco will be positive,' Manuel Fraga, founder of Spain's opposition People's party and a former Franco minister, said this week. Fraga warned Zapatero, whose own grandfather was shot by Franco's followers, against bowing to demands that something be done to provide moral compensation for those persecuted, killed or tortured by the Franco regime. 'It is best to leave the dead in peace. History needs to be respected, but it should not be opened up again,' he added.Ignorance about Franco runs deep. A poll run by the Cadena Ser radio station last week found that one out of three Spaniards did not know that Franco had overthrown a democratic

government. Just over half of those questioned, however, said that they thought Franco's influence could still be felt. Ruesga wants to know why her parents did not protest or fight to get rid of Franco. 'It was bad, but what was I going to do?' replied her mother. A new generation, which did not live under the dictatorship itself, cannot decide whether that is a good enough answer." (The Guardian, 20 November 2005)

Tutorial 10: "Post-conflict" reconstruction

After the conflict has "ended" and when societies are transitioning from violence and injustice to peace and justice they are confronted with the fact that those who fought need to be disarmed, demobilized and reintegrated in society. There are different ways in which such DDR can take place. Certain trends have shaped DDR over the last decades and here we also see a movement from minimalist to maximalist approaches. The last approaches are more development orientated. Traditionally, transitional justice has neglected the importance of developmental aspects. Several authors have questioned this blind spot of transitional justice and they argue that because of the different links that exist between transitional justice and development, it is opportune to consider pursuing synergies with development work and some even argue that TJ also should directly address development-related issues. Others are more sceptical and raise concerns about the field of transitional justice branching out into such new directions. Despite such more critical views, one can also not neglect as one author states that "Increasing numbers of violent street protests and riots caused by socioeconomic grievances often occur in countries whose truth commissions have studied similar past episodes of violence and repression. These new cycles of violence push us to ask what more transitional justice can do to promote the aims of reconciliation and sustainable peace." Maybe, in order to break cycles of violence transitional justice needs to pay attention to development issues and the importance of economic, cultural and social rights in post-conflict situations. Maybe it is both about corrective and distributive justice.

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Case illustration

How Do You Take a Gun Away?

"Can Hezbollah be disarmed? The United Nations Security Council, the major Western powers and the government of Lebanon have all called for the Shiite militia to be shorn of its weapons. But how? And by whom? When it approved the terms of the cease-fire on Aug. 16, the Lebanese cabinet stipulated that its army would not take Hezbollah's weapons away. United Nations officials have said that the international force that is to join the Lebanese Army in southern Lebanon would not do so, either. And militia leaders insist that they will not voluntarily lay down their arms. That doesn't leave too many options, does it? And yet if Hezbollah is not disarmed, all of the appalling destruction that Israel visited upon Lebanon and suffered in its own territory may have accomplished nothing, and the bloodshed just concluded may be only the prelude to something yet worse. "Disarmament," like "peacekeeping," is a confident-sounding coinage for an improbable activity. The murkiness of the language governing the conflict in Lebanon is, in fact, endemic to the activity itself. What does it mean to disarm? Is it a reflexive verb — a thing you agree to do to yourself? Or is it a thing done to you? Victors in war, of course, forcibly disarm the losers — as the Allies did to the Germans and Japanese after World War II and as the United States did to the defeated Iraqi Army in 2003. But in a war that ends without decisive victory, or in civil conflicts, forcible disarmament is often impossible. The fighting force must more or less agree to disarm itself. And disarming is the easiest part. Fighters who yield up their weapons must then be demobilized, meaning not only that they have to be mustered out but also that the organization's command-and-control structure must be eliminated. And then, perhaps most crucially of all, as the Bush administration discovered to its pain in Iraq, those soldiers must be reintegrated into civilian society, or into the national army, so that the rewards, or at least potential rewards, of peace outweigh those of violence. Professionals thus refer to the entire activity as disarmament, demobilization and reintegration, or D.D.R. Disarmament, like peacekeeping itself, offers a set of time-tested, codified practices that are quite effective under certain political conditions and futile in their absence. In 2000, I visited the dusty town of Port Loko, in Sierra Leone, to see a "disarmament camp," a desultory affair in which a knot of surly ex-rebels from a murderous force known as the Revolutionary United Front hung around waiting for $300 payments meant to enable their fresh start as farmers. Most of them still wanted to fight, and many probably returned to the bush. But then their leader was arrested, U.N. peacekeepers equipped with heavy weapons were deployed in the countryside and the R.U.F. signed a peace deal. D.D.R. resumed in earnest in 2001, the R.U.F. disbanded the following year, and by 2004 the rebels had been fully disarmed. U.N. peacekeepers were able to leave. Sierra Leone is now patrolled by its own army and police force, though the country's desperate poverty and political fragility could tip it back into warfare at any time. […]"(NYTIMES, August 27, 2006)

Tutorial 11: Holistic approach…?

Throughout the last 10 tutorial meetings we have been discussing a variety of transitional mechanisms. Although zooming in on each of these mechanisms has generated interesting insights, there is also a downside to it because these mechanisms do not operate in a vacuum. To facilitate transition multiple measures are implemented throughout the process transitional justice. Experts are currently arguing for even more integrative and holistic approaches. They argue that all these justice mechanisms and measures are somehow interrelated and they have proposed several models that promote integrated and holistic transitional justice. Such theoretical models are surely inspirational and make us aware of the awesome potential of integrated approaches. It has, however, been argued that to really achieve a vibrant society that respects human rights, an agenda for practice is required that is more 'transformative' than 'transitional.'

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