

The United Nations, Transitional Justice, and Religious Liberty

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ABSTRACT: The paper reviews the main United Nations documents on “transitional justice,” i.e., on how countries that move from an authoritarian to a democratic rule should deal with past injustices. The question was hotly discussed with respect to post-Communist Eastern Europe, including Lithuania, but also concerns post-authoritarian Taiwan. The paper argues that past violations of religious liberty should also be addressed by transitional justice, through revisions of the court cases, legal reforms, public acknowledgement of past wrongdoings, and compensations to the victims.

KEYWORDS: Transitional Justice, Post-Conflict Societies, Transitional Justice in Eastern Europe, Transitional Justice in Taiwan, Tai Ji Men.

In United Nations’ jargon, “transitional justice” means “a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation” (Moon 2010, 3). This definition comes from one of the most comprehensive United Nations documents on the matter, then Secretary-General Kofi Annan’s (1938–2018) report to the Security Council on “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” dated August 23, 2004 (Annan 2004).

The problem of “transitional” justice, as its name indicates, arises when a country transitions from a non-democratic regime where human rights were systematically abused to a democratic one. Justice would require that those responsible for past abuses be punished, and the victims indemnified. Achieving this “transitional justice,” however, is never easy.

Some may ask how my paper exactly fits in a session about Taiwan. It may come as a surprise to some that in Taiwan, which was once governed by an authoritarian

regime, transitional justice has become an important political and even electoral issue. Professor Tsai discusses how and why this happened in the paper presented at the same ISA-RC22 Vilnius conference session, published in this issue of *The Journal of CESNUR*.

In this paper, I will discuss three issues. First, I will examine some United Nations documents on the issue of transitional justice. Second, I will say a few words about the issue of transitional justice in Lithuania, not only because I am Lithuanian and this conference took place in Lithuania, but because, for reasons I will try to explain, Lithuanian cases have led to a number of significant decisions by the European Court of Human Rights on transitional justice. Third, I will comment on how principles established by the United Nations and the European Court of Human Rights may be useful to interpret and address cases in Taiwan, although Taiwan is not a member of the United Nations, nor of course of the Council of Europe.

Some can argue that transitional justice was part of the very process that led to the establishment of the United Nations, since as a way to prevent any resurgence of Nazism, Fascism, and Japanese militarism the powers that won World War II wanted to make sure that war criminals will be punished. This led to the Nuremberg and Tokyo trials, where Nazi and Japanese war criminals were tried, convicted, and executed.

The United Nations themselves, on the other hand, have acknowledged that the concept of transitional justice, which goes beyond punishing war criminals, was born in the 1980s with the transition to democracy first of military regimes in Latin America, then since 1989 of countries in Eastern Europe that were once part of the Soviet bloc. U.N. documents emphasize the importance (Dykman 2007) of a decision of 1988 by the Inter-American Court of Human Rights concerning Honduras. This famous case goes under the name *Velásquez Rodríguez*, which was the last name of one of many citizens of Honduras that “disappeared,” and never reappeared, at a time when Honduras was under a military dictatorship.

The Inter-American Court established that Honduras had not seriously investigated what happened to Ángel Manfredo Velásquez Rodríguez (1946–1981), which had been presumably killed, had not punished those who kidnapped him, and had not indemnified his family. The decision established four

key principles of transitional justice. First, human rights violations that happened when a non-democratic regime was in power should be investigated, and the truth should be told to the country's public opinion. Second, perpetrators should be punished. Third, victims should be indemnified. Fourth, measures should be taken to make sure that human rights violations, which unfortunately may continue to take place even in democratic countries, will not happen again (Inter-American Court of Human Rights 1988).

All the elements of transitional justice were defined by the *Velásquez Rodríguez* decision, although the words “transitional justice” were not used. These started being used by legal scholars in the 1980s. The term became common in the 1990s, until in 2001 the International Center for Transitional Justice was founded in New York by South African white Methodist ordained elder Alex Boraine (1931–2018), who had been the main architect of the Truth and Reconciliation Commission in South Africa after the apartheid.

Initially, the attention of the United Nations was focused on one of the elements of transitional justice, punishing the perpetrators. This appeared urgent in light of the carnages perpetrated in the former Yugoslavia and Rwanda, which proved that, most unfortunately, mass violation of human rights and even genocides had not ended with the Cold War. The operative word at the United Nations was “impunity,” as something that should not be tolerated. The early 1990s saw the creation of the Office of the Special Rapporteur on the impunity of perpetrators of violations of human rights, and the institution of the U.N.-controlled International Criminal Tribunal for the former Yugoslavia in 1993 and International Criminal Tribunal for Rwanda in 1994.

However, the concept of traditional justice had other aspects, in addition to bringing perpetrators to justice. This was gradually recognized by the U.N., and led to Kofi Annan's report I mentioned earlier. Finally, in 2011, the Special Rapporteur on the impunity of perpetrators of violations of human rights was replaced by a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The change in the title meant that the Special rapporteur should deal with all dimensions of transitional justice, not preventing impunity of perpetrators only. This position still exists, and in 2018 Fabián Salvioli of Argentina, a law professor and lawyer who had studied and litigated cases of transitional justice after the fall of the military regime in his country, was appointed as Special Rapporteur. Meanwhile, the U.N. Human Rights Council

has assisted several countries, in many cases in cooperation with the independent International Center for Transitional Justice in New York, in formulating national plans for transitional justice.

I come now to my second part, transitional justice in Lithuania. The United Nations have acknowledged that an important partner for them in defining and promoting transitional justice is the European Court of Human Rights. Lithuania offers a good example both of how the European Court became very active in defining the scope and limits of transitional justice, and how the situation of post-Communist countries in Eastern Europe raised some politically sensitive and delicate issues (Milašiūtė 2021).

For readers who are not Lithuanian, let me remind them that Lithuania was annexed by the Soviet Union in 1939, with the acquiescence of Nazi Germany, pursuant to the infamous Molotov-Ribbentrop pact. However, when Germany went to war with Russia, Lithuania was occupied by the Germans between 1941 and 1945. As the war progressed, Germans and Russians fought for Lithuania in 1944 and 1945, and, as the Germans lost the war, Lithuania was occupied again by the Soviets, and regained its independence only in 1991.

Both the Nazis and the Soviets committed gross violations of human rights in Lithuania, and both of them had Lithuanian collaborators, although of course the Soviet occupation lasted for a much longer period.

Although, particularly in the 20th century, terms other than “transitional justice” were mostly used, after 1991 the new democratic and independent Lithuania had to confront all the typical issues of transitional justice.

One of the first to be addressed had to do with religious liberty, and it was the restitution of the communal properties belonging to the Catholic Church and other religious institutions. Churches, temples, synagogues and even cemeteries had been destroyed in Soviet times, or turned into museums, factories, and even warehouses and stables. In Vilnius, the cathedral became a picture gallery, and the historical church of Saint Casimir was converted into a Museum of Atheism. After independence, places of worship and other religious buildings were given back to the different religious organizations.

The process, regulated by a 1995 law, went up smoothly enough, except with the Jewish community, with which, according to a study by Algimantas Prazauskas (1941–2007), three problems existed. The first was who would represent the

Lithuanian Jews, most of whom had left Lithuania and lived in the United States or Israel, in negotiations with the Lithuanian government. In 2005, a Jewish Heritage of Lithuania Foundation was founded in the United States, under the aegis of the American Jewish Committee. The Committee's Director of International Jewish Affairs, Rabbi Andrew Baker, became a board member of the Foundation, and the main negotiator with Lithuania. In 2009, his position was reinforced when he was appointed as the Representative of the OSCE (Organization for Security and Cooperation with Europe) for combating anti-Semitism, a position he has maintained to this day. In 2006, the 1995 Lithuanian law was amended, and the Foundation was recognized as the sole body entitled to the restitution of Jewish religious properties in Lithuania. However, other Jewish organizations objected that this was unfair, because in their opinion the Foundation did not represent the interests of all Jews of Lithuanian origin, and perhaps not even of half of them.

A second point of contention was about the number of communal properties of the Jewish communities whose pre-World-War-II ownership could be documented. A third point concerned the direct intervention of the United States that, based on an agreement signed in 2002 on the reciprocal protection of cultural places of national concern, informed Lithuania in 2006 that some 100 synagogues and Jewish burial grounds there were of American interest because the descendants of these Jews lived in the U.S. The issue died down when Lithuania, in 2007, in turn formed a commission that listed more than 100 Lithuanian churches that had been demolished or were in a state of disrepair in the United States (Pražauskas 2007, 7–13).

The issue of Jewish properties and restitution remains politically sensitive in Lithuania, as proved by controversies concerning the Soviet Palace of Concerts and Sports in Vilnius, which is in a destitute state and was built by the Soviets in an area where an historical Jewish cemetery was once located. Lithuania planned to demolish the Soviet Palace and build there a conference center, while the Jewish community wanted it back to restore or rebuild the cemetery. It was becoming a heated issue when in August 2021 the Lithuanian government announced that plans to build a conference center had been shelved indefinitely due to how COVID-19 had changed the market for international conferences (Liphshiz 2021). After this paper was presented at the ISA RC-22 conference, Lithuanian Prime Minister Ingrida Šimonytė stated in January 2022 that the

government was considering restoring the Soviet Palace and converting it into a Jewish museum or memorial (BNS 2022).

Cases about religious properties did not reach the European Court of Human Rights; however, some cases concerning the broader issue of restituting private properties to the owners who had them confiscated by the Soviets or their descendants did. This was a more complicated issue than it may seem. After more than fifty years of war and occupation to whom exactly properties belonged was not always clear, and the process involved a good deal of administrative corruption. The law of 1990 governing the issue was amended several times, yet all versions maintained that only Lithuanian citizens should benefit of the restitution. In 2009, in the decision *Shub v. Lithuania*, the European Court of Human Rights decided that this did not create an illicit discrimination. The court explained that states that adopt a politics of restitution in furtherance of transitional justice have the right to implement it as they deem fit (European Court of Human Rights 2009).

Note, however, that in several cases the court, as recently as 2018, has sanctioned Lithuania for the excessive length of the restitution process. For instance, in the admittedly extreme case of *Beinarovič and Others* the Court found that a case properly submitted in 1991 had still not been solved after more than 25 years (European Court of Human Rights 2018b).

Another delicate situation concerned the Lithuanian citizens who had invested their money with Soviet banks, particularly in the chaotic final period of the Soviet Union, and had lost it, because these banks went bankrupted or disappeared overnight. Russia refused to compensate investors in Soviet banks, and desperate Lithuanians who had lost all their savings turned to the Lithuanian government. The latter wanted to help, and decided to compensate the defrauded investors, but only within the limit of 6,000 litas (at that time, some \$2,300 dollars) each. The unhappy investors went repeatedly to the European Court of Human Rights, only to be told, from the *Jasinskij and Others* case of 1998 (European Court of Human Rights 1998) to the case of *Petkevičiūtė* in 2018 (European Court of Human Rights 2018a) that Lithuania is not the successor of the Soviet Union and is under no obligation of repaying this money.

Perhaps more important for comparative purposes are cases involving the punishment of perpetrators of human right violations. As several other former

Communist countries (Fijalkowski 2018), Lithuania enacted in 1999 a law on so-called *lustracija* (Люстрация), excluding people who had collaborated with the KGB and other Soviet agencies responsible for violations of human rights from certain jobs and from running for office in the elections. Several of those affected by the law took their cases to the European Court of Human Rights.

The Court's reaction was very interesting. It ruled that to protect the newly born democracy a law on *lustracija* was reasonable in general, for example in the cases of *Sidabras and Džiautas* in 2004 (European Court of Human Rights 2004), and *Rainys and Gasparavičius* in 2005 (European Court of Human Rights 2005). However, it indicated two limitations. First, in the above-mentioned cases it found against Lithuania that it cannot prevent the applicants from working in the private sector. In fact, in 2015, three of the 2004–2005 applicants obtained a new decision of the European Court against Lithuania, *Sidabras and Others*, complaining they were still harassed in their private activities (European Court of Human Rights 2015a). Second, the court warned that *lustracija* laws cannot be permanent, and should last for a reasonable time only after the transition to democracy, except in special cases of persons individually responsible of atrocities or having hold leadership position in organizations (such as the KGB) guilty of gross violations of human rights.

Other cases that went to the European Court dealt with crimes against human rights committed by Soviet collaborators. A high-profile case was *Kuoletis, Bartoševičius and Burokevičius v. Lithuania*, decided in 2008. It confirmed that Lithuania had the right to punish Lithuanian citizens who had supported Soviet troops in cracking down on freedom fighters during the Bloody Sunday of January 13, 1991. The applicants had claimed that they had just been loyal to the legitimate government of that time, i.e., the Soviet Union. In fact, the Court did not explore in depth issues of transitional justice, but simply stated that on January 13, 1991, the legitimate authority in the country was the Republic of Lithuania and no longer the Soviet Union (European Court of Human Rights 2008).

It is interesting to note the difference between two cases concerning the criminal prosecution in Lithuania of former Soviet officers who were part of the repression and killing of Lithuanian partisans in the 1950s. In the case of *Vasiliauskas*, in 2015, the court found against Lithuania, accusing it of trying to apply its own laws retroactively and prosecute former Soviet soldiers for their

“participation in a genocide” without clarifying to which definition of genocide it was referring to or investigating the individual responsibility of the defendants (European Court of Human Rights 2015b). In 2019, in the *Drėlingas* case, the European Court agreed that Lithuanian judges had taken the *Vasiliauskas* case into account, and were now rendering unobjectionable decisions that specified in which specific genocidal actions or war crimes the defendants had participated (European Court of Human Rights 2019).

While the *Drėlingas* decision has confirmed that it is part of transitional justice in Lithuania to prosecute former Soviet officers or collaborators and convict them when they are guilty of specific (as opposite to generic) offenses, I would not omit to mention a sensitive political issue. Lithuanian courts and governments have been accused by legal scholars and politicians, both at home and abroad, of having applied transitional justice selectively, by punishing those responsible of atrocities during the Soviet period and ignoring those who had collaborated with the Nazis, even celebrating them when, after having been Nazi collaborators, they had become anti-Soviet partisans (see Fijalkowski 2018).

As a legal issue, it is now largely moot as almost all Nazi collaborators have now died, although Germany in 2021 started trials against a 100-year-old former concentration camp guard (*BBC News* 2021) and a 96-year-old female camp secretary (*France 24* 2021). It remains however a political and cultural issue, and many believe Lithuania as a mature democracy should now sincerely confront all its past, recognize that there were Lithuanians, including some who later fought against the Soviets, who were co-responsible for Nazi atrocities, and stop celebrating those anti-Soviet partisans who had a dark Nazi past.

In conclusion, what does all this tell us about transitional justice in Taiwan? I believe there are valid lessons in the United Nations experience and the case of Lithuania that are relevant for Taiwan as well.

First, it should be acknowledged that violations of freedom of religion or belief are among the wrongdoings of past regimes in need of being rectified. This is obviously relevant for the Tai Ji Men case. It may seem that compared to torture and killings the discrimination of spiritual minorities are minor, but in fact spirituality is an important part of individual and collective identity and violations of spiritual liberty damage a country as a whole.

Second, to preserve both justice and social stability, transitional justice should avoid the two extremes of vengeance and impunity. Punishment should be administered with restraint, although restitutions should be precise and generous. Ultimately, what many citizens in post-authoritarian societies such as Lithuania and Taiwan really want is not so much to see those who had been responsible of past injustices languish for long years in jail. What they want is a public recognition that injustices were perpetrated, an honest proclamation of the truth. In all cases where human beings were abused by authoritarian regimes, including the Tai Ji Men case in Taiwan, we should first and foremost ask for the truth.

As Jesus said, if you seek liberty, first “you shall know the truth, and the truth will make you free” (*John* 8:32). When Tai Ji Men protest in the street and ask for the truth, they are fighting for their liberty—and ours as well.

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