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Using Restorative Methods during Conflicts of War

The methods of restorative justice are used to repair the harm caused during crimes and to resolve conflicts with the active involvement of both victims and perpetrators. Restorative methods have also been applied to armed conflicts, either in cases where the goal is to settle a long-standing conflict, or where the aim is to mitigate the consequences and damages of a war that has already ended. The purpose of this study is to examine, by presenting some good practices, what restorative methods could be used to handle the conflicts of the ongoing Russian–Ukrainian war, by analysing some military conflicts that have occurred in history during which restorative methods were used, such as the conflicts in Papua New Guinea, the Democratic Republic of the Congo, South Africa or Northern Ireland.

Introduction

Defining the concept of restorative justice still raises many issues among professionals. The definition formulated by Tony Marshall is perhaps the most widely accepted one: “Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”.¹ One of the goals of restorative justice is to reduce the number of conflicts and, as it applies to criminals, to prevent them from recidivism.

However, experience shows that a large proportion of society is not familiar with restorative methods and does not understand what exactly they are. All of this is particularly worrying in light of the fact that one of the pillars of restorative methods is for the community to be an active participant in the process, so it is important that as many people as possible know about and are able to apply these methods when dealing with different types of conflicts. More people are likely to be familiar with the concept of mediation, either in civil law in connection with child custody during a divorce, or in cases of criminal proceedings. In Hungary, mediation is synonymous with the mediation process used by government agencies in misdemeanour and criminal cases, and is conducted by specially trained probation officers – mediators, and all of this can be classified under the umbrella of restorative methods.

In some cases, these methods can be applied not only in connection with a crime or an act affecting a small community, but also in connection with conflicts affecting entire societies.

The ongoing Russian–Ukrainian war raises the question of whether restorative methods have a role in resolving these conflicts. The purpose of this study is to present

¹ MARSHALL 1998: 5.

good practices, describe how and with what success restorative methods have been used during or after wars and how this knowledge can be applied to armed conflicts currently taking place in the world.

What can we learn from history about dealing with conflicts of war restoratively?

Papua New Guinea

A civil war took place in Bougainville, a province of Papua New Guinea, between 1988 and 1997.² The conflict broke out over the ownership of certain geographical areas and because of the desire for independence. Several thousand people died during the conflict and the traces of this traumatic period could still be felt in the community years after its end. In 1997, two peace negotiations took place, followed by the signing of the Lincoln Agreement, which enabled further conciliatory discussions to be held over the years. Bougainville's new justice system incorporated elements of restorative methods into the justice process. Between 1997 and 2003, a reconciliation mission took place, in which both military personnel and civilian, unarmed women and men from several countries of the world (Australia, Fiji, New Zealand and Vanuatu) took part. The United Nations (UN) maintained only one office and a few people in the area. One of the tasks of the peacekeepers was to monitor whether the government and the indigenous people were actually observing the ceasefire, while the other task was to conduct peace circles. According to the literature, the peace circle used in the region corresponds to a "deeper" version of the restorative conferences of the Western world, since the face-to-face meetings are preceded by lengthy preparation and negotiation. The peace circle method was applicable to a wide range of crimes (from theft to sexual crimes and murder). The custom was for the perpetrator to approach the victim and make some kind of reparation (which could not only be financial reparation, it could even be bringing some food), and in these events the direct and sometimes indirect community also participated, not only the parties involved. What is unusual compared to the practice in Hungary, for example, is that in Bougainville the reparation is agreed upon before the meeting, it is not discussed or negotiated during the personal meeting.

According to the literature, civil wars can be regarded as three-tier structures consisting of the victim, the perpetrator and the community. Table 1 shows this at the macro, meso and micro levels. At the micro level, the victims are individuals and families; the perpetrator or oppressor appears in the form of local fighters/individual opportunists or criminals, while the village or clan takes the role of the community. At the meso level, a targeted group or minority is identified as the victim, while militias, armed movements and criminal gangs are the perpetrators or oppressors, and the entire nation or society is represented by the community level. At the macro level, the victim takes the form of

² REDDY 2008: 117–130.

the traumatised society and the collapsed state, the state regime/warlords/structures can be observed in the role of the perpetrator/oppressor and the international and regional neighbours are understood as the community.

Table 1: Victim, perpetrator and community as a three-step construction at the macro, meso and micro levels

Victim	Perpetrator/oppressor	Community
Traumatised society/collapsed state	State regimes/warlords/structures	International and regional neighbours
Targeted group/minority	Militias/armed movements/criminal gangs	Nation/society
Individual/family	Local fighters/individual opportunists/criminals	Village/clan

Source: REDDY 2008: 125

Democratic Republic of the Congo

The use of child soldiers by the armed forces has been a phenomenon observed in the Democratic Republic of the Congo since 1996.³ This is a very complex phenomenon, since these children can be considered both victims and perpetrators at the same time, as victims of violence, but also perpetrators of violence. According to a report, 2,816 children were freed from various armed groups in Congo in 2010.⁴ The use of restorative methods is mentioned in official documents as a possible way to reintegrate child soldiers. The study written by Jean C. Kiyala draws attention to the fact that, according to his observations, there are not enough professionals in the country who are qualified to apply restorative methods, so one of the goals of his research was to educate the local people about restorative justice and its practical application.

During the study, researchers used peace circles, which involve not only the victim and the perpetrator, but also the whole community in the process (in Hungary, the process of peace circles has also been used in some cases, and Borbála Fellegi and Dóra Szegő published a manual to help with the facilitations which is available free of charge in English for professionals).⁵ The researchers interviewed 121 people who had served as child soldiers at one time and conducted six focus groups with their participation.

Based on the interviews, they found that those child soldiers who successfully escaped from an armed group usually find it very difficult to reintegrate into their community, because the community does not look favourably on their return, and many prefer to join another armed group rather than stay in their home in this isolated state. They are often approached by the group from which they escaped, and if they are not killed, they are taken back to the group, but some may voluntarily rejoin in return for basic food or

³ KIYALA 2015: 99–122.

⁴ KIYALA 2015: 99–122.

⁵ FELLEGI–SZEGŐ 2013.

to acquire money through looting and in the course of assaults. During the research, 1,165 people from the community, including child soldiers, completed questionnaires, the results of which revealed that they consider restorative methods to be a good way to reintegrate children, although it is also clear that the community wants to hold children accountable and punish them. Respondents agreed that the better the justice system works, the less inclined children will be to join armed groups. Restorative methods can help children take responsibility for their actions in a safe environment that is accepted by the community. During peace circles, children can discuss, not only with the community, but also with their families, the difficulties surrounding their return, their impact on their lives and the lives of others, as well as their needs and tasks for the future.

South Africa

As the governments of the various countries in southern Africa began to transform into democratic institutions in the past decades, national reconciliation processes were initiated, which aimed to restore the damage caused by human rights abuses and discrimination caused by deep-rooted political, ethnic and social differences.⁶ The study written by Christopher J. Colvin discusses the South African Reconciliation Project (SARP), which aims to map the restorative processes of five countries (South Africa, Malawi, Mozambique, Republic of Namibia and Zimbabwe) in the early 2000s with the aim of showing how the political and community characteristics of different countries influenced these initiatives. One of the most significant of these initiatives was the creation of the Truth and Reconciliation Commission in South Africa, whose tasks are to identify the perpetrators and victims of serious human rights violations committed between 1960 and 1994, to hold the perpetrators accountable and to map out the reparation options for the victims.

Based on the study, although victim protection and the services available to victims are very limited in the observed countries, a lot of attention was specifically paid to mapping the possibilities of the soldiers' reintegration into society, both in terms of their families and the local community. The results of the study suggest that reconciliation processes do not achieve the goal of the victims regaining some kind of control during the process and being able to meaningfully participate and lead the processes, which is an important part of restorative methods. According to the author, this can be traced back to the political divisions and the class differences that are still present.⁷ The results also show that the best model would be for restorative processes to involve various different domains (legal, financial, health, institutional, etc.) and at different levels (individual, community and

⁶ COLVIN 2007: 322–337.

⁷ COLVIN 2007: 332.

national). It is also extremely important that the initiators and implementers of restorative programs take into account the local culture, since any process will only work well if it can be well integrated into the local system, paying special attention to local characteristics. It also involves taking into account the ways in which people in that culture typically cope with trauma and hardship.

Northern Ireland

The paramilitary forces formed during the conflicts in Northern Ireland and the values that form the basis of the justice system represented by them, the customs formed on the basis of them, and the identity differences created along these lines have all been integrated into the culture of the country.⁸ The republicans saw the national police force as an illegal police body, so independent, paramilitary organisations were formed to perform police duties, which used violence in their communities and tried to maintain order with their own methods. On the other hand, the loyalist paramilitary forces primarily presented the lack of resources of the national police as a problem, which stemmed from the fact that although they recognised the police, they perceived that the police's resources were completely exhausted by the terrorist acts committed by the Irish Republican Army, which therefore did not deal with minor crimes, so the loyalist paramilitary forces had to fill this gap.

Instead of these paramilitary forces, various community restorative projects were created, which offered an alternative community justice method in order to give the community the opportunity to deal with conflicts non-violently. Non-violent, voluntary and inclusive restorative justice based on conversations stands in stark contrast to the use of force and repression by paramilitary forces that focus on punishment. In 1998, with the signing of the Belfast Agreement, the use of restorative processes rose to a political level, and the attitude towards conflicts seemed to be changing. However, there were many sceptics of community restorative projects who doubted the voluntariness of the process, as the leaders of the programs were in several cases members of paramilitary groups.⁹ In response to these concerns, the government (Northern Ireland Office) began to centrally accredit the projects and conduct research into them, and as a result, many sceptics' confidence in the processes increased.¹⁰ In addition, it cannot be ignored that, according to researchers, these ex-paramilitary group members were able to achieve the involvement of people in the restorative processes (primarily with the help of conversations based on shared experiences) who could not have been addressed by an outsider.

⁸ ASHE 2009: 298–314.

⁹ ASHE 2009: 301.

¹⁰ ASHE 2009: 302.

How could the experience gathered on the applicability of restorative methods be applied when dealing with the Russian–Ukrainian conflict?

While the Russian–Ukrainian conflict has been ongoing since 2014, it escalated significantly when Russia launched an invasion of Ukraine on 24 February 2022.¹¹ A military conflict of this scale has not been seen in Europe since World War II, so unsurprisingly all the developments related to this conflict have suddenly become the focus of the news.

The International Criminal Court (ICC) has jurisdiction over war crimes and crimes against humanity that take place in Ukraine, but the crime of aggression itself is not counted among them, so we have not yet seen any legal action against Vladimir Putin's actions in the international sphere.¹²

It may be worth asking, however, how the restorative methods used in previous armed conflicts could be applied to the Russian–Ukrainian conflict?

To address these international armed conflicts, it is important to explore the possibilities of using certain methods with a restorative approach, especially methods that can involve members of the affected communities in the processes (such as the method of peace circles), since these affect not only a single perpetrator and a victim, but entire communities. Of course, the active participation and openness of the communities to these processes is essential for this. According to John Braithwaite, the only solution is for the Russian population to try to resolve the conflict through restorative diplomacy, because external coercion can achieve the opposite of the hoped-for results.¹³ According to Braithwaite, the dialogue must start from within the community before any external party intervenes. Braithwaite's other suggestion for starting a dialogue and thus for a restorative handling of the conflict is to give space to citizen journalism. One of the cornerstones of restorative methods is that participants are given the opportunity to tell their stories, but often professional journalists do not have access to places where there is the greatest need to share stories. Citizen journalism could be a solution to this problem. Also, it is worth considering that everything may have turned out differently if Ukraine had had the opportunity to pay more attention to prevention and early restorative interventions. Around 2006 (years before the outbreak of the conflict in eastern Ukraine), the author attended an event in Moscow to promote restorative justice in Russia and Ukraine. Years later, when the conflict started, an initiative was launched on the Russian side so that the parties involved in the event would try to find a common path, but the Russian leadership did not support the program and the initiative ended prematurely.

The examples discussed above included situations where civilian, outside facilitators helped the processes and situations where the facilitators were active participants in the conflict. Both methods have their advantages and disadvantages, since a civilian person can bring in completely new aspects and has no emotional attachment to the situation and the outcome, while a person who was an active participant may have a strong attachment

¹¹ CHOWDHURY et al. 2022.

¹² SANDS 2022.

¹³ BRAITHWAITE 2022: 137–147.

to the situation. At the same time, if the facilitators are part of the affected community, there is a greater chance that they will see the complexity of the situation and respond sensitively to its specific details with the methodology applied. In both cases, it is essential that the facilitators are professionally trained. It is also important to mention that local culture and peculiarities must be taken into account in every case, and a single method should not be imposed on every case, as restorative justice allows and requires flexibility. The historical examples cited also show that it is important to intervene at different levels (individual, community and national level) and not only in one, but in several areas (e.g. legal, health and institutional fields).

Conclusion

During armed conflicts, it is important to remember that restorative justice, although it can contribute in part, is not the same as peacemaking.¹⁴ One of the biggest challenges facing it is that the conflict found at the micro level (between individuals) cannot be separated from the historical, political and social context found at the macro level, but only by taking these into account can we deal with the conflict between individuals.¹⁵

The method of restorative justice is also noted for its flexibility, since all crimes and conflicts are different, and these methods allow the process to adapt to different situations.

Peacekeeping is a complex process, which throughout history has primarily been the task of soldiers. However, these soldiers are not sent to fight, nor can they even act threateningly, so it is fundamentally questionable why we entrust soldiers with this task. There is not enough research to determine whether restorative justice can be useful in all cases during civil wars and other armed conflicts, but the application of the good practices listed in the study may be a useful approach when dealing with a conflict affecting a society.

Of course, nothing will bring back the dead and undo the traumas of war. The goal of restorative methods, instead, is to bring communities together, to restore relationships and thus repair the damage caused by war as much as possible, and to start a kind of conversation that may lead to a better future. There will always be crimes and wars, but it matters greatly how we react to these conflict situations, because if we can help one person, then participating in any process is already worth it.

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¹⁴ AERTSEN et al. 2008: 19.

¹⁵ AERTSEN et al. 2008: 19.

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