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This Briefing Paper considers the context and reasons underlying the small number of guilt admissions in international criminal courts and tribunals, such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court. Limited attention has been paid to the rationale that may induce perpetrators of war crimes to plead guilty. In particular, as this paper outlines, interviewing techniques may be a key component in influencing guilt admission in the investigation and trial process. Such admissions can also assist in reconciliation and recognition of past crimes. The author concludes by outlining future research on the incorporation of effective interview techniques into international war crime investigations.

R. Delaforce

Dr Ruth Delaforce
Editor
CEPS Research Fellow

Guilt Admissions and Interview Techniques in International Criminal Courts and Tribunals

Melanie O'Brien

Introduction

Prosecutions of international crimes such as war crimes, crimes against humanity, and genocide are complex and gathering information for cases is extremely difficult (Holliday, Brainerd, Reyna, & Humphries, 2009, p. 149; Murphy, 2010). Yet guilt admissions are a vital element of both preventing and coping with international crimes. Guilt admissions can provide us with an insight into why such crimes were committed, as well as being a coping mechanism for both victim and perpetrator. Outlined in this paper is a project that will ultimately assist international criminal justice practitioners in a number of ways; it will increase their success in prosecutions; contribute to an increase in guilty pleas; and increase reconciliation, truth-telling and forgiveness. This inter-disciplinary study involves aspects of law, psychology, criminology, and socio-legal theory; these theoretical bases will inform analysis of the praxis of the investigators and lawyers in the courts and tribunals. The results of this study will contribute to:

- Shorter trials using fewer resources; less confrontational situations and more consolation for victims;
- Rehabilitation for both victims and perpetrators; and
- A standard interview technique procedure to be available across all international criminal courts and tribunals, in particular the International Criminal Court (ICC).

Guilt admissions have both benefits and disadvantages. True admissions of guilt and remorse have beneficial impacts on victims, assisting with the healing process and reconciliation.[1] They can also contribute to truth telling,[2] although the utility of using war crimes trials and guilty pleas to determine the historical record can be questionable (Rauxloh, 2010). Convictions through international criminal legal processes can also have an impact, through deterrence, on reducing the likelihood of human rights abuses by subsequent regimes (Kim & Sikkink, 2010). In addition, a guilty plea means less tribunal or court resources and time

1 *Prosecutor v Deronjić*, Sentencing Judgement, IT-02-61-S, 30 March 2004, para. 238; *Prosecutor v Milan Babić*, Sentencing Judgement, IT-03-72-S, 29 June 2004, para. 69. For criticism on this view, see (Clark, 2009).
2 *Babić*, ibid., para. 68.

have to be used, and victims can be spared the distress of testifying.[3]

It is quite rare that perpetrators of international crimes plead guilty. For example, at the post-World War II Nuremberg International Military Tribunal of 1945-1946, defendants pled not guilty, and argued that they were following orders. In the National Military Tribunals of Nazis, there were 185 indictments, and only one guilty plea. At the International Criminal Tribunal for the Former Yugoslavia (ICTY), 20 defendants have pled guilty to date, out of 161 indictments.[4] Probably the most convictions of perpetrators have taken place in Rwanda since the 1994 genocide; not through the International Criminal Tribunal for Rwanda (ICTR), but through the Gacaca and ordinary domestic courts. However, there are currently no statistics available on the number of perpetrators who have admitted their guilt. At the ICTR, there have been few guilty pleas (eight to date from 92 indictments);[5] the reasoning behind which has been suggested to include the fact that high-level perpetrators had a strong belief in what they were doing and therefore maintain their actions were not criminal; and also that sentencing ruling in guilty pleas have not provided a guarantee that a perpetrator will receive a lighter sentence for pleading guilty.[6] From the pleas at the two tribunals, it is difficult to provide a true motive behind guilt admissions. Some perpetrators seemed to be genuinely remorseful.[7] Others clearly pled guilty merely with the goal of receiving a reduced sentence- although this is often not obvious until after sentencing, or even after time served.[8] Thus, the outcome of proceedings, such as a reduced sentence, or even an amnesty, can be a factor in inducing an admission of guilt.

There are many factors that could influence a perpetrator to confess. These may be psychological, anthropological,or sociological, such as a perpetrator's upbringing or personality. Factors which inhibit confessions for ordinary crimes are likely to be exacerbated in the case of international crimes, due to their serious and shocking nature. These factors may include the fear of legal sanctions such as imprisonment, which is usually a certainty in cases of crimes such as genocide (Gudjonsson, 2003, p. 115). Another factor may be concern about the perpetrator's own reputation (Gudjonsson, 2003, p. 116). For international crimes, this may not just be concern for their reputation, having committed the crimes, but it may be an impact of the admission itself. This can also be linked to a fear of reprisal (Gudjonsson, 2003, p. 116). For example, in some areas of the former Yugoslavia, accused who receive low sentences or are acquitted go home as heroes. In contrast, those who testify against others are pariahs, considered 'traitors'. In some areas of the former Yugoslavia, a persisting nationalist ideology is reflected in the continuing denial of the commission of war crimes. These elements may all influence a suspect's decision whether or not to plead guilty. Other factors inhibiting confessions include memory suppression in order to avoid self-admission of the crimes, and wanting to avoid family and friends learning of the crime(s) (Gudjonsson, 2003, p. 116).

For a perpetrator who truly regrets his or her actions, admitting their guilt can assist with understanding their own behaviour. While controversial, it cannot be denied that, for some perpetrators who did not take pleasure in what they did, or who were forced to commit horrendous crimes, coping with what they did is an impossible task. Some perpetrators have been unable to deal with their actions, have suffered from post-traumatic stress disorder, and in some cases committed suicide.[9] Some perpetrators have shown true remorse, assisted with other cases, and even offered direct consolation to individual victims about the fate and whereabouts of loved ones.[10] An admission of guilt should be encouraged as a form of rehabilitation for those who commit mass atrocities. [11]

There are other elements in the criminal justice process that may influence the decision of a perpetrator whether or not to confess. This includes the manner in which the interview and questioning process is conducted. An effective interview can result in an admission from a perpetrator who previously was either unwilling to admit their crimes, or wanted to, but was apprehensive about doing so. A highly skilled interviewer can create a rapport and use techniques that will result in an admission where other techniques, for example, more aggressive techniques, would not.

Persons who work in international criminal justice, such as at the ICTY or ICC, come from a variety of legal backgrounds and professional experience. Investigators and prosecutors are inevitably influenced by their national training and experience, so these differences may impact significantly on whether perpetrators confess or not. There exists a variety of interview techniques, some which are recognised by psychologists as being more successful in criminal interrogations and confessions, such as, for example, cognitive interviewing techniques (Gudjonsson, 2003; Kebbell & Wagstaff, 1999; Milne & Powell, 2010). These techniques can take into account factors such as the barriers to confession,

3 *Prosecutor v Deronjić*, supra note 1, para. 241. For further discussions on guilty pleas, see e.g. (Combs, 2002); (Jorgensen, 2002); (Damaska, 2004); (Scharf, 2004); (Dixon & Demirdjian, 2005); (Combs, 2006).

4 Including Babić, Deronjić, Erdemović, Jelisić, Momir Nikolić, Obrenović, and Plavšić.

5 Bisengimana, Kambanda, Nzabirinda, Rugambara-ra, Ruggiu, Rutaganira, Serugendo, and Serushago.

6 Combs, 2002, and Combs, 2006, both *supra* note 3. See also (Hatzfeld, 2008), in which perpetrators freely discuss their genocidal crimes and their lack of remorse.

7 See e.g. *Prosecutor v Milan Babić*, Transcripts 27 January 2004, IT-03-72-S; Sentencing Judgement, 29 June 2004, paras. 65-71.

8 E.g. *Prosecutor v Kambanda*, ICTR-97-23-S & ICTR-97-23-A; *Prosecutor v Plavšić*, IT-00-39 & 40/1.

9 *Prosecutor v Erdemović*, Sentencing Judgement, IT-96-22-T, 29 November 1996; (Taylor, 1993), pp. 132, 149 (the suicide of Robert Ley- although it must be noted that Taylor does not analyse the reasons behind Ley's suicide).

10 E.g. Drazen Erdemović (ICTY); Albert Speer (Nuremberg IMT).

11 *Prosecutor v Dragan Obrenović*, Sentencing Judgement, IT-02-60/2-S, paras. 145.

a suspect's anxiety, memory issues, and other psychological and logistical concerns relating to the suspect (Gudjonsson, 2003, pp. 118-128).

Guilt and Remorse before the International Criminal Tribunal for the former Yugoslavia

The author's research to date, undertaken through interviews of current and former personnel (lawyers and investigators) of the ICTY, has revealed several aspects to the guilty pleas entered before the tribunal. In terms of discussing their own conduct, politicians who appear before the ICTY as defendants are more likely to submit to interview or testify than military personnel. This is because politicians tend to want to sell themselves and their ideology, and engaging in an interview with the prosecution may further this goal. However, the main motivation behind guilty pleas before the ICTY has been for the suspect to undertake the best course of action for themselves and their family. That is, suspects have opted for a determinate sentence, as opposed to an indeterminate sentence such as life. The majority only plead guilty after learning of the evidence against them and the subsequent realisation they are likely to be found guilty.

As mentioned above that guilty pleas have been considered effective for promoting reconciliation and forgiveness. One case before the ICTY where this occurred was *Plavšić*. Plavšić pled guilty and admitted full responsibility,[12] an action which an expert witness declared before the tribunal would have a very positive impact on reconciliation and forgiveness in the former Yugoslavia.[13] Unfortunately, during her term of imprisonment, Plavšić openly declared her lack of genuine remorse, stating that she only pled guilty in order to have genocide charges dropped and to receive a shorter sentence (Goldberg, 2009). Plavšić's statements reveal the problem of guilty pleas being made, not through a true acceptance of responsibility by the perpetrator, but for self-interest. Such false statements of remorse impact negatively on reconciliation, and also create problems as to the perceived legitimacy of the international court or tribunal (Simic, 2011, pp. 1400-1402).

In the case of *Deronjić*, the suspect gave several different versions of what happened in various interviews with the prosecution. Eventually, Deronjić pled guilty with one last statement that was still not completely truthful.[14] However, based on the evidence before the court, Deronjić pled guilty because he knew he would be convicted. This evidence included an acknowledgement Deronjić had made before a judge in Bosnia that he had ordered the destruction of the village of Glogova (Bosnia and Herzegovina).[15] While he did express remorse about the victims of the war,[16] as with Plavšić, the perception is that Deronjić's motivation was to get a reduced sentence.

There are cases of genuine remorse before the ICTY. In the case of *Erdemović*, the perpetrator was forced to commit murders.[17] He killed about 70 people as part of the Srebrenica massacres. Erdemović surrendered himself and pled guilty immediately. His trial was delayed due to his suffering post-traumatic stress disorder.[18] Erdemović stated: "*I only wish to say that I feel sorry for all the victims, not only for the ones who were killed then at that farm*… because of those victims… my consciousness… my life… my child and my wife, I cannot change what I said… because of the peace of my mind, my soul, my honesty, because of the victims and war and because of everything."[19] Erdemović continues to assist the ICTY, testifying for other cases, and has provided extremely valuable information to the ICTY. Erdemović was, in fact, a key case that introduced plea agreements into ICTY system.

Another case of genuine remorse is that of *Babić*, who considered "that I do bear certain responsibility for everything that took place during that period of time in the territory of the former Yugoslavia".[20] He stated: "*I come before this Tribunal with a great sense of shame and remorse. I have allowed myself to take part in the worst kind of persecution of people simply because they were Croats and not Serbs*… The regret that I feel is the pain that I have to live for the rest of my life. These crimes and my participation can never be justified… Only truth can give the opportunity for the Serbian people to relieve itself of its collective burden of guilt. *Only an admission of guilt on my part makes it possible for me to take responsibility for all the wrongs that I have done*…".[21] He declared that his main reasons for testifying were to establish the truth and assist in the process of reconciliation.[22]

Guilt and Remorse before the International Criminal Court

To date, only one suspect has agreed to be interviewed by the prosecution/investigators of the ICC. As with ICTY interviews, ICC prosecution interviewers determined that

12 *Prosecutor v Plavšić*, Trial Transcript, IT-00-39 & 40/1 17, December 2002; Plea Agreement, IT-00-39 & 40-PT, 30 September 2002.
13 *Plavšić*, Sentencing Judgement, IT-00-39 & 40/1-S, 27 February 2003, paras. 75-77.
14 *Prosecutor v Deronjić*, Sentencing Judgement, IT-02-61-S, 30 March 2004, para. 252.
15 *Prosecutor v Deronjić*, Plea Agreement, IT-02-61-PT, 29 September 2003.
16 "I regret the expulsion that I committed, and I express my remorse about all the victims of this war, no matter in which graveyards they lie. I apologise to all those […] to whom I caused sorrow and whom I let down." *Deronjić*, Sentencing Judgement, para. 263. Note the phrasing does not expressly admit remorse for and take responsibility for the crimes he committed. His remorse was found to lack credibility by Judge Schomburg in his dissenting opinion. *Deronjić*, Sentencing Judgement, Dissenting Opinion of Judge Schomburg, para. 17.
17 *Prosecutor v Erdemović*, Sentencing Judgement, IT-96-22-T, 29 November 1996, paras. 10, 14, 80, 81.
18 *Ibid*., para. 5.
19 *Prosecutor v Erdemović*, Sentencing Judgement, IT-96-22-T*bis*, 5 March 1998, p. 16 (emphasis added).
20 *Prosecutor v Babić*, Sentencing Judgement, IT-03-72-S, 29 June 2004, para. 65.
21 *Babić*, Trial Transcript, 27 January 2004, pp. 57-58 (emphasis added).
22 *Babić*, Sentencing Judgement, para. 69.

this suspect used the interview for his own political agenda.

The reason for the lack of suspect interviews at the ICC is that defendants have a greater awareness of the ICC and its justice system as a whole. Therefore, suspects invoke their rights under Article 55 of the Rome Statute such that a person cannot be compelled to incriminate himself or herself or to confess guilt, and the right to silence [Article 55(1)(a) and 55(2)(b)].

Interview Techniques and Training

In the author's research so far, there are no interview technique training courses required, nor are there interview technique guidelines available for staff at the ICC or ICTY. Interviews of suspects are undertaken not just by investigation personnel, but also prosecution lawyers. Past training by domestic institutions of lawyers in investigative interviewing techniques is almost non-existent. Training of investigation personnel is dependent on their background. Police officers are more likely to have been trained in interview techniques, but these techniques will vary greatly depending on their background.

The best comparative example of different interview techniques is those adopted by the UK and those used in the USA (Sear & Williamson, 1999). In the United States, an interrogation approach is taken. An interrogation approach involves techniques with the goal of obtaining a confession. One example is the Reid Technique, used by US law enforcement officers, and based on breaking down denials and resistance of a suspect, and increasing the suspect's desire to confess (Gudjonsson, 2003, p. 11). The technique follows nine steps, which include direct confrontation of the suspect, and presenting two possible alternatives for the commission of the crime (Gudjonsson, 2003, p. 21). Use of trickery or deceit by an interrogator is legally permissible, and commonly used (Alfredsson & Eide, 1999, pp. 73-74; Lord & Cowan, 2011, pp. 219-221). [23]

In the UK, police officers are trained in the PEACE method (Planning and preparation, Engage and explain, Account, Closure, and Evaluation) (Dando, Wilcock, Behnkle, & Milne, 2010, pp. 491-493). The aim of these investigative interviews is to obtain the truth of what happened. Two interview styles are used: conversation management, and cognitive interview techniques (CI) (Dando, et al., 2010, pp. 491-492). The latter is used for cooperative witnesses and suspects. The cognitive interview stems from principles of cognitive and social psychology. The three core principles are memory/general cognition, social dynamics, and communication (Holliday, et al., 2009, pp. 138-140). The first principle requires the interviewer to recognise the limited cognitive processing resources of a person, and thus to use, inter alia, witness compatible questioning and context reinstatement in order to encourage memory retrieval (Holliday, et al., 2009, pp. 138-139). Through the use of social dynamics, an interviewer will encourage active subject participation in the interview, and develop rapport with the subject (Holliday, et al., 2009, p. 139). For the third principle, the interviewer must communicate to facilitate extensive, detailed responses from the interview subject (Dando, et al., 2010, p. 492; Holliday, et al., 2009, pp. 139-140). In contrast, conversation management is used with unwilling or uncooperative interviewees, particularly suspects, and requires the interviewer to control the interview (Schollum, 2005).

Conclusion

It is evident that very few génocidaires and perpetrators of other international crimes are unwilling to admit their guilt and to take responsibility for their actions. It is even rarer still that these admissions are based on genuine remorse. For example, from my analysis and interviews, only three out of 20 guilty pleas at the ICTY were based on remorse, such as the case of *Erdemović*. Perpetrators maintain their own belief in actions as a way of justifying such conduct. A majority of those who do are motivated to confess guilt only for self-interest, such as a shorter prison sentence or reduced charges. They are often motivated to confess guilt only when a conviction is inevitable, as demonstrated by evidence against the suspect presented throughout the trial. Perpetrators can also be discouraged from pleading guilty if prior defendant(s) received high sentences with guilty pleas.

It is important then, that interviews with suspects obtain as much information as possible, even if they do not necessarily lead to a guilt admission or trial. In some cases before the ICC, potential affecting elements such as interview techniques may be irrelevant due to defendants' unwillingness to talk to prosecution. However, some suspects do agree to be interviewed, and thus personnel should be trained in effective investigative interviewing techniques. Effective investigative interviewing can be the trigger that results in a perpetrator revealing the crimes they have committed, while avoiding false confessions from innocent people.

Without comprehensive investigations that reveal the truth, the goals of truth and reconciliation are not necessarily met. If some goals of international criminal justice mechanisms are truth and reconciliation, in addition to criminal justice retributive sanctions, then preliminary findings are that, as a starting point, the courts and tribunals should adopt the PEACE approach, using cognitive interviewing and conversation management. This approach, although not confession-oriented, has been found not to reduce the number of guilt admissions. In international criminal justice, such techniques may, in fact, increase them or result in more fact-inclusive prosecutions through admissions by witnesses as to their own crimes. However, this is not to say that such techniques will always be applicable to different cultures, and therefore there should also be specific training for personnel depending on the culture of the people from the region in which crimes are being

23 See e.g. *Frazier v Cupp*, 394 US 731 (1969).

investigated.

A lack of awareness of, or training in interview techniques, by lawyers who interview demonstrates that there is no institutional recognition of the importance of investigative interviewing in international cases. It is vital to remember that in international criminal law, while guilt admissions should always be a consideration, there are broader goals to the international criminal justice process, as one part of the broader domain of transitional justice. False or incomplete statements have a negative impact on peace and reconciliation; clearly do not expose the truth; and damage the credibility of the institution by casting doubt on its legitimacy.

Future Research

This project is ongoing, and in the future will look to expand on two main elements. The first is examining and comparing interview techniques used across different domestic jurisdictions globally, including non-Western, non-Anglo countries. This study will increase the technique base from which to draw effective techniques that could be applied in international courts and tribunals. The reason behind this is that techniques such as cognitive interview techniques may not always be effective in all cultures (e.g. they do not work for non-chronological recounts of events as experienced in some African cultures).

The second element will involve studies of international courts and tribunals not yet covered. This will involve interviews with former and current personnel of the International Criminal Tribunal for Rwanda, and the Extraordinary Chambers in the Courts of Cambodia.

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About the Author

Dr Melanie O'Brien is a research fellow in the ARC Centre of Excellence in Policing and Security at Griffith University in Brisbane, Australia. She completed her PhD in international criminal law, human rights, military law, international humanitarian law, and peacekeeping at the University of Nottingham, UK; and has an LLM in International Human Rights Law from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at the University of Lund in Sweden. Prior to completing her Graduate Diploma in Legal Practice at UTS, Australia, she graduated from the University of Newcastle, Australia, with a BA in history and French, and LLB. During her PhD, she was a visiting scholar at the Max Planck Institute for Foreign and International Criminal Law, Germany; and the Asia Pacific Centre for Military Law at the University of Melbourne, Australia.

Her research and supervision areas include peacekeeping, international criminal law, international humanitarian law, human rights, feminist legal theory, public international law, comparative criminal law, and military law.

She has published in leading academic journals, including the *Journal of Conflict and Security Law*, and the *International Criminal Law Review*. She is a peer reviewer for, inter alia, the Interdisciplinary Journal of Human Rights, and is a member of the Australian Committee of the Armed Forces Law Association of New Zealand, and the Emerging Scholars Committe of the International Association of Genocide Scholars (IAGS). Melanie has presented papers at many international conferences, including the IAGS conference and the Socio-Legal Studies Association conference.

Melanie is currently working on research projects about guilt admissions in international criminal justice; interview techniques in international courts and tribunals; expanding the mandate of CivPol in UN peace operations; and various cases of interest in transnational and international criminal law, including the Gabe Watson case.

Melanie's previous work includes the Legal Advisory Section of the Office of the Prosecutor at the International Criminal Court; the International Criminal Justice Unit of the Nottingham University Human Rights Law Centre; the UN Department of Peacekeeping Operations; for the Raoul Wallenberg Institute; at the Australian Law Reform Commission; and at the NSW Crown Solicitor's Office. She is an admitted legal practitioner.

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M10_3.01
Mt Gravatt Campus
170 Kessels Road
NATHAN QLD 4122
Ph: 07 3735 6903
Fax: 07 3735 1033

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