

Negotiating Peace and Conflict Resolution
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The first priority in negotiating an end to violent conflict is to ensure that the values of Peace and Justice are not regarded as in conflict with each other but as mutually reinforcing, nurturing and complementary.

This principle is easy to accept in theory and always nearly intractable when applied in practice. How do we do it?

First, durable, sustainable peace can only be achieved through consultation with and participation by ALL stakeholders, especially the victims of war crimes and crimes against humanity. It is widely understood that the victims' demands for justice need to be considered or the peace agreement may not be lasting. Even if it is lasting, it may not be desirable because it will not address either the root causes of the conflict or the open wounds it has produced in the social fabric.

Those of us who approach these questions primarily from the perspective of human rights cannot afford to be painted into the corner of the spoilers of peace, accused of countenancing prolonged violence and suffering just because we don't like the deal that is being worked out. On the other hand, we should not back down from our insistence that the parties to the conflict have no right to bargain away the legitimate aspirations of victims to see justice done. Victims have suffered the war and will have to live with the peace; it is only right to listen to them. Of course, listening to them does not mean that they should hold a veto over peace agreements.

Second, let us acknowledge that international law has been evolving and that it clearly requires that genocide, war crimes and crimes against humanity simply shall not go unpunished. This principle, born in this very city sixty years ago, has now been amply ratified by human rights treaty bodies, international courts and other authoritative organs in the last two decades. The 1999 UN Guidelines for mediators may be binding only on UN mediators, but let us be reminded that they are not a policy option made by the UN: they are based on the requirements of international law. Those emerging norms are now coupled with an institution, the International Criminal Court, that not only solidifies and clarifies the standards but facilitates their implementation. Taken together, the emerging norms and the ICC clearly limit the discretion of the parties to the negotiations and the mediators as to what deals are acceptable to the international community. Some may think that those limits to discretion are a complicating factor: I prefer to see them as an incentive to work harder towards a better deal, a deal we can ALL live with.

In any event, these standards prohibit blanket amnesties for the category of crimes mentioned earlier. The reason is that if war lords and criminals say they will go on fighting and committing human rights abuses unless we give them full impunity through

amnesty they are engaging in a blackmail that we cannot tolerate because it undermines the legitimacy and the legality of the international order. Amnesties of the offense of rebellion or sedition, however, are perfectly compatible with international law, indeed may be required by Protocol II to the Geneva Conventions. We should, in fact, actively promote that kind of amnesty for the purpose of demobilization, disarmament and reintegration while we object to amnesty for those bearing the highest responsibilities for war crimes or crimes against humanity.

Also, blanket amnesties are prohibited because they are unconditional and therefore just another name for impunity. But that does not mean that some reduced penalties, in exchange for broad cooperation on a variety of justice-oriented mechanisms, are also off-limits. Conditional amnesties like the one established under the South African Truth and Reconciliation statute may well pass international law muster in principle, although a lot will depend on how those amnesties are actually applied.

Third, it is important not to see the guidelines only as a series of prohibitions; they are actually a catalog of constructive suggestions as well. It must be understood that, even in the best case scenario, only a handful of cases will be criminally prosecuted and tried, with or without an amnesty. To avoid the disappointment that such an “impunity gap” will generate, we must consider non-judicial approaches to truth telling, justice by customary or traditional law, reparations, apologies, reconciliation conversations and thorough reform of security sector institutions. All of these “transitional justice” mechanisms can offer the means by which justice in multiple forms is done and is seen to be done.

Fourth, in addition, there is no need to expect that every aspect of justice must be realized at the same time. The prosecution of “dirty war” defendants in Chile and Argentina thirty years after the fact demonstrates that the power of the idea of justice is so strong that it just does not go away. Naturally, this does not mean that we should wait; but it does suggest that there are ways of “sequencing” the steps of peace and justice so that they indeed strengthen and reinforce each other.

This brings me to my last point: the way to avoid a “Peace versus Justice” conundrum is to try to see both peace and justice in a continuum of actions, measures, policy steps and achievements over which a Nation overcomes conflict and confrontation and builds a future of understanding and decency.

Certainly, some steps are more urgent than others. For example, we should always support an immediate cease-fire. And as we build over steps already achieved and we create conditions of confidence by all parties and all stakeholders, we must make sure that what we agree today does not become an obstacle to legitimate pursuits later. In that manner, we can achieve the greatest possible measure of justice that is consistent with peace. In the final analysis, peace will be more than the silencing of the guns if it is also an opportunity to realize legitimate and inalienable aspirations to justice.