Pursuing Peace, Justice or Both?

Of the many challenges that arise when negotiating a transition to peace and an end of war, one of the most difficult can be the tension between prioritizing peace and insisting equally on justice for crimes of the war. Should peace take precedence over justice in situations involving massive human rights violations and war crimes? In reality, is there a trade-off? What are the options for mediators?

BACKGROUND
Mediators and those negotiating peace agreements have long struggled with demands for both peace and accountability—for example, during the 1990s in El Salvador, Guatemala, Sierra Leone, South Africa and the former Yugoslavia. This decade, Indonesia, Liberia and Nepal have offered similar challenges. Most of the recent agreements reflect a growing international belief that massive atrocities cannot be swept under the rug at the end of a war. In particular, recent peace agreements have largely avoided granting amnesty for serious crimes.

Most recently, the issue of peace and justice has become significant in Uganda and Sudan, where the International Criminal Court (ICC) has investigated crimes or issued arrest warrants against senior members of the government or armed opposition while peace negotiations were underway.

The issue also arises in situations where international judicial mechanisms have no involvement. In these cases, the question is often whether negotiators or other authorities will grant immunity from prosecution for crimes committed in war, or if some form of accounting for such crimes at the national level will be included in a peace pact.

Some peace agreements include provisions for a truth commission, reparations for victims, vetting of the police or army, or memorials to be constructed to remember victims. The challenge then becomes whether and how such agreements are implemented.

IMPORTANCE OF TIMING
Societies do not have to choose between peace or justice. In many societies that are grappling with recent human rights abuses, mediators and negotiators recognize that the immediate demand for peace and essential need for justice can be addressed through an appreciation of timing.

The prosecution of senior perpetrators may not be possible immediately, for example, in part because national judicial systems are politically compromised or in tatters. But conditions usually change over time. Building fair, functioning systems that uphold the rule of law and hold officials accountable helps build a stable, lasting peace. Indeed, justice initiatives must go beyond focusing on the prosecution of high-level people charged with violating human rights, and concentrate on building rule-of-law institutions.

The case of Charles Taylor—the former president of Liberia who was arrested by the Special Court for Sierra Leone—demonstrates that seeking political asylum in another country no longer guarantees impunity. After the court indicted him in 2003, Taylor was granted asylum in Nigeria; this allowed Liberia’s civil war to end and a transitional government to take power there. Taylor repeatedly violated the terms of his stay in Nigeria, and, at the urging of the newly elected Liberian President Ellen Johnson Sirleaf, Nigeria took Taylor into custody in 2005 and handed him over to the Special Court for prosecution. He is now on trial in The Hague.

AMNESTIES
Providing amnesty for “international crimes”—defined as crimes against humanity, war crimes and genocide—is increasingly considered to be prohibited by international law. While international law is constantly evolving, this understanding is drawn from the obligations set out in human rights treaties (signed by most states), the decisions of international and regional courts and the law emerging from long-standing state practice, known as customary international law. In many countries there may also be legal prohibitions of such amnesties. International, regional and national courts have increasingly overturned general amnesties.

The United Nations has established explicit guidelines prohibiting its representatives from supporting amnesty for international crimes. The Rome Statute establishing the ICC, to which 108 states are party, requires prosecution of these core crimes.

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While questions of justice in the context of peacemaking have emerged in every region of the world, they are receiving considerable attention in Africa because of the ICC’s recent actions in nations there.

**Uganda**

The ICC’s decision to issue arrest warrants for five leaders of the rebel Lord’s Resistance Army (LRA) in 2005 raised concerns about whether the threat of arrest would hinder peacemaking efforts. However, the most promising peace talks began only after the warrants were issued. The warrants forced the negotiators to grapple directly with the question of justice. The parties’ final agreement set out plans for a new, special chamber in the Ugandan courts to try the rebel leaders in Uganda, and thereby show that the ICC’s involvement was no longer necessary.

The leader of the LRA, Joseph Kony—one of the people sought by the ICC—did not appear for the signing ceremony of the final peace agreement in April 2008 and failed to appear at a second meeting in November 2008. But mediators do not believe that the justice provisions were the reason he failed to appear. The LRA has since continued to carry out violent attacks.

**Sudan**

In 2007 the ICC issued arrest warrants for two Sudanese charged with crimes against humanity in the Darfur region. In July 2008 the prosecutor requested an arrest warrant for Sudan’s president, Omar al-Bashir. The Sudanese government has protested strongly and refuses to cooperate. Observers have warned that an arrest warrant may threaten the fledgling Darfur peace talks and limit the delivery of humanitarian aid to victims. Regional bodies including the African Union and Organization of Islamic Conference expressed support for the government of Sudan. The United Nations Security Council is considering whether to suspend the activities of the ICC in relation to Sudan for one year, which the council has authority to do under Article 16 of the Rome Statute.

**Democratic Republic of Congo (DRC)**

The DRC has been in an almost constant cycle of war and peacemaking for the past 10 years. The ICC has issued arrest warrants for five Congolese for their actions in the DRC; most of the suspects are former rebel leaders who had demobilized as part of a peace process. Four are in custody; the fifth person remains at large. The ICC’s engagement in the country has neither precluded further peace agreements nor been an impediment to peace generally. But the arrests do not seem to have had a deterrent effect, as serious human rights abuses continue. Since 2001 all peace agreements in the DRC that have included an amnesty provision have explicitly excluded serious international crimes, thus respecting international standards.