

DEALING WITH JUSTICE AND PEACE ISSUES IN TIMES OF WAR

ACP REPORT, NO. 1/2023



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Austrian Centre for Peace Report, NO. 1/2023

Supported by:

 Federal Ministry
Republic of Austria
European and International
Affairs



Imprint

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Dealing with Justice and Peace Issues in Times of War

1. Context

Recent events in different parts of the world seem to indicate that war is becoming routine again. The year 2023 will likely turn out as the deadliest year in terms of armed conflict in decades. Indeed, there is evidence of a global stalemate in key peace processes, resulting in military deterrence and a turn to violence as the chosen answer.

One of the major dilemmas that peacebuilders and mediators face during or after violent conflict is dealing with human rights and justice issues while pursuing peace initiatives. Without human rights for all there is no lasting peace, no long-term security and no sustainable development. Major violations of international humanitarian law and human rights law almost unavoidably take place during large scale violent conflict.

Bringing justice to perpetrators is one of the key tenets of international peacemaking. Article 1 of the United Nations Charters indeed outlines that the first purpose of the organization is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which may lead to a breach of the peace.”

In other words, sustainable peace can only be found if these principles are taken into account. However, most of the time, the those violating these principles are also the conflict parties with whom mediators need to work to bring an end to war and enforce

peace.

The tensions between the principles of justice and peace in situations of armed conflict were discussed among experts from different fields, who participated in **a workshop on the 13 November 2023 leading to a public event at the Diplomatic Academy on the 14 of November 2023**. The experts shared lessons learned of peace processes from former Yugoslavia, Ethiopia, Sudan, Ukraine, and the Middle East Conflict.

2. General Conclusions

The tensions of reaching justice within peace processes are evident and carry practical implications. Indeed, the perpetrators of human rights law (IHRL) or humanitarian law (IHL) are frequently the ones, who negotiate ceasefire, or even a peace process. More often than not, it is therefore impossible to **bring perpetrators to justice** in an immediate sense.

A departing point is that only a small percentage of armed conflicts in modern times end in military victory. In other words, in the overwhelming number of cases, fighting might end on the battlefield, but the end to the war is achieved in a negotiation room. Looking further into detail, most ceasefire or peace agreements have power-sharing arrangements at their heart, with the immediate aim to stop violence. In case concrete accountability mechanisms were included, the assumption is that the incentives for conflict actors to take part would significantly

decrease.

At the same time, a majority of peace agreements contain principles about human rights. The assumption is that the mention of such principles provides legitimacy to agreements and the actors part of it. A notable exception is the Colombian peace process concluded after several decades of violent conflict, which contains concrete provisions for accountability and which were in fact a central part of the negotiations. A preliminary conclusion might be that a conflict might in fact need to be “ripe” not only in a sense of violence ending but of actors being ready for a more sustainable solution, including accountability mechanisms.

In light of the recent increase in cases and magnitude of violations to IHL and IHRL, the **credibility and the accountability of the international legal system** is under severe scrutiny. It is essential to restore this credibility and ensure that the system itself is not blamed for its poor implementation. Historical documents such as the Geneva Conventions or the UN-Charter remain the key references. However, there is several recent cases where the selective application of IHL and IHRL is visible.

3. Case Studies

The experts discussed the past and ongoing armed conflicts in the former Yugoslavia, Ethiopia, Sudan, Ukraine as well as Israel/Palestine and shared their recommendations.

Considerations from Past Armed Conflicts

a. Former Yugoslavia

Many years after the armed violence in much of the former Yugoslavia the dynamic of polarization hasn't changed. Throughout the years after the end of violence, extensive

processes of international justice were conducted, contributing to establishing facts about IHL and IHRL violations. Nevertheless, the next step was never taken and a process of reconciliation didn't follow these efforts to provide justice. Therefore, although there was increasingly a common basis of facts, different “truths” continue to be deducted from them, continuing the dynamic of polarization.

Experts recommend to

...think comprehensively since justice without reconciliation as a next step does not bring peace.

...keep in mind that in “truths” reflected on the ground can be more important than actual facts.

b. Ethiopia

The latest conflict in Ethiopia was one of the most devastating in the Horn of Africa in humanitarian terms in the last decades. This humanitarian disaster was indeed ended by a ceasefire agreement. However, the rationale was based on regional stability and regime maintenance. Transitional justice provisions were thus included in the national system, which is marked by a pervasive culture of impunity.

Experts recommend to

...provide for independent mechanisms of accountability.

...focus on a comprehensive peace process.

Considerations from ongoing armed conflicts

c. Sudan

The conflict in has a long history of atrocities, such as the large-scale violence

committed in Darfur in 2003. Different peace agreements over time mainly focused on power-sharing between the conflict actors, which led to a situation where important actors responsible for IHRL and IHL violations remained in power and at the central stage in the current conflict dynamic.

At the same time, a historic indictments were passed in 2008 by the International Criminal Court with the most significant case against the then active Sudanese President Omar Al Bashir. This was the first warrant of arrest ever issued for a sitting Head of State by the ICC. However, soon after, **the international community lost its interest in the Sudan conflict** and Al Bashir was never handed over for trial.

Experts recommend to

...facilitate a long-term inclusion of civil society into peace processes and mechanisms surrounding justice and accountability.

...document atrocities since data is key to justice mechanisms and documentation on the Sudan conflict is not sufficient.

...critically analyze the involvement of external actors on Sudanese soil to show possible courses of action for the international community.

d. Ukraine

Especially since the Russian war of aggression against Ukraine from 2022 onwards, there is a multitude of violations of IHRL and IHL taking place on Ukrainian soil. There are two levels to distinguish when discussing the interrelation of peace and justice in this context.

In relation to Russia, Ukraine pursues a so-called “just peace” and in consequence most points in the Peace Formula by Ukrainian President Zelenskyy seek for accountability. Since an independent pursuit of accountability is not always possible (despite the significant

indictment of Russian President Putin by the ICC), Ukraine conducts most of the pursuit by itself. At the same time, it is clear that the possibility of accountability and the threat of prosecution reduce the likelihood of concerned actors to agree to negotiations. It remains important to keep in mind that justice should further peace. However, the question might arise whether Ukraine is in fact seeking peace, or rather revenge through their pursuit for accountability.

In relation to societal cleavages inside Ukraine related to the war with Russia, tendencies for accountability such as in the context of the crime of collaboration need to be considered in relation to their long-term effect on societal cohesion in Ukraine. Indeed, otherwise it might lead to a situation where the war is won but the peace lost.

Experts recommend to

...document atrocities since data is key to justice mechanisms.

...include annexed regions of 2014 into reconciliation processes since justice cannot be selective and it would further divide communities.

...avoid raising false expectations in front of victims when it comes to the feasibility of accountability.

e. Middle East Conflict

The Israel/Palestine conflict is a dynamic of a vicious cycle of violence and violations of IHL and IHRL by all sides, culminating in the events since 7 of October 2023. Zero-sum thinking is at its strongest in this conflict.

The notions of peace and justice are embedded within complex historical and religious perspectives. A satisfying definition of peace or justice is therefore hard to agree upon, as world views differ enormously. Both sides would therefore need to overcome maximalist positions in order to reach difficult

compromises as an exit to the vicious cycle of violence.

Experts recommend to

...pressure all sides to uphold IHL and IHRL.

...revive a political peace process as the only way to break the cycle of violence.

...involve religious actors in efforts to identify solutions due to the strong religious dimension of the conflict.

of unaddressed emotional pain, which makes reconciliation difficult.

i. One precondition for reconciliation is **humanization of the enemy**.

4. Lessons Learned

The lessons learned are a summary of the expert's knowledge in peace processes of Ethiopia, Former Yugoslavia, Ukraine, Sudan, and the Middle East Conflict.

a. A peace agreement cannot function as a **silver bullet** since overburdening peace agreements lead to the collapse of the whole process.

b. A **pragmatic stance** on what a peace agreement can serve for, instead of having unrealistic expectations, is crucial.

c. **Interim steps** such as ceasefire agreements can decrease humanitarian suffering, while being aware that ceasefires can be abused for **strategic military means**.

d. The process of reaching a peace agreement and its **sequences** are essential for its success.

e. An analytical perspective of finding out which **justice concerns** can be addressed immediately, and which issues must be addressed later, go a long way for reaching a peace agreement in the first place.

f. There is a difference between **regime security and human security** within negotiations of peace agreements.

g. Narratives around **facts** evolve around different perceptions on **truth**, which impacts prospects for reconciliation.

h. Intergenerational **hate** is the product