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# Peace vs. Justice

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## ABSTRACT

*The peace vs. justice debate is primarily understood as two real factors equally esteemed, that were concluded as incongruous and fundamentally unrelated. This quagmire, just after an outfitted conflict still stands as a pertinent issue as some contend to choose to focus on the aspect of peace or justice. With the political necessities of negotiating with those blamed for criminal viciousness so as to avoid any kind of armed conflict is definitely an area of concern. Just by understanding their disparities, it is conceivable to accept them to be complimenting each other as the supreme need for Justice is progressively being given prime importance however, with the recent as well as past instances it may seem quite a far fetched goal.*

## I. INTRODUCTION

“A new society cannot be created by reproducing the repugnant past however reined or enticingly repackaged” - Nelson Mandela

The aspect of ‘PEACE VERSUS JUSTICE’ or what one understands as harmony versus equity dispute has been a focal subject while separating the administrative issues of overall criminal value. The activity of the immutable International Criminal Court may be delineated as a hindrance to amicability shapes yet it ought to support those methods and hence, this paper by contrasting to a great extent, seeks to find whether or not should either peace or justice should take precedence over each other. The topic of a compromise among harmony and equity isn't new. Instructive for the spectator, the need to pick between the two is reality for some, over the world, especially in the outcome of a war. Generally, despots and merciless pioneers are liable for atrocities, violations against mankind and massacre.

## II. WHAT DOES ONE UNDERSTAND BY THE TERMS PEACE AND JUSTICE?

John Galtung, principal founder of the discipline of peace and conflict studies, defines peace in two aspects, negative and positive, He defines negative peace as the absence of violence, for example, a ceasefire whereas, and positive peace necessitates the addition of positive elements including reconciliation, in order to make peace a long-term and sustainable one.

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In present times, Bosnia-Herzegovina is in a condition of negative instead of positive harmony, as there is an absence of immediate conflict, yet no genuine compromise in the feeling of a fix and rebuilding of connections. To this level, peace must be perceived and assessed not just in terms of simple and immediate cessation of violence; there can be no certain peace without justice. It has been contended that endeavours to battle impunity or in simple words, exemption by advancing accountability in transitional justice components block the peace process and draws out conflicts by destabilizing an effectively delicate circumstances. For instance, critics of justice based methodology contend the Ntaganda's 2012 M23 disobedience in the DRC was actuated by his own dread of indictment. For instance, the 1999 Lomé international agreement gave cover absolutions to the Revolutionary United Front (RUF) and the legislature and granted some RUF individuals with positions in the solidarity government. It was distinctly with the guidance of the Special Court for Sierra Leone and criminal indictments despite cover reprieves that viciousness stopped. Correspondingly, the South Sudanese government issuance of de facto amnesties, who had perpetrated extreme atrocities, and further made a culture of exemption and sense of injustice in the country. This essentially problematised the attestation that blanket amnesties confer peace in either positive or negative origination. Persistent calls for accountability culminated in 2005, when the Argentine Supreme Court of Justice formally declared blanket amnesties unconstitutional and therefore void.

### **III. PEACE VS JUSTICE: - A FALSE DILEMMA**

The bi-conjugate conversation of Peace versus Justice is false as it relies upon a faulty and restricted perception of both amicability and value. However, in understanding congruity rather justice as something past the suspension of brief violence, and understanding value in more than retributive terms, it is believed to be a basic and focal piece of accomplishing concordance rather in simple terms, agreement. <sup>2</sup>It is very important to comprehend that every conflict is sui generis (unique); thus there can be no universal or rather standardised procedure. The main issue herein lies on the accountability for atrocity crimes, which is defined as that of genocide, crimes against humanity, war crimes, and ethnic cleansing, barbarities, and ethnic refining. This debate wouldn't be satisfied unless primary importance is given to the aspect of post conflict resolutions and agreements. The pro-justice contention is problematized by its suspicion of reliability as epitomized in the International Criminal Court (ICC), notwithstanding, it is to some extent affirmative that it is an issue of the Rome

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<sup>2</sup>*Peace versus justice: A false dilemma* | ICTJ. (2016, December 8). International Center for Transitional Justice. <https://www.ictj.org/news/peace-versus-justice-false-dilemma>

Statute, and not of criminal International criminal justice approaches.

In general terms, the goals of international law (peace and security for collective groups, nations states, and peoples) can only be realized through prosecution of particular individuals. As famously stated by the International Military Tribunal, Crimes against international law are committed by men and not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced upon. The experience of both Nuremberg and Tokyo Military Tribunals is definitely important but when taking it into consideration one has to be aware of its limited value for the present examination. Both Tribunals indeed delivered “victor's justice” in the aftermath of World War II. Their paradigm, which precluded any need to balance the demands of peace and justice in other words, ‘the triumph of transitional justice within the scheme of international law,’ had witnessed a gradual shift of the paradigm from peace towards what is understood as ‘historical pursuit of justice’.

<sup>3</sup>The Review Conference in Kampala entitled “Managing the Challenges of Integrating Justice Efforts and the Peace Processes”, Priscilla Hayner identified different sets of challenges concerning the relations carried between justice and peace processes:

- Negotiating justice (how accountability for serious crimes might be addressed in the course of peace negotiations)
- The impact of international justice (how international criminal justice efforts may affect ongoing (or intended peace talks), and
- The implementation of justice (in the aftermath of the peace agreement where there is still strong resistance to accountability)

The dichotomous vision of the titular dilemma is also shared by the Truth and Reconciliation Commission for Sierra Leone: “ones who argue that peace cannot be bartered or traded in exchange for justice, under any circumstances and must be prepared to justify the likely prolongation of an armed conflict”. Interviewing some victims spill the actuality rather assumptions, they mentioned the aspect of this torturous punishment being continued or generations in a family. The new generation was however not spared in any way. They were forcibly drugged and coercion was put upon on those who did not comply with them. Subsequently, dictator pioneers in Argentina and Chile self-conceded their own sweeping absolutions, contending for an ‘aggregate amnesia’ towards the wrongs of the past; expecting

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<sup>3</sup>Grey, D. (2020, July 20). Peace Initiative. CJP. <https://cjp.org.in/category/peace-initiative/> (Last visited on 10<sup>th</sup> Oct, 2020)

“at that time the desire for political stability simply out-balanced that of accountability” The 1990s saw a change in outlook in intuition when the 'criminal turn' prompted calls for more noteworthy responsibility to battle apparent exemption. The advancement of arraignment in local and universal procedures turned into a 'fundamental necessity' to make sure about both peace and justice.

#### IV. ROLE OF PROSECUTION

The role of prosecution is anchored to law, along with someone who understands the political situations. Thus, it goes in line with the visions of the tension between the two ideals: the pursuit of justice entails the prolongation of hostilities, whereas the pursuit of peace requires resigning oneself to some injustices” The prosecution may create a disincentive for peace thus prolonging the atrocities, it is therefore justified to consider the dangerous slippage between peace and justice. In 1999, the UN expressed its official stance not to condone amnesties for serious international crimes, marking the formal beginning of the third phase of the debate, which has been marked by a legal prohibition on granting impunity with respect to atrocity crimes.

Prosecution serves as a disincentive for negotiators and at the same time fear arrest or prosecution as the accused perpetrators. In that regard, the ICC may be considered as an “unwelcome intrusion of albeit laudable ideals on a terrain that requires some very hard and unpalatable bargains to be driven”

Prosecutions may be considered generally as serving to obstruct the possibility of bringing conflict to an end. Monstrosity violations including decimation, ethnic purifying, wrongdoings against humankind, and atrocities, are totally viewed as jus cogens (compelling law) standards under international law, involving commitments erga omnes (towards all) under standard international law. This commitment originates from different universal treaties, including the 1949 Geneva Conventions, which built up an obligation to give 'powerful reformatory approvals for people perpetrating, or requesting to be committed grave penetrates of the Conventions'. Starting in 2002 with the section into the power of the Rome Statute, all state parties had a lawful commitment under Article 17 to arraign these violations under the Court's purview (Rome Statute 1998).<sup>4</sup>The commitment rather obligation to indict fundamentally involves the wrongdoing of exemption for such violations, exemplified by blanket amnesty approaches. The shift in international lawful intuition on the lawfulness or

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<sup>4</sup>*Peace versus justice? Understanding transitional justice in fragile states*. (n.d.). ODI. <https://www.odi.org/events/2043-peace-versus-justice-understanding-transitional-justice-fragile-states> (Last visited on 10th Oct, 2020)

tolerability of cover reprieves was solidified by the Special Court for, Sierra Leone in *Prosecutor v. Morris Kallon and Brima Bazzy Kamara*, finding that where purview is general, a state can't deny another State of its ward to indict the guilty party by the award of reprieve. A State can't bring into insensibility and carelessness a wrongdoing, for example, a wrongdoing against global law, which different States are qualified to keep alive and recollect. The Special Court for Sierra Leone in this way rejected, pardoning by the 1999 Lomé Peace Accord, which it considered a domestic agreement that couldn't supersede international convention. While the Rome Statute itself makes no particular notice of pardon, the commitment erga omnes of monstrosity violations implies that the ICC can essentially decline to perceive reprieves

## **V. THE GOALS OF INTERNATIONAL CRIMINAL JUSTICE AND OBLIGATIONS OF THE CRIMINAL COURTS**

A dilemma between retributive and restorative justice. The latter, thus contrasted with the traditional understanding relying on culpability, is based on accountability and pays more attention to the relationships among offenders, victims and their communities. “The debate on how to “reconcile” peace and justice them has lasted more than a decade. The debate is no longer between peace and justice rather between peace and the quest of “what kind of justice”

<sup>5</sup>The Convention on the Prevention and Punishment of the Crime of Genocide creates a legal obligation on states parties to take steps to provide effective penalties for those responsible for genocide. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also binds states to prosecute these violators. The Geneva Conventions of 1949, applicable during an armed conflict, established a duty to provide effective penal sanctions for persons committing, or ordering to be committed grave breaches of the Conventions. However, the subject matter jurisdiction of the International Criminal Tribunal for Rwanda (ICTR), which includes Common Article 3 of the four Geneva Conventions and its Second Additional Protocol and decisions by the International Criminal Tribunal for the former Yugoslavia indicate acceptance of the extension of the prohibition to non-international armed conflicts. A broader applicability of duty to prosecute war crimes committed during non-international armed conflicts was recognized by the International Committee of the Red Cross (ICRC) in its 2005 study of customary international humanitarian law. The Rome Statute establishing the International Criminal Court is an

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<sup>5</sup>*Justice and peace – why we can't have one without the other* | Will Bennett and Thomas Wheeler. (2017, May 31). the Guardian. <https://www.theguardian.com/global-development/2015/oct/26/justice-peace-conflict-affected-societis> (Last visited on 10<sup>th</sup> Oct, 2020)

important indicator that the obligation to prosecute serious violations of international law is supported by customary law.

***Can a golden mean be accepted rather be looked out for?***

Notwithstanding the dichotomous boundaries between thoughts of justice versus justice, temporary peace and post-struggle peace-building approaches include a wide scope of nuanced approaches enveloping components of both harmony rather peace and justice however there are some issues that rise, them being;

Trade-offs between peace and justice: - Although they are often inevitable, there are controversies between the extent to which these trade-offs occur and whether amnesties should be given for the sake of peace. In Northern Ireland, peace only took place once when the extremists were included in the peace negotiations and this had some lessons for places such as Afghanistan too. It could mean non-retributive justice mechanisms, that took place in Mozambique.

International Criminal Court: -There were some concerns that the timing of the ICC could hinder peace processes. For example, the fact that the court looked to investigate those accused of organising violent acts in Kenya. Yet the fact that the Waki Commission highlighted the need to ensure justice mechanisms were put in place to prevent future violence indicated that immediate action was in fact necessary.

Restorative versus Retributive Justice :- The fact that in current conflicts the distinction between victims and perpetrators is sometimes difficult bring about was raised, with implications about the type of justice mechanisms pursued. The cases such as abducted child soldiers that later go on to commit crimes, can be resolved through accountable processes that determine responsibility and the appropriate form of justice. In Sudan, there is a range of justice mechanisms and the ICC is among them. However, traditional law has often been politicized and captured by the elite group. Therefore, in South Africa, traditional law is part of the constitution but as long as it does not contradict its bill of rights.

Hence in other words, Amnesty trades justice for peace. This has been the cases of Latin America and South Africa. Definitely, there is danger that peace deals sacrificing justice may eventually fail to produce peace, as witnessed such as the violent aftermath of Foday Sankoh after the failed amnesty agreement in Sierra Leone. However, it may be claimed that justice, in the form of prosecution, must take priority over peace and national reconciliation which goes in line with the prevailing view of inadmissibility of amnesties. Hence, it reduces the practical importance of amnesties as a means for addressing the dichotomy between peace

and justice

### ***Can peace be secured without justice?***

It is argued that peace without justice is at best fragile. Only through justice can sustainable peace be secured. The topic of a compromise between peace and justice isn't new. Instructional for the eyewitness, the need to pick between the two is a reality for some, numerous individuals over the world, especially as repercussions of a war. As a rule, despots and merciless pioneers are answerable for atrocities, violations against humankind, and slaughter. Despite the fact that proof may point towards associations that have regularly been cleared of all charges when attempted, or even excluded from any legal action inside and out through amnesty deals that give them complete insusceptibility from judicial processes.

At a point when war disintegrates a nation's social, financial and political life, it creates an impact on every individual. Access to food and clean water turns into an impossible test, brutality dominates and physical security stays compromised. Houses are annihilated to the ground and property that used stand, do not remain anymore. A citizen discovers his costs mounting for the minimum necessities that show themselves just in the operating at a profit market. He lives under constant danger, that he or those near him will be compelled to confront a risky bind, and become one of the numerous in the demise or atrocity measurements. In circumstances like that, it isn't out and out unsatisfactory that an individual in war would be compelled to pick peace, regardless of whether it implies that the pioneer who permitted the monstrosities to happen will get away from preliminary, anything, as long as he won't carry out the barbarities that he did. However, there's a downside to making that choice. Peace which arrives at the cost of justice is unsettled, impermanent and full of simmering undertones of tension below it. Understandable that it can be seemingly impossible to make a leader stop atrocities against his own people. The most that the world can do is to make a choice between wringing it's hands and watching on, or to intervene in the country, which as time has proved over and over again, could be destructive. The middle path, the imposition of sanctions, usually does little to deter a leader, as the civilians are the ones who end up suffering under it's burden. The International Criminal Court, has hindrances in the form of the rule of complementarity and the fact that it has jurisdiction only as a court of the last resort, where it can take over only if a country is unwilling or unable to prosecute a leader.

## **VI. END OF CONFLICT AT WHATEVER COST**

It has been witness through many instances that, the demand for justice or demanding the root

cause of this is often forgotten in the dire need of peace and harmony. Perpetrators reinvent themselves, maybe from a post of general then try or president or let alone a businessman. Hence, the “tools are the same”. The concern herein lies with the transition of democracy getting destroyed.

“Justice for All yet Stability for None” can be concluded on behalf of the minorities.

<sup>6</sup>Centralized commands and high-level perpetrators commit mass atrocities, the Security Council should refer such situations to the ICC, to widen the scope of the prosecutor’s ongoing investigation to encompass crimes committed exclusively on the territory of Myanmar or, could instead create an ad hoc tribunal, and empower it to investigate and prosecute crimes occurring against all of Myanmar’s ethnic minorities. A third-party state could also demand the extradition of alleged perpetrators, or a regional country could propose a special tribunal, both of which contributed to the trial and conviction of Chadian dictator, Hissène Habré. Very often justice and accountability are seen as barriers to achieving stability in Myanmar. The Tatmadaw’s pattern of human rights violations against ethnic communities are a grim reminder that the opposite is actually true where justice and accountability are necessary preconditions for a true democratic transition. Justice for all, is the only path forward, and until it is achieved, Myanmar’s ethnic minorities will continue to be targeted.

Similarly, the arrest warrant for Liberian President Charles Taylor and de-legitimizing Taylor both domestically and internationally, helped make clear that he would have to leave office, an issue that had been a potential sticking point in negotiations. However, it was clear that it was a key factor to bring peace in Liberia. Taylor’s government had committed systematic abuse of civil and political rights of many. Taylor stated “If President Taylor removes himself for the Liberians, will that bring peace? If so, then I will remove myself”.

The failure of international and regional bodies and donor states to demand accountability can encourage abusive leaders to commit more crimes. In Rwanda, a significant contributing factor to the 1994 slaughter was the willingness of influential governments to overlook crimes that predated the genocide. The increased awareness of what constitutes criminal behaviour stands as a result of ICC prosecutions. This resulted in behavioural changes simply out of fear of prosecution. For example, in the Central African Republic (CAR), a rebel commander demobilized his child soldiers after learning about the ICC’s prosecution of

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<sup>6</sup>*Minority rights: A major misconception?* (2011, May 1). ResearchGate. [https://www.researchgate.net/publication/50386823\\_Minority\\_Rights\\_A\\_Major\\_Misconception](https://www.researchgate.net/publication/50386823_Minority_Rights_A_Major_Misconception) (Last visited on 10th Oct, 2020)

Congolese rebel leader Thomas Lubanga on charges of recruitment of child soldiers, claiming he was not aware, using child soldiers was a crime. Rejecting Bosnia's moves towards gaining independence as Yugoslavia broke apart, Bosnian Serbs began seizing control of large areas in Bosnia and Herzegovina, "ethnically cleansing" non-Serbs and subjecting them to violence and persecution whereas non-Serbs also committed violations of international humanitarian law. In Uganda as well, many feared that justice and the involvement of the International Criminal Court would prove an obstacle to peace. Although, unlike in the other case, leaders of the Lord's Resistance Army had not been apprehended and the ultimate effect of the warrants is unknown, the warrants did not have any immediate devastating impact. By 2006, the Taliban and other insurgent groups in Afghanistan had gained public support due to the government's failure to provide essential security and development. An International Crisis Group report on policing in Afghanistan concluded that the lack of rule of law lies at the heart of much popular disillusionment and that the weakness of law enforcement had contributed to the appeal of insurgents in Afghanistan. The mere threat of prosecution has made several leaders of the world wake up to reality and surrender to the law, such as <sup>7</sup>Slobodan Milosevic in the ICTY, when Louise Arbour decided to prosecute him for his atrocities against the Kosovars. There was plenty of evidence to argue that peace should come through justice, and not at the cost of it.

## **VII. CONCLUSION**

Taking into consideration the remarks made above with respect to the current situation, as the future of this generation, certain questions definitely arise them being, does justice undermine peace negotiations? Is justice neutral? Question of who owns justice?

The "peace versus justice" debate centres on how societies emerging from political violence and repressive rule should address human rights abuses committed in the past. It is claimed that there is a moral and legal duty to prosecute the perpetrators of the gravest international crimes as defined by international law and that acting on this duty is necessary to deter the recurrence of those crimes and consolidate post-conflict peace. Potentially destabilizing consequences of insisting on prosecution when negotiation is the most viable means political change and those accused of criminal violence still retain their significant power.

However, in recent years, there has been a marked shift from the practice of providing immunity from prosecution to those responsible for mass atrocity. This has cause an uprising in understanding that the two goals of peace and justice, rather than being exclusive, are

mutually reinforcing. Peace, when understood as enduring and long-term peace, goes beyond the goal of ending a conflict and relies on justice and accountability to ensure positive sustainability. Where mass crimes are not addressed, when the root causes of conflict are not sought and removed, when calls for justice are not heard, the danger of violence recurring remains and will always high.

This debate just in time becomes acrimonious. Justice reinforces peace and the long term peace on looks for. Justice processes are related to social as well political aspects. Yemen, Tunisia, Egypt and many other places till date have instances of torture and disappearances and hence justice would only serve stability. In a similar vein, one may utilize "no peace without justice" to deliver the interchange and to introduce the two qualities being referred to. As it may, this is certainly not by any means the only conceivable choice, to make reference to now more confrontational adaptations. Payam Akhavan broadly recognized "legal romanticism" indiscriminately seeking after justice and sceptical "political authenticity" looking for peace by conciliating the powerful.

Peace cannot exist in vacuum: - Those with the highest responsibilities account and are required to bring about stability and law abiding citizens only if it's equal to everyone or rather the other way round, that every individual is equal in the eyes of law.

Slender interpretations of negative peace and retributive justice lead to a false polarity between peace and justice. Thus, in contrast, more holistic comprehension of positive peace as long-termed and sustainable, with an emphasis on helpful equity, settle this falsified division to uncover that most post-struggle peace-building activities require a type of justice so as to successfully promote reconciliation. A justice-based approach can result in bringing out sustainable peace, However, transitional justice as represented by the ICC has been fraught with allegations of political interference and selective justice, which have undermined its legitimacy and capacity to pursue justice effectively. A holistic inclusion of accountability measures as a starting point for conflict resolution, but recognition of the inherent limits of international justice institutions is needed as they currently exist. Both values reinforce and complement each other. The need of peace can and should be accommodated with demands of justice. However, if handled improperly, the two may clash. Yet, the facilitation of peace may not be equated to an acceptance of impunity.

Hence, I would like to conclude with a very apt understanding of Archbishop Desmond Tutu where he rightly said, "As painful and inconvenient as justice may be, we have seen that the alternative, allowing accountability to fall by the wayside, is worse."