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Justice Swapped for Peace: Understanding Justice

Stuti Bhakat

Bharati Vidyapeeth, New Law College, Pune, India

ABSTRACT

One of the main themes in the analysis of the politics of international criminal justice has been the "Peace versus justice" debate. Though it could also help peace processes, the permanent International Criminal Court's position is sometimes regarded as a barrier to them. This study aims to provide a more sophisticated way to accurately evaluate the impact of the ICC by contrasting sometimes opposing viewpoints. In actuality, the Court may not fulfill either function solely.States and international organizations must uphold the obligation to prosecute when it is applicable in order to avoid sending the wrong message about the significance of the treaties that give birth to this duty, which could endanger their own populations and undermine the rule of law more broadly.

Keywords - Anti-thesis, justice, peace, negotiation, amnesty, accountability, accommodation.

I. INTRODUCTION

"A man is put in prison when he kills another man." Someone is deemed mentally insane if they murder 20 people. However, when a person murders twenty thousand people, he gets invited to Geneva for peace talks. The dark humor encapsulates a conundrum at the heart of the international criminal law project: to what degree should the pursuit of individual justice be subordinated to the greater good of peace?

For a diplomat or peacebuilder, the accountability approach combined with the principle of justice can be a very helpful instrument. In the past, peace-builders have depended on the strategies of either force or accommodation to achieve their goals. The majority of the time, the instrument of justice and accountability was either disregarded or, when it was, not used effectively. However, the tool of justice and accountability has recently been used more frequently in the process of establishing peace, particularly in South Africa, the former Yugoslavia, Sierra Leone, Rwanda, East Timor, Cambodia, and Iraq. The work is predicated on the idea that, rather than reflecting international law in this domain, the pervasive state practice of amnesties is a violation of it.

The paper establishes the duty to prosecute in cases of grave breaches of the Geneva Conventions, genocide, and torture, but there is not yet a customary international law rule requiring the prosecution of war crimes in internal armed conflicts or crimes against humanity. In cases when there is a duty to prosecute, nations and international organizations must uphold this obligation, lest they show disdain for the significant treaties that give rise to it, possibly endangering their populations and weakening the rule of law in general.

Even though "no peace without justice" became a catchphrase in the 1990s, gaining justice and bringing about peace aren't always compatible ends in themselves, at least not immediately. Negotiations are frequently required with the very leaders who are accountable for war crimes and crimes against humanity

in order to put an end to an internal or international crisis. In such a situation, pressing for criminal charges may extend the fighting and add to the number of casualties, damage, and suffering of people.

There is a widespread misperception that accepting peace in exchange for amnesty or exile means there will be no accountability or redress. Amnesties can be linked to accountability measures that are less intrusive than local or international prosecution, as in the cases of Haiti and South Africa mentioned above. Following an amnesty or exile-for-peace agreement, the concerned governments have increasingly often provided financial compensation to the victims and their families, set up truth commissions to record the abuses (and occasionally name the perpetrators), and imposed employment bans and purges (known as "lustration") to prevent such offenders from holding positions of public trust.

II. DEFINING JUSTICE AND ANTI-JUSTICE

Understanding the definition of justice is crucial, but so is comprehending the characteristics of some actions that compromise the efficacy of the justice norm or that could be considered the norm of "anti-justice." There is undermining of the moral obligation to act, impunity, and de facto or de jure immunity**.**

A. Essence of Justice

Fairness is linked to an initial impartial strategy that can and should be modified in light of the conflict's real facts. Therefore, while fairness demands that third parties approach peace-building objectively at the outset of the conflict, it also demands that, once elements of truth are discovered, they not be misrepresented to preserve artificial impartiality, but rather that they be taken into account when making decisions and that policy be modified appropriately. The State Department's efforts in the spring of 1999 to give the public comprehensive details about the types of crimes being committed by the Serbian regime in Kosovo—even down to the level of naming them—serve as an illustration of how fairness can be used to steer the peace process.

In order to be fair, third parties must also refrain from putting undue pressure on conflict victims in an effort to forward a short-sighted political goal. The U.S. efforts during the Rambouillet/Paris negotiations to publicly recognize the Kosovars as victims serve as the best example of this application. Therefore, the United States did not initially try to take advantage of the Kosovar delegation's victim status, even though it did try to convince them to accept significant concessions requested by the Serbian side. This is in contrast to the United States' approach to the Dayton negotiations four years prior, when the Americans threatened to end the talks and place the blame for their failure on the Bosnian delegation if the latter refused to make a number of concessions. For example, in a peace process driven by rectitude, the peace-builders would probably be reluctant to significantly accommodate or appease those who are behind crimes against humanity because doing so would legitimize those players and their tactics and give them a chance to validate the results of their crimes at the negotiating table. Furthermore, the chances of establishing a lasting peace based on the declarations and assurances of individuals and establishments accountable for crimes against humanity are significantly reduced, as demonstrated by the numerous collapsed cease-fire agreements arranged by different UNPROFOR commanders with Serbian leaders Ratko Mladic and Radovan Karadzic, who were charged with genocide by the Yugoslav Tribunal.

Retribution and requital include the ideas of paying off wrongdoers, punishing aggressors, making up for bodily harm, delegitimizing accountable organizations, and enforcing the law once more. It excludes all ideas of vengeance, retribution, or reprisals.

Organizations that are commonly linked to this standard are truth commissions and war crimes tribunals. Retribution and requital are especially crucial to peacebuilding because, as one prominent analyst put it, "in the fragile political climate that exists" after a settlement, "there is a great temptation for retribution and revenge."The parties and their home institutions are unlikely to achieve retribution/requital and related institutions' "bring an element of impartiality that is necessary to restore faith in the judicial process and in the rule of law" on their own.

B. Essence of Anti-Justice

Artificial impartiality and moral equivalency are the opposites of fairness. When, in 1995, an artillery shell hit the Sarajevo market, killing 68 Bosnians, General Michael Rose threatened to reveal to the media that the Bosnian government had killed its own people in an effort to win over the world to yet another cease-fire unless the government agreed to another one. This was an example of moral equivalency created by fabrications. General Rose made his threat fully aware that the shell had actually been fired by Serbian forces, as determined by a UN investigation, and that the U.S. embassy in Belgrade had reported that the conspiracy theory blaming the Bosnian government originated there as part of a propaganda effort.

The antithesis of rectitude is conduct that aims to weaken the moral obligation to act. For instance, when Secretary Christopher testified before the U.S. Congress in the spring of 1993 that all parties to the conflict were equally responsible for the atrocities, which did not amount to a campaign of genocide, he attempted to undermine the moral imperative to use force or take other aggressive action. Over 90% of the atrocities were being carried out by Serbian forces, according to internal CIA and State Department reports that were later leaked to the New York Times. The campaign most likely constituted an attempt at genocide.

De facto or de jure immunity and political legitimization are the opposite of retribution or requital. When those guilty of war crimes are welcomed by the international mediators or by others as "partners in peace" and vital to the peace process, political legitimization takes place. For example, despite Radovan Karadzic's obvious guilt for attempted genocide at the time, David Owen repeatedly legitimized Karadzic by accepting him as a legitimate partner in the ICFY negotiations in Geneva.

III. THE PROBLEM

Even though "no peace without justice" became a catchphrase in the 1990s, gaining justice and bringing about peace aren't always compatible ends in themselves, at least not immediately. Negotiations are frequently required with the very leaders who are accountable for war crimes and crimes against humanity in order to put an end to an internal or international crisis. In such a situation, pressing for criminal charges may extend the fighting and add to the number of casualties, damage, and suffering of people.

In line with this reality, over the course of the last thirty years, amnesty has been granted to former regime members who committed international crimes within the borders of Angola, Argentina, Brazil, Cambodia, Chile, El Salvador, Guatemala, Haiti, Honduras, Ivory Coast, Nicaragua, Peru, Sierra Leone, South Africa, Togo, and Uruguay as part of peace agreements.

A number of dictators have recently been given refuge abroad in exchange for ceding their positions of authority. As a result of an agreement mediated by the United States and U.N. envoy Jacques Klein, for instance, Ferdinand Marcos fled the Philippines for Hawaii, Baby Doc Duvalier fled Haiti for France, Mengisthu Haile Miriam fled Ethiopia for Zimbabwe, Idi Amin fled.

There are numerous ways in which justice and peace may be related. One may begin contemplating the problematic relationship by applying the well-known principle: Fiat iustitia pereat mundus. However, the

conventional interpretation of upholding justice at all costs—"even if the world should perish"—refers only to the best case scenario. From the two values being mutually exclusive to the "no peace without justice" formula at the other end of the spectrum, there are many more scenarios that could occur.
The purpose of this contribution is to outline the issues that underlie the interrelationship that is being presented from the standpoint of international law—more specifically, international criminal law—with a focus on the International Criminal Court and how it is handling the above-described dilemma.

IV. LIMITED LEGAL OBLIGATION TO PROSECUTE

Regardless of the underlying practical considerations, there is an international legal obligation to prosecute in a few specifically defined situations. In such a situation, not pursuing legal action may constitute a transnational violation. A case brought before the state's domestic courts or an international forum may invalidate any amnesty for asylum granted to the former regime's members. International adherence to and respect for the treaties that demand prosecution would be compromised by support for such an amnesty for asylum agreement.

A. Crimes defined in International Convention

The prerogative of states to issue an amnesty or grant asylum for an offense can be circumscribed by treaties to which the states are party. A number of international agreements, most notably the provisions pertaining to grave breaches of the 1949 Geneva Conventions, the Genocide Convention, and the Torture Convention, expressly state that prosecution of the humanitarian or human rights crimes specified therein is required. Giving amnesty or asylum to someone who committed the crimes listed in these conventions would be a treaty obligation breach when these conventions are in effect for which there can be no excuse or exception

1. The 1949 Geneva Conventions

The four Geneva Conventions were negotiated in 1949 with the aim of codifying international regulations concerning the treatment of civilians and prisoners of war in occupied territory after a war, as well as during armed conflict. Nearly all nations across the globe have ratified these agreements. There is a specific list of "grave 12 breaches" in each of the Geneva Conventions. These are war crimes recognized by international law for which a state is required to prosecute or extradite a person and for which there is individual criminal liability. Intentional killing, torture, or inhumane treatment, willful infliction of severe pain or bodily harm, extensive property destruction not required for military purposes, and willful denial of a civilian's right to a fair and regular trial are all considered grave breaches. Unintended civilian deaths are “lawful collateral damage” as long as the targeting complied with the rules of distinction and proportinality.

2. The Genocide Convention

The Genocide Convention, which came into effect on January 12, 1952, is ratified by the majority of nations worldwide. The International Court of Justice has ruled that the Convention's core provisions are customary international law that is obligatory on all states. The Genocide Convention, like the Geneva Conventions, imposes an unwavering duty to prosecute anyone found guilty of genocide. According to the Genocide Convention, one of the following acts constitutes genocide when it is carried out "with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such": (a) Killing group members; (b) seriously injuring group members physically or mentally; and (c) purposefully causing the group to suffer from certain conditions of life.

B. The Torture Convention

There are presently 138 parties to the Torture Convention, which came into effect on June 26, 1987. Each state party to the Torture Convention is required to ensure that all acts of torture are prohibited by its internal laws, to establish its jurisdiction over such offenses in cases where the accused is found within its borders, and, in the event that the accused state does not extradite the alleged offender, to submit the case to its competent authorities for the purpose of prosecution. Torture suspects shall receive severe sentences commensurate with the seriousness of their acts.

It is important to remember that the Committee's remarks do not imply that customary international law forbids amnesties or asylum for torture perpetrators.

Using the word "should," the Committee made it clear that its statement was intended to be a guideline rather than a legally binding declaration. The Committee did not suggest that Argentina was required by international law to provide remedies for the victims of torture and their surviving relatives; rather, it made this recommendation based on its decision. It also did not state that the prosecution of those guilty should be the course of action, as opposed to another suitable course of action like compensation.

C. Crimes against Humanity

Crimes against humanity are defined as any of the following acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack: This definition was developed in the Nuremberg Tribunal's jurisprudence and codified in the statutes of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Rome Statute for the International Criminal Court.

The following acts are prohibited by international law: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forced population transfer; (e) imprisonment or other severe physical liberty deprivation; (f) torture; (g) rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other comparable acts of sexual violence.

There is no treaty requiring the prosecution of crimes against humanity (apart from torture in cases where the state is party to the Torture Convention at the time the crime is committed); crimes against humanity are solely the product of customary international law. States are required to prosecute serious violations of the Geneva Conventions and the crime of genocide.

Crimes against humanity were traditionally prosecuted through the domestic legal systems of any state, including their own, and treated like pirates, considered hostis humani generis (an enemy of all humanity).

V. CONCLUSION

It has been demonstrated how the justice/accountability approach can support the process of establishing peace by establishing individual responsibility, denying collective guilt, facilitating the dismantling of institutions that support the commission of atrocities, creating an accurate historical record, offering victims a cathartic process, and discouraging atrocities in conflicts that are similar to one another. This research has explained how the substantive law that establishes international offenses is substantially more expensive than the international procedural law that imposes a duty to prosecute under the current state of international law. This is due to historical factors: It was easier for states to agree to recognize permissive jurisdiction than to take on a duty to prosecute for all but the most egregious international crimes. However, in cases where there is a duty to prosecute, states and international organizations must uphold

this duty lest they show disrespect for the significant treaties that give rise to it, which could put their own citizens in danger in accordance with the principle of reciprocity in international law.

This is not to say, however, that states have to rush to bring charges against anyone found guilty of crimes covered by these treaties. It is permissible to prosecute cases selectively and to use "exemplary trials" as long as the standards applied represent appropriate divisions based on levels of guilt and the strength of the evidence.

While proponents of human rights and peace have come to view the institutions and norms of justice as the answer to conflict and atrocities, professional diplomats typically still view justice as, at most, morally superficial window dressing and, at worst, a barrier to peace, which is best achieved through coercion and/or the use of force. Raised in the realist school, peace-builders are frequently confused by the mantra of human rights advocates asserting that there can never be justice without peace, despite the fact that history seems to be filled with numerous examples of injustice leading to peace as well as circumstances in which seeking justice has obstructed efforts to achieve peace

References

1. Human Rights Quarterly, *18* (2) (1996), pp. 249-256
2. O. Triffterer (Ed.), Commentary on the Rome Statute of the International Criminal Court, Nomos, Baden-Baden (1999), p. 377
3. A. Cassese, *et al*. Commentary., Oxford University Press, Oxford (2002)
4. Vanderbilt Journal of Transnational Law, 35 (2002), pp. 1501-1543
5. Adolf Hitler, Speech to Chief Commanders and Commanding Generals (Aug. 22,1939), quoted in BAssIoUNI, supra note 67, at 176 n. 96.
6. David Matas, Prosecuting Crimes Against Humanity: The Lessons of World War 1, 13 FORDHAM INT'L L.J. 85, 103 (1989-1990)