

Peace vs. Justice: The Perceived and Real Contradictions of Conflict Resolution and Human Rights*

Paz vs. Justicia: las contradicciones reales y percibidas de la resolución de conflicto y los derechos humanos

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Abstract

The perceived dilemma between a choice of focusing on justice or peace after armed conflict continues to be an issue around the globe. Particularly the treatment of perpetrators remains a highly contentious issue, whether amnesty is a policy of impunity or is a necessary evil to get to a peace agreement in the first place. While the importance of justice is increasingly gaining grounds, cases

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around the globe show the difficulty to punish the perpetrators. Part of the peace versus justice debate is also affecting the fields of human rights and conflict resolution that are divided on the topic and still fail to communicate effectively between each other. Only by understanding their differences, it is possible to collaborate successfully together.

Keywords

Conflict resolution, human rights, justice, peace.

Resumen

El dilema percibido entre la opción de enfocar la justicia o la paz después del conflicto armado sigue siendo tema de debate en el mundo. En particular el tratamiento que los autores han dado a esta temática ha sido muy discutido, el debate se centra en si la amnistía es una política de impunidad o es necesario para entrar a un acuerdo de paz. Mientras la importancia de la justicia cada vez gana más terreno, los casos alrededor del mundo muestran el avance que han tenido los autores. El debate de la paz y la justicia también afecta el campo de los derechos humanos y la resolución de conflicto dividiendo el asunto planteado, solo a partir de la comprensión de sus diferencias, es posible entender las dos temáticas.

Palabras clave

Resolución de conflicto, derechos humanos, justicia, paz.

Introduction

How can sustainable peace be reached after armed conflict? Should the focus be put on stopping the violence and reach peace, or is it first of all necessary to bring the perpetrators to justice? The con-

Conflict parties need to be convinced to halt violence and bring the armed conflict through a negotiated agreement to an end. The belligerents need to perceive in their own best interest the necessity to overcome the violence; Zartman (2000; 2001) describes this process as a mutually hurting stalemate. Although there are many obstacles in the way, some willingness needs to be created by third parties to “think about the unthinkable” (Rothstein, 1999, p.3) and reach a peace agreement.

For third parties the question arises how they can support the conflict parties to reach a peace agreement that will be lasting and is sustainable. While it is difficult enough to reach a negotiated agreement, the real problems usually start with the implementation of a peace agreement (DeRouen, et al., 2010). According to the findings of Fortna (2003; 2004), it is important to reach specific agreements to make them last, not least because uncertainty is reduced. Moreover, the parties need to have the capacity to implement the agreement –despite the fact that the institutional set-up might have been weakened considerably during the armed conflict.

The impact of a peace agreement is important because it influences the post-conflict society and how it can come to terms with atrocities and human rights abuses –committed by all sides– during the violent conflict. Major questions arise about how the divisions in society can be overcome and how victims can recover from collective trauma (Volkan, 2001). What do people need in order to move on with their lives? During a negotiated agreement, a dilemma is emerging: What should be done with the perpetrators? Two basic solutions seem to be suggested: (1) perpetrators of human rights violations are put on trial in front of a national or international tribunal through the means of criminal justice or (2) amnesties (in various degrees) need to be granted to the conflict actors and its belligerents to reach a peace agreement in the first place. In short, it is a choice between justice or peace.

The debate of how to deal with perpetrators is one of the most ancient dilemmas: the debate between peace versus justice. In other words it is phrased as policies of “forgive and forget” about the past crimes in contrast to “persecute and punish” the perpetrators (Rigby, 2001, pp. 2-6). In the following, this article discusses the perceived dilemma of peace versus justice and continues to present the influence of this debate on the fields of conflict resolution and human rights. Finally, possible ways to overcome the perceived dilemma are presented, although it also faces its limitations.

First of all, it is important to define conflict and human rights. The assumption is that conflict is natural and normal phenomena, an inevitable part of human life. Thus, social or political conflict cannot be overcome and will always exist. In fact, conflict is something positive as long as it is used in a constructive way to bring about social change (Lederach, 1995, 1997). However, violent conflict is in its nature destructive and the task of peace builders and third parties is to transform the violence into non-violent means. Concerning human rights, the assumption in this article is that they include civil, political, economic, social and cultural rights that are reflected in international and regional instruments. Human rights are universal in their nature, thus the article is normatively based on a cosmopolitan ground.

The row about amnesty

In the debate between peace versus justice, the question of amnesty is particularly controversial. After the end of the Cold War, most violent conflicts ended with a negotiated agreement (Kreutz, 2010)¹; in fact, the 1990s were declared as the decade of peace agreements (Bell, 2006). One of the major concerns is the creation of the

1 One of the few exceptions where there is an outright military victory is the case of Sri Lanka where the government had an outright victory in 2009 over the insurgence group popularly known as Tamil Tigers (their official name was Liberation Tigers of Tamil Eelam - LTTE), therefore ending a civil war that was going on for more than 25 years as it is well described in Hashim (2013).

right conditions –Zartman (2000; 2001) talks about the “ripeness” of a conflict– so that the parties involved in the bargaining process would be willing and ready to sign and commit themselves to a document that puts the violence to an end. Such negotiation processes often include those people who have a lot of blood on their hands. May it be a repressive president, rebel leaders or military commanders - they are key figures that need to be included in a lasting peace agreement. The question arises whether those individuals involved in major human rights violations simply get away with the numerous human rights violations they have committed in the past.

For a long time, particularly during the Cold War, compromises had to be made with the perpetrators to bring a conflict to an end. The main and immediate concern is to stop the suffering, and may that include also amnesties for war crimes and crimes against humanity. It is the important and difficult question whether amnesties for serious crimes are worthwhile of a strategy or not. Are amnesty deals simple protection mechanisms for tyrants to enjoy a peaceful retirement or may it even allow them to continue influencing a post-conflict order?

After the end of the Cold War, the perspective on amnesty has changed and instead of immunity, there was a strong move towards criminal prosecution to those individuals that have been mostly responsible for ethnic cleansing, war crimes, crimes against humanity, or even genocide. The assumption is that when the justice system –a court or a tribunal– does not address mass crimes, perpetrators are not punished and do not face any consequences for their violations of human rights and consequently the danger of reoccurrence of violence is very high due to the impunity. As Snyder and Vinjamuri (2002) point out, human rights advocacy groups like Human Rights Watch and Amnesty International have made a critical contribution to push for the advance of international human rights

by publicizing the need to prevent mass atrocities and widespread political killings and torture. Moreover, there has been an increasing appetite for humanitarian interventions after the Cold War period (Kydd & Straus, 2013), particularly with the rise of the Responsibility to Protect (R2P) in 2005, an emerging concept to prevent and stop mass atrocities (Evans, 2008; Strauss, 2009).

With the establishment of the International Criminal Court (ICC), there has been a tremendous shift in the international community towards justice because now even sitting presidents can be indicted. Human rights advocates point out that impunity for perpetrators will undermine a new democratic order and a peace settlement. Today, criminal trials of major perpetrators have become commonplace since the 1990s with the development of hybrid tribunals like in Cambodia or Sierra Leone, international tribunals like in Rwanda and Ex-Yugoslavia and particularly the establishment of the ICC in 2002. Indeed, demands for individual accountability for human-rights violations have almost exploded to what Sikkink (2011) calls a global “justice cascade”.

Such kind of advocacy strategy for human rights often has one goal: the prosecution of perpetrators of atrocities according to universal standards. This proposition is based on the idea that there are international obligations to be fulfilled, not least human rights standards that bring about justice. This proposition of justice is taken as a matter of principle. The outcome is important –justice– while there is not that much focus on the process of how the peace is reached. Yet, this approach risks more atrocities than it would prevent, because it pays insufficient attention to political realities. The threat of prosecution can lead to the exclusion or walking-out of the conflict parties present at the negotiation table, although these actors might be crucial for signing a peace deal. The reality in the aftermath of violent conflicts, the dilemma between peace and justice can be much more

difficult than a debate on moral grounds. In many cases, from Northern Ireland to Mozambique, wide-ranging amnesties were granted because an end to violence seemed impossible to achieve on any other terms. Was that the price to pay for peace?

Ten cases studies about the impact of justice

During the Cold War, amnesties and impunity dominated. In the mid-1970s, three southern European dictatorships fell (Greece, Spain and Portugal), while six South American dictatorships collapsed from 1979 to 1989 (Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay). All of these countries transitioned back to democracy and have in common that they have allowed impunity for the perpetrators who committed torture as well as atrocities and were responsible for “disappearances” during the dictatorship². Only much later, the justice debate flared up again in Latin America, particularly with the arrest of general Augusto Pinochet in London in 1998. The experience of these countries would show that only with a stable democracy it is possible (but not necessarily implemented) to punish and prosecute the perpetrators of human rights violations. With the rise of the ICC, it is not so easy anymore –if not impossible– to allow for blanket amnesties because justice seems to be trumping peace.

In the following, overall ten case studies (seven African cases and three European cases) of the past 20 years are briefly discussed to review the impact of the use of justice mechanisms and the problems that come along with it. First of all, let us take the case of

2 However, in Argentina, Bolivia and Chile so-called truth commissions were established in the 1980s. These non-judicial tools should highlight the crimes perpetrated during the dictatorship, although the perpetrators would not face direct judicial consequences. The only exception was Argentina that in fact jailed the most notorious perpetrators – but not for long, as president Carlos Menem released those convicted with amnesty laws in 1989/90. In Brazil (2011) and Paraguay (2004), truth commissions were established much later. While the truth commissions had not a direct impact, it contributed to a wider understanding of the crimes committed by the dictatorial regimes and contributed to prosecutions during the past years.

Libya where the ICC issued a warrant against Muammar Gaddafi in May 2011, due to alleged human rights violations connected to the Arab Spring uprising in Libya.³ This move of ICC prosecutor Luis Moreno-Ocampo limited the available options of Gaddafi, thus making a peace deal with the opposition groups more difficult and eventually leading to the NATO intervention.⁴ Until today, Libya is on the edge of falling apart; no stability has been reached since the fall of Gaddafi's regime in October 2011 as two rival governments are struggling for power and Islamic State (IS) is active as well (Kuperman, 2015).

Also in other countries where the ICC got involved, like in Sudan, the court has closed off or at least limited the space for peace negotiations, thus risking prolonged violence and continued human-rights abuses. The ICC issued a warrant against Sudanese president Omar al-Bashir in March 2009 for alleged war crimes and crimes against humanity in the western region of Darfur where a violent conflict has caused since 2003 the lives of more than 200 000 people (Buzzard, 2009; de Waal, 2007). The first warrant of the ICC against a sitting president was a factor that hampered the peace negotiations between the Sudanese government and the various rebel groups of Darfur; in particular because the ICC did not conduct investigations against any of the rebel leaders. Moreover, it has contributed to the failure of the ongoing disarmament and demobilization program (Rodman, 2014). In fact, there is even the risk that no one of the Sudanese regime is actually brought to prosecution or trial and Bashir continues to be in power in Sudan.

There is a pattern of the ICC intervening at earlier stages in the escalation of conflict with the hope that its scrutiny will halt

3 Liolos (2012) presents a discussion of the warrant against Gaddafi and argues that the ICC should actively be involved in trying accused regime members.

4 Moreno-Ocampo's decision for an ICC warrant was based on United Nations Security Council (UNSC) resolution 1970 of 26 February 2011.

further human-rights abuses (Simmons & Danner, 2010). And yet, it is clear that mass human rights violations continue in many areas where the ICC is active. The important step for the ICC is that its prosecutor has established important precedents for the notion that accountability need not wait for stability. In fact, the ICC has put forward a discourse suggesting that justice causes peace.

However, these processes of the ICC can be inherently flawed demonstrated by the examples of Uganda and the Democratic Republic of Congo (DRC) (Nouwen & Werner, 2011). Both governments invited the ICC to investigate and prosecute crimes in their own territories. The international community applauded the ruling elites of the two countries because it was welcomed as a public commitment to human rights and international justice. However, the intentions of the Uganda's and DRC's governments show a very different story as they successfully tried to delegitimize and remove their political rivals or troublesome insurgents that could not be defeated militarily (Branch, 2005; Clark, 2008). There is no doubt, that these individuals from Uganda and the DRC who are prosecuted at the ICC committed war crimes and crimes against humanity. And yet, the governments secured their own impunity by threatening non-co-operation with the ICC if their own violations of human rights would be investigated.

A similar case took place in Côte d'Ivoire, where the ICC involvement has so far served to reinforce the international credibility of President Alassane Ouattara while his rival, former president Laurent Gbagbo, is in The Hague – which is perceived as victor's justice (Lee & Marriot, 2013). The examples show that the ICC is also a very political institution although the credibility and legitimacy of the court depend on the perception that is an independent and impartial organization. The one-sided decisions in the case of Uganda, the DRC and Côte d'Ivoire contribute to a justice imbalance and the perception of a politicized justice (Tiemessen, 2014).

However, it is not only the ICC but also other justice mechanisms that can be problematic. In particular, transitional justice mechanisms have become very popular tools during transition periods from dictatorship to democracy or from civil war to peaceful coexistence (Hayner, 2011; Roht-Arriaza & Mariezcurrena, 2006). It aims to link complex ethical, legal and political choices after a negotiated agreement that should end the violence, restore peace, and prevent the reoccurrence of armed conflict. Yet, transitional justice mechanisms can lead to evasion instead of accountability of human rights abuses. Not all governments that establish post-conflict justice mechanisms have made a break with the past. Instead, senior officials may have been implicated in past abuses and are running these very institutions. Particularly with power-sharing arrangements, post-conflict governments may perceive the need to compromise on individuals that are responsible for crimes against humanity committed during times of conflict. As a result, political elites may share an interest in continued impunity, demonstrated by the two examples of Kenya and Sierra Leone.

An example of this challenge is the Kenyan coalition government that did set up a transitional justice mechanism after the 2007/8 post-election violence: the Truth, Justice and Reconciliation Commission (TJRC). Its promise was to record past abuses since Kenya's independence in 1963, while promoting accountability and national healing and in May 2013 a final report was published (Naughton, 2014). The Kenyan government, however, demonstrated little commitment to the TJRC and installed at the beginning a chairman who was responsible for human rights abuses. That goes along with the failure to cooperate with the ICC where at the time six Kenyans had their case pending. Rather, it tried to undermine the ICC process, including attempts to get the UNSC to defer the ICC's involvement and to convince African countries to withdraw from the ICC (Höhn, 2014).

In Sierra Leone, Charles Taylor faced an 11-count indictment in April 2012 with charges covering a wide variety of atrocities in a unanimous judgment by the Special Court of Sierra Leone. Taylor was the first former head of state to be convicted by an international criminal tribunal since the Nuremberg trials after the Second World War. He was convicted for crimes committed in Sierra Leone from 1996-2002, despite not having set foot in the country during that time as the president of Liberia. However, he was not convicted for the original time suggested and the situation in Sierra Leone has hardly improved overall while millions of dollars were spent on the hybrid court (Jalloh, 2011). Moreover, prosecutions have made it more difficult to persuade combatants and ex-combatants into disarming and demobilizing because they fear legal action as well. And as Mieth (2013) shows in her article, many Sierra Leoneans do not feel that justice was brought to them with the special court.

While only African cases have been discussed so far, also in other parts of the world the limitations of the efforts of justice can be seen. In Bosnia and Kosovo, former parts of Yugoslavia, the peacekeeping missions after the violent conflicts favored amnesties and immunity arrangements – in contrast to the prosecutors of international crimes (Visoka, 2012). While the International Criminal Tribunal for the former Yugoslavia (ICTY) demanded the delivery of prominent ICTY indictees like Radovan Karadzic or Ratko Mladic, the NATO forces on the ground did little to capture them (Méndez, 2012, pp. 95-96). Also in Kosovo, the UN Interim Administration Mission in Kosovo (UNMIK) did not collaborate with the tribunal about a war criminal because the person was considered as one of the few people they could actually work with in establishing a new country.

Also in Northern Ireland, the last case study that is discussed, might still be at war unless significant numbers of people on both sides had been prepared to do compromises and see people they regarded as criminals being released from prison as part of a wide-ran-

ging amnesty. Northern Ireland's fragile peace is based on a profound disagreement over how to regard violent actions in the recent past before the of 1998: were they terrorist outrages or were they legitimate actions in the context of a "liberation" war? It was the conscious decision though to not bring the perpetrators to the courts, because otherwise an agreement could have not been reached (Bell, 2002).

The ten case studies have shown that a variety of problems are caused with the focus on justice during or after violent conflict, because it is limiting the possibility of negotiations (Libya, Sudan), is an excuse to go after one's political opponent (DRC, Uganda), is an instrument to "satisfy" the international community but one is not taking it seriously (Kenya) or is seen as a burden that severely undermines for the implementation of a peace agreement (Bosnia, Kosovo, Northern Ireland).

The troubles to sign an agreement

As Snyder and Vinjamuri point out, "[j]ustice does not lead; it follows" (2002, p.6). After the violent conflict, it is a political bargain among the contending groups to create robust administrative institutions that can predictably enforce the law. Preventing further atrocities and enhancing respect for the law will frequently depend on the negotiation agreement that creates effective political coalitions to contain the power of spoilers – those people with influence that try to undermine the process (Stedman, 1997). Amnesty, which has the connotation to simply ignore the past abuses of perpetrators, is sometimes perceived as a necessary tool in peace negotiations. Only when a negotiated deal is achieved and institutions are in place again, the principle of the rule of law becomes more feasible. Universal standards of criminal justice in the absence of political and institutional preconditions may in fact risk weakening the norms of justice by revealing their ineffectiveness and hindering necessary political bargaining.

Mediators negotiating peace agreements have tended to view the prospect of prosecution of the perpetrators as an unfortunate obstacle to their work as it is implicit in the classical article of Touval and Zartman on mediation (1986). Some fear that the mere specter of trial will undermine and eventually bring to an end the fragile peace talks. Mediators often feel pressed to push justice aside. Today, proponents of amnesty argue that those bearing the greatest responsibility for atrocities have no interest in laying down their arms unless they can avoid criminal charges. Other mediators argue that justice should wait until those culpable are no longer in positions of authority, since seeking prosecution bears the risk of retaliation, including humanitarian agencies. In the short term, it is easy to understand the temptation to forego justice in an effort to end armed conflict. Or, as Vanjamuri concludes, “contrary to the mantra that justice delayed is justice denied, the most promising way to promote justice may be to postpone it” (2010, p.208).

Foregoing accountability often fails to result in the expected benefits. Instead of putting a conflict to rest, an explicit amnesty that grants immunity for war crimes, crimes against humanity or genocide may be an implicit approval of wrongdoings that will as a consequence not allow to achieve the desired peace. All too often a peace that is conditioned on impunity for these crimes is not sustainable. Even worse, it sets a precedent of impunity for potential perpetrators to commit atrocities and human rights abuses without getting punished. While under the pressure of trying to negotiate a peace deal, justice may seem like a dispensable luxury. In the long run, however, the lack of accountability can create the fertile ground of new violations, because the truth about the past is still not known and it is easy to manipulate history in the pursuit of their political ends and infuriate the people to the point that new conflict comes about.

Proponents of a stronger international criminal law regime and activists of human rights have tried to insulate justice from politics (Rodman, 2006; 2014). They justify this approach with several claims. Some argue that the pursuit of justice through uncompromising legal accountability is a matter of absolute principle, regardless of consequences. Others have chosen to go about their past very differently and have not actively dealt with their past. A famous example is Spain where the crimes committed during the civil war of the 1930s and the following dictatorship is a period of oblivion. Was forgetting a necessary price to pay for the social peace when democracy was reinstated after general Franco's death?

Human rights versus conflict resolution

In the second part of the article follows a discussion about the differences of the worldview between academics and practitioners of human rights on the one side, and conflict resolution on the other. Although these two camps appear to be almost the same from the outside, they are in fact a representation of the justice versus peace debate. While they do work in a very similar environment, it is not the same people working there. There are a lot of differences in practice that can lead to contradictions in action that can even be mutually exclusive. In fact, human rights activists and conflict resolution practitioners speak very different languages and there is insufficient interaction going on.

To be sure, there are similarities between the two camps. As Lutz, Babbitt and Hannum (2003, p.173) point out, human rights and conflict resolution have numerous similar goals: 1) both seek to end violence, 2) limit the loss of human lives, 3) try to stop suffering, 4) make sure that violence does not reoccur, 5) respect of the rights of everyone, 6) impartiality to all parties, and 7) prevention is the best way. And yet, there are many differences between human rights activists and conflict resolution practitioners.

Human rights folks often have a background in legal studies; it is thus logical that they focus on legal issues. They want to hold perpetrators accountable, reestablish the rule of law and do not mind to blame and shame the perpetrators. In contrast, practitioners of conflict resolution have often a diverse background – like psychology, anthropology, sociology or international relations. They are usually focused to achieve peace with various strategies that the conflict resolution toolbox offers to them. One of the key principles is communication and therefore one cannot be scared to shake hands with those who have blood on their hands, as long as there is a perception that they can bring the armed conflict to an end. It is therefore a very pragmatic approach that requires flexibility and cooperation.

For sure, both groups are needed to actually stop massacres and massive human rights violations. As Baker puts it, “[they] share a common concern to end conflict, but favor different strategies in achieving it” (1996, p.565). And yet, there are some crucial differences: 1) a negotiated settlement often does not give sufficient emphasis on human rights, 2) human rights advocates do not consider the pressures of mediators, 3) without amnesty, there is no peace deal, 4) judicial sentences for criminals and perpetrators is necessary, otherwise there is no sense for justice, and 5) while both want to see sustainable peace with justice, it is unclear what should come first: peace or justice. Having these differences in mind, it is important as well to understand the origins of human rights and conflict resolution that will be presented in the following two sub-chapters.

The rise of human rights and the legal perspective

With the end of the horrors of the Second World War, a momentum was reached to codify human rights that culminated in the Universal Declaration of Human Rights (UDHR) in 1948. While the ratification of human rights on paper was a great achievement

in itself, it was a very different story about its implementation. The challenge remains until today to implement all the norms promised to people around the globe, although in the meantime strong regional mechanisms of human rights have been established, particularly in Europe and the Americas (Steiner & Alston, 2000, p.779). Particularly with the end of the Cold War, human rights advocates are very active to investigate human rights abuses and be vocal about them. NGOs like Human Rights Watch or Amnesty International stand up for the victims that often have been voiceless beforehand and try to lobby other governments or regional and international organizations to get active. In the short run, human rights NGOs pressure governments to end human rights violations while in the long run, they want to secure human rights protection across the globe. This is done through shaming, thus through activist means which often compromises cultural sensitivity.

Over time, also humanitarian law became more important because human rights defenders recognized that it would be necessary in conflict to rely on law that predates human rights law. The most important defense mechanisms can be found in the four Geneva Conventions that established international legal norms, not least about the treatment of soldiers, the wounded and civilians during warfare. The Rome Statute of 1998 that is the basis of the ICC, established four punishable crimes, namely crimes against humanity, war crimes, genocide, and crime of aggression.

In contrast to international human rights groups that try to lobby for action and awareness about major abuses of human rights around the globe, local human rights NGO are the conscience of their society because they try to protect citizens at risk and demand from their government to change policies, reform the security apparatus or make sure that any type of minorities are protected. After conflict, human rights activists want to discover the “truth,”

to document all the violations with the intent that they cannot re-occur in the future. This should come along with punishment of perpetrators. Therefore, human rights actors want to apply objective standards to determine issues of justice and punish those that violated the standards. They are focused on principles, on the legal protection of rights. This is very much related to their role they have during this process, like a lawyer, an advocate or a monitor. *Per se*, this role requires an adversarial position towards the perpetrator; these people need to speak out against injustice and human rights violations. Many times, human rights experts serve as leading figures in peace-building processes because they are seen as capable and trustworthy.

For human rights activists, perpetrators rather should be excluded from peace talks. Human rights abuses should be highlighted during negotiations because it should influence the negotiation process and ultimately the settlement as well. Any compromise is often deemed as illegitimate or non-negotiable because victims would continuously be under threat and their suffering would not be addressed adequately. In the following, a presentation of conflict resolution practitioners and their work shows a very different approach to violence and human rights abuses.

The focus of conflict resolution on settlement

In contrast to human rights activists, conflict resolvers frame their practice very differently. The focus is about bringing all conflict actors together that will allow space for conversations. The power of words and communication is taken as a given. The space that is given to the conflict parties is an important requisite to air their grievances, including by those individuals that are widely perceived to be responsible for major human rights abuses. Usually, also perpetrators have experienced personal loss - in fact, the conse-

quent suffering might have impacted their behavior. Providing the possibility to voice their sorrow can help to humanize the other and establish vital relationships across the lines of the conflict actors. It can be the first, although small, step towards reconciliation in the long run.

Conflict resolvers will also talk to those groups or individuals that might disrupt the process, potential spoilers. This is done purposefully, because otherwise the likelihood of failure is bigger. Therefore, conflict resolution practitioners want to reconcile needs, interests and concerns of the conflict actors. It is not necessary to decide who is right and who is wrong. There is no normative thinking that would lead to the need of judging the conflict parties, with the implicit assumption that it will allow for more flexibility during a negotiation.

There is a focus on reconciliation between the actors, whereby this should be achieved thanks to the facilitation of the talks that are participatory and develop trust between the conflict parties. All of that is related to the role of conflict resolution actors, usually being a facilitator, mediator or reconciler between the conflict parties. After the Cold War, also culture has become a major issue as well in conflict resolution over the past 25 years or so. Not only are culture-sensitive approaches important, usually conflict resolution practitioners try to use indigenous methods in the first place (Augsburger, 1992)⁵.

5 As Augsburger points out, third parties are often blatantly ignorant about the context they are going to, including very experienced mediators and theorists. He points to three central contrasts that exist between the Westernized culture and traditional culture (1) situational versus cultural, (2) individual versus communal, and (3) direct versus indirect (Augsburger, 1992, pp. 6-10). The differences are crucial in mediation as Westernized mediators have an “etic” approach that is describe by expertise, prescription and imports methodology while traditional mediators are using “emic” approaches that are characterized by unawareness, inductive work and the discovery of a methodology that is reinforced and used (Augsburger, 1992, pp. 35-37).

Over the past 30 years, conflict resolutions NGOs have filled out the role to also bring in non-state actors into conflict resolution. Others are involved in peace education or in training critical stakeholders in conflict resolution skills. Conflict resolvers try to reach a settlement and decrease the level of violence. Thanks to the improved relationships, conflict resolvers aim to resolve or prevent an outbreak of violence. However, their aim is to direct the energy of conflict from violent means towards constructive ends. In contrast to human rights advocates, conflict resolvers do not want to blame the conflict parties because they believe in a constructive problem-solving approach.

Conclusion: Overcoming the divide

There is a growing understanding that peace and justice can be mutually reinforcing instead of being exclusive. Enduring and long-term peace is much more than the immediate goal of ending a conflict and relies on justice and accountability to ensure sustainability. Also, justice does not need to be perceived as retributive justice but rather develop restorative justice systems that allow going beyond the typical prosecution mechanisms. Peace and justice seldom walk alone but are intrinsically linked. In the words of Sriram and Pillay, “[i]n reality the choice is seldom ‘justice’ or ‘peace’ but rather a complex mixture of both” (2010, p.1). None of the actors involved are actually neutral about human rights and justice. Everyone will agree that any durable peace needs to address the underlying causes and roots of violent conflict. Therefore, the international community and the transitional government need to overcome greed –economic motives and poverty that involves common people into civil war (Collier & Hoeffler, 2002, 2004; Fearon & Laitin, 2003)– as well as grievance, which explains armed conflict through identity and relative deprivation (Gurr, 1970; Olson, 1965). The importance to build institutions after conflict decides about the success towards

peace and the reform of the justice sector is a key part of it (Paris, 2004, pp. 205-207).

Different points can be identified where human rights and conflict resolution can meet, including: 1) human rights abuses usually are conducted in the context of grievance and structural violence and are often the cause of violent conflict, 2) the institutions of a country need to respect human rights as a given in their policies to prevent conflict, 3) the prescriptive approach of human rights actors must be combined with the facilitative approach of conflict resolution practitioners, 4) conflict resolution can serve as an alternative to litigation in dealing with human rights violations, 5) peace-building processes are long-term and the prevention of human rights violations are an absolute integral part to satisfy basic human needs, and 6) human rights can reinforce the need to involve civil society (Bell, 2006; Parlevliet, 2002). To achieve all of that, both sides need further training from the other side. Conflict resolvers need to have more awareness about human rights concerns. At the same time, human rights defenders need to be more aware of the conflict resolution toolbox, including negotiation, mediation, and problem-solving workshops.

Thus, in fact, a lot of synergy exists between the two fields. As long as peace is not only defined as negative peace (the absence of war), but as positive peace (social justice), the divide between peace versus justice seems much smaller and conflict resolution practitioners and human rights activists are not that far away. The difference, however, which strategy to take reaching sustainable peace will persist.

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