

Preface

I.

Tensions between Peace and Justice have long been debated by scholars, practitioners and agencies, including those of the United Nations, and both theory and policy must be refined for very practical application in situations of emergence from violent conflict or political repression. Specific contexts demand concrete decisions and approaches aimed at the redress of grievance and creation of conditions for social justice and non-violent futures. Within the United Nations, discourse on ‘post-conflict’ justice originally grew out of the Nuremberg trials and focused on prosecutions for serious international crimes committed by an accused individual, placing accountability at the individual level and not on an entire nation. In international law, the responsibility lies with states to ensure individuals are held accountable, and also with the international community as a whole. This view holds that support for the rule of law and human rights norms cannot be established in a society while the perpetrators of crime enjoy impunity. This has been confirmed by the establishment of the International Criminal Court, whose jurisdiction extends to ongoing conflicts and whose work has given particular impetus to the peace and justice debate.

Opposing voices point out that prosecutions can make it impossible to achieve a negotiated settlement to conflict, may divide and even threaten the affected population, if they open old wounds or prompt re-mobilization for war or criminal intent. Alternative justice approaches thus emerged from the 1970s onwards in countries where conflicts were deeply rooted in the structure of society. Rather than focusing only on individual perpetrators, transitional justice shifted attention to broader issues which related needs for reconciliation and social justice, on the basis that too narrow a definition of justice in legalistic and judicial terms was preventing countries from addressing the root causes of poverty and violent conflict. In some situations, including El Salvador, Peru and South Africa, transitional justice mechanisms such as truth commissions were pursued in lieu of criminal prosecutions. Now, in post-conflict settings, it is generally accepted that an integrated approach of measures such as criminal justice, truth seeking, reparations and institutional reforms are necessary to reflect the complexity of the demands of justice.

But what does this mean in situations in which there is still no peace? The cry for ‘no peace without justice’ resonates in many bitterly divided settings throughout the world. International responses have included diverse institutions such as the already mentioned International Criminal Court and more recently the Peace Building Commission, with a consistent message from the United Nations that peace and justice can and must be pursued in tandem. As recently stated by the Secretary General in a statement on 5 June 2008: “The Secretary-General is convinced that there can be no sustainable peace without justice. Peace and justice go hand in hand.”

II.

For the purpose of addressing these tensions between peace and justice, 60 years after the famous judgment of the International Military Tribunal at Nuremberg, a distinguished gathering in the same courtroom opened a conference entitled *Building a Future on Peace and Justice*. The large international conference held at Nuremberg from 25 to 27 June was co-hosted by the Governments of Germany, Jordan and Finland, as well as two non-governmental organizations with experience in these issues (Crisis Management Initiative (CMI) and the International Center for Transitional Justice, (ICTJ)). Participants included numerous international dignitaries, government representatives from nearly 40 governments, and almost 300 academics, practitioners and experts from settings which face dilemmas in achieving a balance between peace and justice (for the list of participants see the annex at the end of this book). The conference unfolded in plenary sessions on the first and last days, and ten workshops on the second day. These workshops were prepared by some thirty studies and abstracts that the conference organizers had commissioned especially for the conference.

Some key aspects of the relationship between peace and justice were addressed in the opening speeches by the German Foreign Minister, *Frank-Walter Steinmeier*, Jordanian Minister of Justice *Sharif Al-Zubi*, ICC Prosecutor *Luis Moreno Ocampo*, and *Sonia Picado* speaking as Personal Representative of the Costa Rican President Oscar Arias. UN Secretary General Ban Ki-moon sent a written message (see page 3). The former Finnish Foreign Minister *Erkki Tuomioja* summarized several aspects in his concluding speech and paved the way for the elaboration of the Nuremberg Declaration on Peace and Justice. In his opening speech, Steinmeier highlighted the importance of dealing with the past and cautioned against simplistic dichotomies between peace and justice (full speech begins on page 5). Moreno Ocampo noted that the entry into force of, and the adherence by more than half of all countries to the Rome Statute of the ICC had changed the parameters for peace (full speech begins page 9).

Sonia Picado highlighted the specific experiences of Latin America in these dilemmas, including the “Esquipulas Agreement” signed by the Presidents of Central America to end the long wars afflicting the area, and the recent developments in Argentina and Chile in the aftermath of the decision of the Inter-American Court

of Human Rights in the case of *Barrios-Alto v. Peru* which confirmed the incompatibility of amnesty laws with the Convention. In her suggestions for initiatives to meet these challenges, including addressing some of the root causes of conflict, she mentioned the Japanese initiative on human security launched at the 2000 UN Millennium Summit; the concept of an “arms trade treaty” now with the First Committee of the United Nations, and a “Costa Rica Consensus” promoted by President Arias, aiming to create mechanisms to forgive the debt of developing nations that invest less in soldiers and weapons and more in education, health and environmental protection. She quoted President Arias to say: “It is time that the international financial community reward not only those who use resources efficiently, but also those who use resources morally.”

Jordanian Justice Minister *Sharif Al-Zubi* spoke as a representative of the Middle East which he called “one of the most troubled regions in the world today.” He stressed the fact that peace must include justice if it is to hold, including a settlement of the Israeli-Palestinian conflict or the situation in Iraq. Even if justice is postponed as negotiators try to hammer out a cessation of hostilities or try to negotiate interim peace accords, justice must ultimately be addressed to fortify the peace. He mentioned that today’s reality has forced populations to accept delayed justice or barely any justice at all in the interim or even final peace accords. He remarked that reconciliation is not a dictate handed down when hostilities cease. Mr. Zubi said it was time to develop a broad framework to address these issues, and that he was particularly interested in how the promotion of justice influences the course of the conflict, including in places such as Afghanistan and Lebanon, with the creation of the Hariri Tribunal. He remarked that:

“Current circumstances in the region, and a sense that the rest of the world does not understand or care, through a selective approach of implementing international resolutions, has raised the voices and influence of a militant minority. The majority undoubtedly want peace, but not any peace. [...] For it to last, it has to be a just peace, and the world community must demonstrate neutrality, even-handedness, superior ethics and morality in dealing with the conflict.”

He mentioned that Jordan is particularly aware of the need to educate people to confront extremist aberrations, thriving on the region’s instability and the world’s complacency, and issued the Amman Message in November 2004, to clarify the true nature of Islam. It articulates Islam’s social values: compassion, respect for others, tolerance, acceptance and freedom of religion, equal dignity of all people, and the pursuit of peace. The most stable foundation for security in a region is improved quality of life for its people.

The closing speech was given by the former Minister of Foreign Affairs from Finland, *Erkki Tuomioja*, who commented that the dilemmas of peace and justice yield no quick and self-evident solutions, but that there are a number of assertions that can be drawn from past exercises in peace negotiations and post-conflict peace-building. For instance, it should be clear that decisions on peace and justice need the support of the local population. This poses great challenges for outreach within society and for international institutions engaged in the provision of justice, maintenance of peace and assistance in the reconstruction of society. Post-conflict

societies must have the necessary capacity to cater to peace and justice, and may require international assistance. An example given by former Minister Tuomioja is the Justice Rapid Response initiative, supported by Germany and Finland, among other states. Justice Rapid Response is intended to be an international cooperative mechanism for the supply of voluntary assistance at the request of a State or international institution, where the identification, collection and preservation of information would assist at any stage a wide range of international and transitional justice options. Criminal justice is an indispensable part of any reconciliation after horrendous crimes have been committed, but justice is more than criminal justice and must include victim-centered mechanisms such as reparations, truth commissions whose recommendations are implemented, gender-sensitive approaches, and vetting programs that improve the integrity of state institutions. The responsibility to protect is another important development. Finally, Mr. Tuomioja stressed once more that peace and justice are not contradictory forces or mutually exclusive objectives, but rather mutually reinforcing imperatives. The question is not about the inclusion or exclusion of justice and accountability, but as the Secretary-General of the United Nations pointed out in his report in 2004, about strategic planning, careful integration and sensible sequencing of activities. Tensions between peace and justice are most pronounced when people expect simple and straightforward solutions to very complex situations.

III.

The complexities of these questions were revealed during the conference. Deliberations and presentations on the second and third days touched on changes in the nature of modern war; the relationship between internationally brokered political settlements (peace agreements) and emerging norms and practices in the field of transitional justice; and the need for creating conditions for sound human development.

There has been definitive progress from a world in which blanket amnesties were granted at times with little hesitation, or accompanied with generous power-sharing arrangements, as was the case with the Lome Agreement in Sierra Leone in 1999. There is a growing understanding that accountability has pragmatic as well as principled arguments in its favor. Peace agreements can no longer be seen as an end in themselves. It is increasingly evident that 'just' conflict resolution is as critical to the successful implementation as to the negotiation of a settlement. In this sense, it may no longer be appropriate to view 'peace' and 'justice' in opposition to each other. The conference sought to identify ways in which both can be simultaneously pursued.

The UN has stated that nearly half of all peace agreements collapse within five years. Increasingly, difficulties of implementing the rule of law are being seen as one key to that failure. As international actors are confronted increasingly with a role in

implementing and sustaining the ‘peace’ they have helped to negotiate, questions of rule of law, accountable political and legal institutions, and the social meanings and symbolism of justice become increasingly important. Indeed it is cumbersome, if not contradictory, to build a culture based on the rule of law when the political arrangement underlying it is founded in impunity. Practical arguments as much as shifts in the norms have created a situation in which the choice is increasingly seen as ‘which forms of accountability’, rather than a stark choice between peace and justice. In other words, it is socio-political transformation, not just an end to violence, that is needed to build sustainable peace and resolution to conflict. It is increasingly evident that conflict resolution is as critical to the implementation as to the negotiation of a settlement.

IV.

The book offers the most important speeches delivered at the Nuremberg Conference and the updated version of the studies prepared for the Conference. This main part of the book is divided into four parts.

Part I seeks to give a thorough overview of the current state of legal obligations in relation to peace and justice. It offers new and comprehensive studies on the laws relevant for transitional justice, in particular the concept of amnesties and the role of the International Criminal Court. *Part II* gives an overview of some of the dilemmas faced by practitioners engaged in conflict mediation and peace building. The papers argue for a holistic approach to justice in building a sustainable peace. This increasingly implies socio-economic justice and the vital parameters of development for visible peace dividends and human security to guarantee better futures for the affected population. *Part III* discusses the specific challenges pursuing justice during or after conflict, taking into account the new problems arising from the coming into force of the International Criminal Court. While this Part looks at these challenges from a rather general perspective *Part IV* includes a selection of case studies, many of which may be described as “hard cases” in which internationalized and local approaches were devised to navigate the tensions between peace and justice. Lessons are drawn from these cases for future scenarios.

The tensions between peace and justice are increasingly topical and have been written about from various perspectives. However, to our knowledge, this is the first volume that seeks to provide an interdisciplinary approach to this issue, viewing the dilemmas from the perspectives of those with experience in conflict mediation, transitional justice, and development. The interdisciplinary approach reflects the competing demands which converge in transition settings. Also unique are the contributions by policy-makers in the form of speeches delivered at the conference, which help to frame the issue in a political context. The book touches on cases and themes that are very recent and currently much under discussion in the field, including the implications of the coming into force of the International Criminal Court, the

legality of amnesties, the relevance and contribution of traditional forms of justice, and the effectiveness of international assistance.

Finally and importantly, this collection is the first one to publish one of the main legacies of the conference: *The Nuremberg Declaration on Peace and Justice*. Quite foreseeably, conference participants would have been overwhelmed with negotiating and agreeing upon an outcome document on such complicated issues in such limited time. Therefore, the outcome document was only drafted after the completion of the conference, but drawing on the workshop conclusions that HRH Prince Zeid, chairperson of the concluding plenary session of the conference, had presented (see page 533). The Nuremberg Declaration on Peace and Justice was elaborated by a group of international experts designated by the conference organizers, working under the auspices of H.E. President Oscar Arias of Costa Rica. After several consultations with interested practitioners and civil society organizations, the Declaration was distributed at the United Nations in June 2008 (UN Doc. A/62/885 of 19 June 2008, see annex in this volume). It contains definitions, principles and recommendations on issues of peace, justice and impunity, dealing with the past and future developments. Although it is not a legal document, it aspires to “guide those involved at the local, national and international levels in all phases of conflict transformation, including mediation, post-conflict peace-building, development, and the promotion of transitional justice and the rule of law” and thus to influence the future practice of making and building “just and lasting peace”.

It is our hope that this entire compilation will contribute to such guidance, and that learning from the experiences and knowledge reflected in its pages, will assist those who both contemplate and act for peace, justice and transformative development now and in the future.

V.

Last but not least, we would like to pay a special tribute to the *Robert Bosch Stiftung* in Stuttgart, Germany, and the *Dräger Foundation* in Lübeck, Germany, for the very substantial financial and moral support that they have lent to the conference. Both foundations have thus set a remarkable example of a public-private partnership aimed at furthering two of humanity’s noblest aspirations: peace and justice. Furthermore, the Robert Bosch Stiftung deserves special credit for contributing towards most of the costs of the expert meetings that led to the drafting of the Nuremberg Declaration on Peace and Justice, and to some of the cost of publishing this book.

Very importantly, one individual has played a central role in the inception, implementation and follow-up to the Nuremberg Conference initiative, working steadily and calmly at the vortex of fast-paced and pressured activities, and offering leadership in the best sense of trust, guidance and inspiration. *Christian Much*, (2005–2008 Head of the German Foreign Ministry’s Division for Conceptual UN Affairs) chose the topic of the conference, brought together its various actors, steered the conference preparations and also the drafting of the Nuremberg Declaration, and

enabled the realization of this publication. To Christian, with appreciation for his patience, attention to detail and sense of humour, go our very particular, personal thanks and recognition.

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