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Peace Without Justice, or Justice Without Peace?

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Peace Without Justice, or Justice Without Peace?

Abstract

Peace without justice is an illusion. The use of the International Criminal Court (ICC) to investigate and prosecute human rights violations not only provides restorative justice for those harmed by the wrongdoing but also retributive justice towards the perpetrators. Restorative justice seeks to help heal the wounds of the victims and community by acknowledging and witnessing the pain and suffering of the victim. Retributive justice seeks to punish the offenders. The hope is that retribution will deter or prevent future acts of violence by holding perpetrators accountable for the violations of human rights, genocide, war crimes, and crimes against humanity. Many people believe that the path to justice is through criminal prosecution of the offenders. McDonnell succinctly summarizes the relationship between restorative and retributive justice when he describes the victim's viewpoint as follows: "if peace comes, and I know the person who killed my brother, raped my sister, killed my mother, how can I live with this person?" Seeking justice by ending the impunity for crimes and seeking redress for the victims is the only way to build a stable long-lasting peace. Such justice allows for social reconciliation, restoration and perhaps forgiveness.

Keywords

Human rights, Sudan, Darfur

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Peace without Justice, or Justice without Peace?

by Clair Apodaca

Peace without justice is an illusion. The use of the International Criminal Court (ICC) to investigate and prosecute human rights violations not only provides restorative justice for those harmed by the wrongdoing but also retributive justice towards the perpetrators. [Restorative justice](#) seeks to help heal the wounds of the victims and community by acknowledging and witnessing the pain and suffering of the victim. [Retributive justice](#) seeks to punish the offenders. The hope is that retribution will deter or prevent future acts of violence by holding perpetrators accountable for the violations of human rights, genocide, war crimes, and crimes against humanity. Many people believe that the path to justice is through criminal prosecution of the offenders. McDonnell succinctly summarizes the relationship between restorative and retributive justice when he describes the victim's viewpoint as follows: "if peace comes, and I know the person who killed my brother, raped my sister, killed my mother, how can I live with this person?" Seeking justice by ending the impunity for crimes and seeking redress for the victims is the only way to build a stable long-lasting peace. Such justice allows for social reconciliation, restoration and perhaps forgiveness.

However, a question remains. When should the process of retributive justice begin? Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, submitted an application for an arrest warrant for Sudanese President Omar Hassan al-Bashir before the Sudanese situation could even be characterized as post-conflict. The [Comprehensive Peace Agreement](#), signed in 2005, is a fragile truce at best. Because Bashir can expect to be prosecuted once peace is established or when/if he leaves power, the likelihood that Bashir will turn over power to more moderate and restrained leaders is very low. Furthermore, the early issuance of the arrest warrant would make it in Bashir's interests to see to it that the conflict and the killings continue. Will the ICC risk future carnage in order to make a forceful, yet premature, gesture of justice? If the arrest warrant is issued it may well be that the civilian population will suffer Bashir's scorn and contempt. The Sudanese Congress already warned of the unleashing of more blood and violence in the Darfur region of Sudan if the warrant is issued. The Sudanese military and government supporters may retaliate directing their attacks against the international staff and facilities, namely the [UNMIS](#) and [UNAMID](#). Or we may see the expulsion of humanitarian aid organizations altogether, the very lifeline for the millions of desperate and vulnerable internally displaced Darfuris—those most in need of aid and protection. Thus, the possibility of any restorative or retributive justice is greatly hindered by a lack of a negotiated and stable peace agreement.

On the other hand, in the interests of justice, the international community cannot allow the genocidal leadership in Sudan to threaten the tenuous peace prospects in order to escape prosecution for their crimes. To do so would betray the victims of Darfur. Furthermore, this would send the message to future tyrants that ignoring international law has no consequences. Therefore, I am not convinced that, in the words of Sadiqu al-Mahdi as quoted by McDonnell, in the "conflict between accountability and stability... [avoiding a trial is] a case of accepting the lesser evil." It may be the choice of exiled leaders wishing to regain power. But can we be sure that it is also the choice of the Darfuri victims who lost loved ones, had their human dignity stolen, their bodies abused, and are deprived of their homes and livelihoods? In the debate between which comes first between justice or peace, the ultimate determination ought to be the

people of Darfur. Certainly, the issue should not be decided by international humanitarian “experts” such as de Waal who took it upon himself to notify Bashir’s regime of the impending announcement of Moreno-Ocampo’s application for the arrest warrant. Perhaps Moreno-Ocampo should issue a warrant for hindering prosecution too.

Luis Moreno-Ocampo may have put the cart before the horse. Pursuing justice before a stable peace is established can threaten the survival of the victimized population, and endanger humanitarian aid workers and peacekeepers. [David Rieff](#) of the *New York Times* wrote: “to secure a peace in Darfur means negotiating with Bashir rather than fantasizing about arresting, trying and imprisoning him.” It may be that the Darfuri population values peace and stability over justice. However, in the end, without justice there will be no lasting peace. It is unlikely that Darfur will find peace if Sudan remains governed by a regime bent on committing war crimes, crimes against humanity and genocide. This leaves human rights advocates, political leaders and international lawyers with a Catch-22: without justice there will be no peace but there can be no justice without first securing peace.

*Clair Apodaca is an Associate Professor in the Department of Politics and International Relations at Florida International University. Dr. Apodaca has published extensively in the areas the international protection of human rights, women's human rights and refugee studies. She is the author of *Understanding U.S. Human Rights Policy: A Paradoxical Legacy* (Routledge 2006). Her work has appeared in the *Journal of Human Rights*, *International Studies Quarterly* and *Human Rights Quarterly* among many others. In recognition of her scholarship in the field, human rights scholars and practitioners elected her to the first Executive Committee for Human Rights at the American Political Science Association (APSA) in 2001. Presently, Dr. Apodaca serves on the Executive Committee for Human Rights Section of the International Studies Association.*