

**International Conference "Building a Future on Peace and Justice"
Nuremberg, 25 – 27 June 2007**

Report on the Major Findings of the Conference

Statement by

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I have been asked to present to you a report containing the combined feedback of the ten conference workshops, based on feedback from each workshop. All Chairs have reported to me that discussions in their workshop were vivid and blessed with an abundance of opinions and suggestions. My first point therefore is to offer heartfelt thanks for your creativity and for sharing so many of your insights with the rest of us.

I hope very sincerely that this report will accurately reflect the workshop. But you will understand that it will be impossible to reproduce in the time available the wealth of opinions that were expressed yesterday in the course of discussions spanning a total of thirty hours.

Workshop 1 ("From Mediation to Sustainable Peace") was prepared by CMI and chaired by Judith Large. The core issue explored was the role of the mediator in brokering the necessary compromise needed to trigger the shift from violence to politics whilst upholding the normative commitment to the core principles of the international legal order, in particular the prohibition of a blanket amnesty for the most serious crimes.

It is certainly difficult to build multi-stakeholder processes which give leverage to those without guns and ensure the voice of excluded groups. The need to adequately address the regional nature of many conflicts poses a challenge to the traditional state-focused model.

More fundamentally, it was emphasized that mediation does not operate as a single model. Rather, different possibilities were explored with different assumptions about the extent to which the mediator can facilitate or is manipulative, and indeed whether the mediation occurs within a narrow elite or at a local level. Not all mediation models fulfil the huge promise provided by skilled mediation processes to lay the foundation for broad-based reconciliation. In this context it was argued that there was a virtue in avoiding comprehensive rules which straitjacket mediators in order to retain the necessary flexibility and scope to respond to local contexts. Whilst the impact of international indictments on mediation processes remains contentious, some argued that there was benefit in removing the burden from the prosecutor of needing to fully resolve all justice issues.

Workshop 2 ("Justice in Situations of Ongoing Conflict") was prepared by ICTJ and chaired by Silvia Fernández from the Ministry for Foreign Affairs of Argentina. The discussion in the workshop focused to a great extent on the situation in Northern Uganda, although other

situations, most notably the experience of the Special Court for Sierra Leone, were also discussed.

The discussion focused on three main areas. First, there was discussion of the question of legitimacy of justice actors, in particular international criminal justice institutions such as the International Criminal Court. The question was posed: whose justice are we trying to pursue? Who are the victims and how do we assess their opinions? What are the methodologies that apply to this? In this regard, the pros and cons of techniques such as scientific surveying were discussed.

The second area dealt with was the sequencing of justice and peace. No one questioned that justice is necessary to achieve sustainable peace in the long term. The conflict between peace and justice often lies in the short and mid term. Some held the view that justice is an essential component of sustainable peace and that it may in certain situations even reinforce peace (examples of the impact of the indictment of Charles Taylor on the Liberian peace process and the impact of the ICC arrest warrants on the peace process in Northern Uganda were mentioned). Others took the view that peace must come first to create the conditions for a broad, comprehensive justice. Some, however, expressed scepticism about the concept of sequencing, as perpetrators will always seek guarantees that they will not be prosecuted before reaching a final agreement.

The third area dealt with the question of how various systems of justice, including international justice, national justice and local justice, should be integrated. On the one hand, it was suggested that some crimes, including genocide and crimes against humanity, are of fundamental concern to all of humanity. On the other, the ICC as a treaty body still has limitations on jurisdiction. For now, international justice may have selective application, but efforts should be made to extend its reach further through the attainment of universal ratification, thus contributing to its legitimacy. Outreach too is important, so that the affected populations fully understand the options. There was considerable discussion about traditional justice mechanisms, in terms of their potential and limitations, an issue that is very relevant in Northern Uganda. All available tools should be used provided that national and local mechanisms take into account developments in international law and attain certain benchmarks.

Workshop 3 ("Looking back and moving forward – the nexus between justice and development") was prepared by the German Ministry for Economic Cooperation and Development (BMZ) and the Working Group on Development and Peace (FriEnt) and chaired by Dan Smith of International Alert. The purpose of the workshop was to discuss resource allocation and the sequencing and complementarity of actors, and to identify links between development cooperation/aid programmes and transitional justice mechanisms in the framework of country-specific development strategies, starting from a broad, multi-dimensional notion of sustainable peace. Country situations mentioned included: Burundi, Kenya, Liberia, Mozambique, Rwanda, South Africa, Sierra Leone, Somalia, Guatemala, Peru, Cambodia, Nepal, Philippines, Bosnia & Herzegovina, Finland, Germany, Norway, Serbia, United States.

There was wide support in the workshop for the idea that the notion of socio-economic justice should be introduced into transitional justice mechanisms and development approaches. This will enable us not only to deepen our understanding on how a society can "move forward", but also to better conceptualize and design processes leading to sustainable peace.

Transitional justice mechanisms can make a contribution to political as well as to socio-economic justice and development, but they are not the magic key for building sustainable peace. The positive impact of transitional justice mechanisms must therefore be seen in the context of a wide range of different measures. Each measure has its specific functionality, and should not be overloaded. Instead of "mixing" transitional justice mechanisms and

development programmes, policy makers and practitioners should strive for complementarity of the different functions.

The international community should be careful not to prioritize stability approaches (Security Sector Reform, DDR) over restorative, justice-related and victim-centred approaches.

Workshop 4 ("The Legal Framework") was prepared by the Institute for Criminal Law and Criminal Justice of the Georg-August-University Goettingen, under the direction of Professor Kai Ambos, and chaired by Prof. Christian Tomuschat. The purpose of the workshop was to take stock of the national and international legal framework regarding amnesties and the rights of victims (truth, participation, reparation, restitution) and to discuss legal issues arising out of the Rome Statute of the International Criminal Court.

The workshop noted that national and international law have produced a number of mechanisms which can be relied upon in facilitating the transition process towards democracy, the rule of law and human rights. It stands to reason that a careful choice of these tools is necessary in order not to re-ignite the conflict that just ended. States must work to provide their citizens with a minimum level of security. Balancing this duty with calls for justice never yields ideal solutions. But leaving the past untouched is the worst of all conceivable solutions.

Truth commissions have increasingly been used in recent decades to investigate past crimes. They may satisfy victims' and societies' demands for truth. The right to truth can be a general guideline that suits any situation of post-conflict consolidation. Reparation in favour of the victims seems to be a self-evident requirement and should be pursued as far as possible. Moral reparation should never be denied to the victims. Many forms of such moral reparation, such as apologies and national days of commemoration, have been devised.

Atrocities committed during armed conflicts and dictatorships call for sanctions under the rule of law. However, after moving away from periods of mass violence, a clear-cut distinction between law-abiding citizens and criminal elements is often hard to draw. Hence, there is a tendency to grant far-reaching amnesties. From a legal viewpoint, such amnesties are generally rejected for core crimes under international law. In particular, self-imposed amnesties generally reflect an abuse of power.

Workshop 5 ("Lessons from negotiated justice options in South Africa and Colombia") was prepared by ICTJ and chaired by Nader Nader of the Afghan Independent Human Rights Commission.

The workshop addressed two complex and different situations in considerable detail. Among other things, it was noted that the negotiating circumstances that prevailed in South Africa were profoundly different from those in Colombia. The most significant difference lay in the silent legal revolution that took place in the intervening years. The options available to the Colombian Government in negotiating the demobilization of right-wing paramilitaries could not include the offer of amnesty found in South Africa because of Colombia's obligations under the Rome Statute. Among other things this means that the possibility of conceiving justice in different time zones or as something sequenced – as was possible in South Africa – is much more constrained in the case of Colombia.

The South African process expanded somewhat the understanding of justice. This approach notably paid a great deal of attention to a victim-focused approach. This understanding has had a significant influence in subsequent contexts, including Colombia, where the criminal justice process purports to address the rights to truth and reparation as well as the issue of criminal prosecution.

The South African experience shows that there may be hidden liabilities in a negotiated process. Problems with entrenched bureaucracies from the previous regime may prove difficult to solve; overcoming the institutional trust deficit may prove much more demanding

than anticipated; institutions may simply not be equipped to deal with the mechanisms created. Similarly, the burdens on the Colombian institutions may be much more significant than the law purports to admit.

The role of civil society was identified as crucial in influencing the negotiated paths taken in both situations and in keeping a strong voice alive in the struggle against impunity.

The two situations showed clearly not only that there is no one-size-fits-all solution, but also that the parameters for the solutions have changed in the light of the developments in the struggle against impunity and the creation of the Rome Statute. At the same time, many of the experiences in South Africa were nonetheless valid and sometimes replicated in Colombia, including factors of institutional and resource limitations and the role of civil society.

Workshop 6 ("Negotiating Justice") was prepared in collaboration between Crisis Management Initiative and the Centre for Humanitarian Dialogue and chaired by Tina Thorne. Again, the contentious nature of international indictments and their impact on the peace process in Northern Uganda was raised.

Whilst addressing crimes of the past was not the only issue during the mediation exercises in Northern Uganda, it risked overshadowing other forward-looking issues. It was argued that it was rarely possible to 'solve' justice issues in the peace agreement. Instead they might be more appropriately dealt with in the post-agreement phase. Again, the current situation in Northern Uganda was at the forefront of the discussion, with some suggesting that local solutions and reconciliation processes should take precedence over justice.

This immediately raises the fundamental issue of the nature of 'justice'. To what extent are informal mechanisms acceptable, and how far are there limits to a criminal justice approach based on prosecution and incarceration? In any event, careful consideration was needed as to whether insisting on accountability should take precedence over ending the conflict. The possibility of a strategic 'silence' in the text of a peace agreement might sometimes be acceptable and wiser than attempting to address all the issues.

Workshop 7 ("The Impact of the International Criminal Court") was prepared by the Government of the Hashemite Kingdom of Jordan with support from the International Centre for Transitional Justice. It was chaired by me.

The discussion reflected the fact that the International Criminal Court has had significant and positive impact within the situation countries. The ICC represents a new reality, a fundamental development, and it establishes new parameters in both resolution of conflicts and accountability for the worst crimes.

The discussion addressed the specifics of at least five situations, including Uganda, Sudan, DRC, the Central African Republic and Colombia. For instance, it was felt that the arrest warrants of the ICC have had a direct and positive impact on the peace process in Uganda, and on bolstering the debate on accountability in the Juba peace talks. On the other hand, the politics surrounding Uganda's self-referral to the ICC continue to haunt the ICC to some extent. In Sudan, the ICC intervention has not been welcomed by the Government, which would prefer to rely on complementary local structures. In the DRC, while generally civil society has pushed for justice, the main fear is that ICC decisions elsewhere may be manipulated in the DRC by local actors. Some consider the *Lubanga* case too limited in scope. However, far from being ignored, the Court has proved highly relevant and has concretely impacted on all these situations.

In light of the above, participants concluded and recommended:

- Complementarity poses a real opportunity. The Rome Statute is about a system, not just about a Court. The system should be expanded through the building of local capacity. Unlike other options under the Rome Statute, such as Articles 16 or 53, complementarity

brings legal certainty. At the same time, it is too early to say what the exact threshold for complementarity will be.

- Self-referrals should be treated with caution, and indirect consequences of ICC interventions should be anticipated and met with a robust outreach response. The Court must close the legitimacy gap that may exist in respect of affected populations. In situ trials should be explored.
- Deterrence may have been a factor in some specific situations mentioned above but it is difficult to show it conclusively. One should not underestimate the impact of indictments on the psychology of perpetrators. Plea bargaining or other sentencing options should be explored as incentives.
- The Rome Statute presents a step forward on guaranteeing the rights of victims to participation and reparations but these rights need to be realized in a responsible manner. Practice is still underdeveloped on this issue. Consultation of victims throughout the process should be a priority.

Workshop No. 8 ("Reconciliation") was jointly prepared by the Centre for the Study of Violence and Reconciliation and the Friedrich Ebert Foundation and chaired by Yasmin Sooka from the Foundation for Human Rights in South Africa. The purpose of the workshop was to discuss the importance of reconciliation, understood as a pragmatic process of building group relationships: how does this process relate to other justice and development requirements? What is the role of civil society in building such relationships? Gender justice and reconciliation?

Reconciliation is perceived both as a goal and as a process which includes the dimensions of truth-telling, justice and accountability, the healing of wounds and the forging of new relationships based on building a new democratic society which is different from the past. Sustainable reconciliation can only be built by addressing the root causes of the past conflict. Reconciliation is multi-dimensional, multi-layered, profound and complex, and should be based on minimum conditions and tolerance to build working relationships at a political level, and to build trust in a political process. Reparations and the restoration of civic trust in state institutions are seen as key elements of reconciliation.

It was stressed that the gender aspect of the reconciliation process needs to be strengthened through building capacity, the inclusion of gender experts and the inclusion of women in the peace negotiations themselves.

Reconciliation processes need to respond to local experiences, needs, values, aspirations and resources. Local culture and traditional practices can provide important resources for reconciliation that are more locally accessible and legitimate.

Sustainable reconciliation also requires the involvement of civil society. Civil society can play a crucial role in strengthening reconciliation processes through advocacy, public education and community empowerment.

Challenges are

- Politicization and manipulation of the term 'reconciliation' by politicians and political actors for their own narrow political interest. The manner in which disarmament, demobilization and reintegration processes create further inequalities between victims and ex-combatants have the potential to create new conflicts in post-conflict societies;
- Addressing past hatreds and bitterness based on multi-ethnic tribal identities;
- Need for multi-level peace processes to achieve sustainable reconciliation.

Workshop No. 9 ("Justice Mechanisms and the Question of Legitimacy: Concepts and Challenges") was jointly prepared by the Working Group on Development and Peace (FriEnt) and the Centre for Peacebuilding (KOFF) – swisspeace. The workshop was chaired by Jürg Lindenmann from the Swiss Federal Department of Foreign Affairs.

Based on three case studies (Rwanda, Bosnia & Herzegovina and Lebanon), the workshop sought to clarify the legitimacy of internal and external actors and justice mechanisms. To that end it discussed concepts of the legitimacy of justice, perceptions of external and internal justice models, and challenges for the transition from external to local justice mechanisms.

The workshop noted that legitimacy is a critically important part for the success of any transitional justice mechanism. Legitimacy is a dynamic concept. Assumptions and perceptions may change over time. The legitimacy of external actors may be challenged because of their role in the conflict, own interests or double standards. The transition from internationally-driven mechanisms to local ownership should be part of any strategy for legitimacy from the beginning. For too long, the International Criminal Tribunal for the Former Yugoslavia considered the issue of legitimacy only vis-à-vis the international community and not with respect to the local constituency. Research in Rwanda suggested that legitimacy should be based on an empirical approach combining qualitative and quantitative criteria of measurement.

Workshop 10 ("Alternative Approaches to Dealing with the Past") was prepared by Crisis Management Initiative and chaired by Mark Salter of IDEA.

The first issue was to challenge the very concept of 'alternative approaches'. Any assumption of a norm of 'retributive justice' as the only means to deliver sustainable peace was strongly challenged on the basis of case studies from Spain, Mozambique and Burundi. The Spanish case highlighted the possibility of a democratic transition within a discourse of forgetting the past, a commonality shared to some extent with Mozambique, where parties insisted that there could only be a conversation if the past was not discussed. This triggered lively debate on the extent to which strategic silences on political issues might be both expedient and morally justified, whilst not ignoring that issue avoidance was inherently one-sided. This was contrasted with the perils of a pervasive obliterating silence denying the victims the right to be heard. The possibility of drawing on traditional processes was exemplified in an intriguing case of the faith healers of Mozambique who open up the space for delivering justice in a way which no law at the international level could. Finally, the extent to which the current normative framework forecloses options which have been used in the past was highlighted in the case of Burundi. One reading of the current situation was that local actors had taken on the forms of transitional justice mechanisms imposed by the international community yet circumvented them, reminding us of the need to link the expectations of the people to the deals which are negotiated by the elite. More fundamentally, the nature of conflict might require us to abandon talk of a unifying 'truth', or 'past' and instead recognize that there are many truths and many visions of justice.

Conclusion

Two days ago, during the opening ceremony in the Nuremberg Tribunal, Ms Sonia Picado, the Personal Envoy of Costa Rican President Oscar Arias, and Mr Frank-Walter Steinmeier, the German Foreign Minister, both mentioned that this conference was likely to accumulate an unprecedented wealth of information on the peace-and-justice dilemma. I think their expectation was correct. We are indeed blessed, even overwhelmed, with an incredible amount of information, opinions and advice. It is sometimes a challenge to separate the wood from the trees. So let me try to attempt a brief and certainly incomplete look at the wood.

1. The first point that comes to mind is the most obvious one – sort of the leitmotiv of the conference: justice and peace need not be contradictory forces. Whilst we must acknowledge that the dilemmas are real, a negotiated agreement must build the foundation for both peace and justice. This point was underpinned by generally accepted references to the concepts of sustainable peace, sustainable development and human security. The logical

consequence of the complementarity of peace and justice is that the choice is not between some accountability and none, but rather how to build sustainable solutions.

2. The second point is a very basic and commonly accepted one: peace must be understood as "sustainable peace". The silence of the arms, the end of violence and terror, the ability to meet basic needs, public security – these are the expectations of people who have been traumatized by armed conflict and all sorts of brutalities, and therefore these are immensely important categories. But we must not confuse a signature on an agreement, the end of violence and public security with the notion of "sustainable peace".

3. A third point concerns mediation processes. Here, it became clear that mediation happens at many different levels and involves many different actors. It is not just power bargaining between diplomats and the men with guns. At this top level, mediators indeed bear a responsibility to contribute creatively and flexibly to the immediate ending of violence and hostilities with the simultaneous expectation – which is usually part of their own "work ethic" – to promote sustainable solutions. This requires engagement with a broader constituency of civil society, in particular women and traditionally excluded groups, to keep the parties from entering agreements that are, in all likelihood, doomed to failure. The commitment of mediators to the core principles of the international legal order has to be beyond doubt – there is simply no room for blanket amnesties where the core crimes are concerned – and mediators should promote knowledge among the parties about the normative framework so that the parties can make informed choices. However, there should be a clear understanding of the division of labour where the mediator and the prosecutor have distinct roles to play. There was also broad agreement that mediators needed flexibility and that a degree of ambiguity could provide the necessary scope to address the reality of conflict situations which invariably centre on competing visions of the past. It was also clear that mediation will continue at many points in society after a formal settlement, often going hand in hand with reconciliation.

4. The fourth point is about the notion of justice. As the development of the field of transitional justice has shown, "justice" needs to be – and in fact is – understood in a broad sense. Transitional justice may comprise criminal justice, truth-telling, reparations and institutional reform. The aims should include building trustworthy institutions and addressing marginalization, especially on grounds of gender. Legitimacy is a cornerstone of justice, and means and priorities must be locally defined. All these ideas are now generally accepted, but the challenge is in combining the ingredients of justice in ways that are sensitive to the context of a particular national or regional situation.

5. Here, as a fifth point, I wish to highlight the fight against impunity, culminating in the Rome Statute of the ICC, now ratified by 104 States. This worldwide movement has changed the parameters for the pursuit of peace. As I said earlier, there is an emerging norm in international law that amnesties cannot be conceded for war crimes, crimes against humanity or genocide. In any case, the Court will not be bound by amnesties if it has jurisdiction. In addition, there is an emergence of practice at the international level of concentrating on those bearing the greatest responsibility for such crimes. A central feature of the Rome Statute is the principle of complementarity, whereby States have the primary duty to investigate or prosecute those responsible. The precise way in which States implement this duty may vary, but while incentives may be used within the context of criminal prosecutions, amnesty for such crimes is no longer available.

6. Sixthly, in this regard it has sometimes been noted that the pursuit of justice and reconciliation seem to be in tension. However, the workshops have been helpful in demonstrating that the desire for both accountability and reconciliation is common to all continents. Expectations may differ according to social, political and religious context, and views may not be uniform. The "hunger" for justice may vary over time and may grow once worries about survival diminish. But there is broad understanding that accountability and reconciliation can, and in fact do, co-exist.

7. A seventh point is about social, political and economic development. There was general agreement that to deliver on socio-economic justice, transitional justice mechanisms and development efforts should complement each other. In particular, security sector reforms, disarmament and demobilization and the restoration of a State sector that is able to uphold a public order based on human rights and the rule of law are all valid development goals which should not be pursued in isolation. Efforts at intelligent timing of the various steps, and at pacing and upholding international commitments, remain a big challenge.

8. An eighth, more specific point on development: several people argued convincingly that development aspects go beyond the resource and managerial dimension which I addressed in my previous point. Conflict is too often centred on issues of lack of equitable access to social goods. Therefore the mediator should be attentive to future developmental needs in order that the root causes of conflict are addressed from the outset. This is essential in generating a "peace dividend" (in other words: a sentiment of trust in the superiority of the post-conflict order), which is crucial to reconciliation. It is therefore necessary that the United Nations – notably the Secretariat, the Security Council and the Peacebuilding Commission – work on the integration of developmental and justice perspectives into their peace-building strategies.

9. Finally, in conclusion, please allow me a simple yet obvious point. The peace-and-justice dilemma is at its worst when people expect simple solutions to highly complex situations. This conference was not intended to produce blueprints for the resolution of all tensions between the pursuits of peace and justice. But the conference has reminded us that although the pursuit of peace and justice occasionally results in a moral dilemma, those deciding do not act in a moral or normative vacuum. There can be no doubt about the genuine difficulties involved, and the need for compromise within the parameters already described. But by comparing experiences from many places, and by listening to the varied expertise, the conference has demonstrated that while there is no *one* perfect solution, there is a spectrum of available options and creative approaches can be found.

You must have heard most of these points before, but maybe you have never heard them in conjunction, all in a single, multidisciplinary conference, and underpinned empirically on such a broad scale. I hope that this will be remembered as the legacy of this conference. I also hope that the legacy will not just be an oral one, but that it will be recorded in such a way as to have a more lasting impact – for the benefit of mediators, Governments, international and regional organizations. You are aware that from very early on in the process of preparing the conference, the organizers had contemplated the plan of condensing the conference results in a set of political recommendations, in consultation with distinguished experts like you. Having listened to the speeches on the first day of the conference and to the feedback from the workshops, I have the impression that many of you share the view that it would be worth trying to go ahead with this plan.