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“Pursuing Peace with Justice: Lessons from Uganda”

“If you want peace, work for justice.” These words of wisdom of Pope Paul VI are sewn into two imposing, multicolor, quilted banners, which dominate the main hall of the Notre Dame law library, just outside my office.

In the long run peace does require justice. History teaches that accumulated injustices eventually lead to violence.

In the short run, however, the relationship between peace and justice is trickier. When the treaty to establish the International Criminal Court was being negotiated, one objection to granting the ICC prosecutor independent power to initiate investigations was that he might indict leaders of warring parties during peace negotiations. Pursuit of justice might then sabotage peace, because the leaders would refuse to lay down their arms, if by doing so they risked imprisonment.

The solution adopted by the drafters of the ICC treaty was to allow the United Nations Security Council, charged with maintaining international peace, to adopt a resolution suspending a particular ICC investigation for a one year period, in order to allow peace negotiations to proceed. The Council could annually extend the suspension, if necessary to safeguard the peace.

This was a prudent if imperfect solution. For the Security Council to defer a prosecution, not only a majority of its 15 members, but all five veto powers must agree. If any one of those five powers -- the US, Russia, China, Britain or France -- thinks that the risk to peace is insufficient to defer the prosecution, it can veto the resolution, and the prosecutor may then proceed.

On the other hand, if all five powers, with their disparate geopolitical interests, agree that peace should take precedence over justice for at least one year, odds are that there is a pretty good case to defer prosecution.

To date there has been no need to ask the Security Council to defer a prosecution. But the time may not be far off. A potential conflict between peace and justice has arisen in Uganda.

One year ago ICC prosecutor Luis Moreno Ocampo made public formal charges of war crimes and crimes against humanity against Joseph Kony and other leaders of the Lord’s Resistance Army, a Ugandan guerrilla movement that specializes in recruiting young boys to be soldiers and young girls to be sex slaves. Kony’s thugs also delight in cutting off the lips and noses of innocent civilians.

Meanwhile, since June, the government of Ugandan President Yoweri Museveni has been engaged in the most promising peace negotiations in years with the guerrilla leaders. Prominent

religious leaders, and activists with humanitarian aid groups, have called on Ocampo to drop his prosecutions, lest they torpedo the prospects for peace.

Guerrilla negotiators encourage such calls by demanding an amnesty before they will sign a peace agreement. President Musaveni answers that they must sign a peace agreement first, and then he will give them amnesty.

But a national amnesty granted by Uganda would not shield the guerrillas from international prosecution. So the Security Council may be asked to defer the ICC prosecution in the interests of peace.

Three important lessons emerge from this experience. First, ICC indictments do not necessarily sabotage peace negotiations. On the contrary, the guerrillas in Uganda did not pursue serious peace negotiations until *after* they were indicted. One might even suspect that they now sue for peace, partly to avoid being prosecuted.

Second, any deferral of prosecution should be a last resort. Even though the Ugandan guerrillas recently gathered in neutral locations in Sudan, as called for by the peace plan, renewed fighting in Uganda broke out this week. Not until a peace agreement has actually been signed and concrete steps are taken to begin to carry it out, should the Security Council consider any deferral of prosecution.

If the Security Council then acts, the one-year limit on deferrals could help to insure peace, because any breach by the rebels would be grounds not to renew the deferral of their prosecution.

Third, timing is key to resolving any short-term trade-off between peace and justice -- and not only for the guerrillas. Last December the International Court of Justice in The Hague ruled in favor of a suit by the Democratic Republic of Congo against Uganda for gross violations of human rights, committed in Congo by Ugandan troops and Ugandan-sponsored guerrilla groups.

That ruling came in what amounts to a civil lawsuit for damages and other reparations. Still, it raises the possibility that Ugandan President Musaveni, who presided over Uganda's incursions into Congo, may be responsible for war crimes and crimes against humanity. If so, he, too, could be indicted by the ICC.

But not now. Let the peace negotiations in Uganda go forward. If they succeed, or if they fail, there will be time enough to consider indicting Musaveni later.

Except for the guilty parties, no one should be content to see justice delayed, let alone denied, even in the interests of peace. Eventually, however, it may be possible to achieve both peace and justice, for example, once President Musaveni is no longer in office.

In the meantime, if all this seems unacceptably messy, there is one final lesson for would-be ICC prosecutors: purists need not apply.

Doug Cassel's commentaries are broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.