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Lawyering Peace: Infusing Accountability into the Peace Negotiations Process

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LAWYERING PEACE: INFUSING ACCOUNTABILITY INTO THE PEACE NEGOTIATIONS PROCESS

Dr. Paul R. Williams¹

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Thank you to Case Western Reserve University School of Law, and in particular Dean Michael Scharf, for providing me with the privilege of delivering the Klatsky Endowed Lecture on Human Rights. Thank you, Milena Sterio, for your wonderful introduction.

It is my honor to receive the Cox International Law Center's Humanitarian Award for Advancing Global Justice and join the inspiring array of international law scholars and practitioners who have received it in years prior.

I am also pleased to have the opportunity to speak today to such an engaged audience of students, professors, lawyers, and members of the Case Western community about the interplay of human rights and accountability in peace processes.

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There are currently over thirty active armed conflicts across the globe.² While a small percentage of these conflicts will end in outright victory for one of the parties, the vast majority of those that end will be resolved through peace negotiations.³ At this moment, there are about two dozen active peace negotiations around the world ranging from Sudan to Afghanistan to Yemen.⁴ In each of these negotiations, the parties face the conundrum of what level of justice is appropriate to ensure a durable peace.

During peace negotiations, the parties to a conflict and the mediators often prioritize securing peace and, to do so, try to get to an agreement as quickly as possible. Historically, this left the notion of justice to be considered at a later time and encouraged impunity for leaders who may have been responsible for atrocities during the conflict. For instance, Ambassador Richard Holbrooke, who negotiated the Dayton Accords that ended the war in Bosnia in 1995, famously described then-Serbian President Slobodan Milošević as both an arsonist and a fireman.⁵ As an arsonist, Milošević instigated and fanned the flames of crimes against humanity and genocide in the Balkans.⁶ Yet, Holbrooke believed he also needed Milošević in the role of a fireman to sign a peace deal in 1995 to put out the very fires Milošević started.⁷ The pursuit of justice was shelved in favor of a signed

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2. See Mark Prigg, *The world at war: Stunning interactive map reveals EVERY conflict currently active around the world*, DAILY MAIL (Apr. 28, 2017), <https://www.dailymail.co.uk/sciencetech/article-4453666/The-world-war-Interactive-map-reveals-conflicts.html> [https://perma.cc/V3LU-KFJ8].
 3. See Virginia Page Fortna, *Where Have All the Victories Gone? Peacekeeping and War Outcomes* 48 (Working Paper Prepared for Presentation at the Annual Meeting of the American Political Science Association, Aug. 2009), <https://pdfs.semanticscholar.org/9e92/99e686c49befe03bf7b863b9c8b25255c8e6.pdf> [https://perma.cc/565V-GEUM].
 4. See *Peace Talks in Focus 2018. Report on Trends and Scenarios*, RELIEFWEB (Sept. 5, 2018), <https://reliefweb.int/report/world/peace-talks-focus-2018-report-trends-and-scenarios> [https://perma.cc/NC8Z-DZJ6].
 5. See U.S. DEP'T OF STATE, *Ambassador Holbrooke Interview on ABC's Nightline Transcript* (Mar. 24, 1999), https://1997-2001.state.gov/policy_remarks/1999/990324_holbrooke_nghtln.html [https://perma.cc/7X4X-XZB2].
 6. See Andrew Osborn, *Milosevic charged with genocide*, GUARDIAN (Nov. 23, 2001), <https://www.theguardian.com/world/2001/nov/24/balkans.warcrime> [https://perma.cc/X7LX-KMSX].
 7. See *Richard Holbrooke*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/intervie>

agreement, accommodating, legitimizing, and emboldening Milošević.⁸ Subsequent to the Dayton Accords, in 1998, Milošević launched a campaign of ethnic cleansing against the Kosovar Albanians.⁹ In 1999, Milošević was indicted for the atrocities perpetrated in Kosovo¹⁰ and in 2001, for crimes in Bosnia-Herzegovina and Croatia.¹¹

When thinking about peace and justice, I suggest we should replace the metaphor of the arsonist and the fireman with a Wile E. Coyote and the Roadrunner metaphor. In this famous cartoon series, Wile E. Coyote devises increasingly elaborate and innovative tactics to catch up to the much faster Roadrunner. Justice, in a way, is like Wile E. Coyote. The odds of Wile E. Coyote catching the Roadrunner are slim, similar to the way that provisions for justice and accountability in a peace agreement are often pushed aside in favor of impunity for the perpetrators of crimes. Nonetheless, Wile E. Coyote keeps trying with each subsequent opportunity, much like the persistent pursuit for justice.

Over the course of this speech, I will examine how justice has repeatedly worked to find a foothold in the peace process and how the international community can continue to work towards embedding accountability into peace processes going forward in order to achieve durable peace.

ERA OF IMPUNITY

Justice did not have a very successful start. During most of the twentieth century, the international community treated amnesty and immunity as the “price for peace.”¹²

ws/holbrooke.html [<https://perma.cc/U5LD-MVN8>] (last accessed Feb. 20, 2020).

8. See PAUL R. WILLIAMS & MICHAEL P. SCHARF, *PEACE WITH JUSTICE: WAR CRIMES AND ACCOUNTABILITY IN THE FORMER YUGOSLAVIA* 152 (2002).
9. See Ivo Daalder & Michael O’Hanlon, *The Roots of the War*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/readings/root.s.html> [<https://perma.cc/J8PH-4HQU>] (last accessed Feb. 20, 2020).
10. See *Prosecutor v. Milosevic*, Case No. IT-99-37, Indictment (Int’l Crim. Trib. for the Former Yugoslavia May 22, 1999), https://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-i990524e.htm [<https://perma.cc/MC5Z-K88P>].
11. See *Prosecutor v. Milosevic*, Case No. IT-01-51-I, Indictment (Int’l Crim. Trib. for the Former Yugoslavia Nov. 22, 2001), https://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii011122e.htm [<https://perma.cc/9TX5-2TV6>].
12. Keith Doubt, *We Had to Jump over the Moral Bridge: Bosnia and the Pathetic Hegemony of Face-Work*, in *THE CONCEIT OF INNOCENCE LOSING THE CONSCIENCE OF THE WEST IN THE WAR AGAINST BOSNIA*, at 121 (Texas A&M University Press, 1995).

For instance, Turkish forces, who many considered responsible for the genocidal massacre of over one million Armenians during World War I, were given amnesty in the 1923 Treaty of Lausanne.¹³ Favoring impunity over justice with peace setting the tone for what would follow during World War II and beyond. Even to this day, the failure to account for the Armenian genocide creates extreme tension in the region, including in the territorial and ethnic Nagorno-Karabakh conflict and in a continued push for international recognition of the genocide by the Armenian diaspora.¹⁴

During the Nuremberg Trials that followed World War II, there was a brief burst of effort to bring accountability back into the process of building a durable peace.¹⁵ But very quickly, those negotiating peace agreements moved back towards a strategy that favored impunity.

The Evian Agreement of 1962 granted amnesty to the French and Algerians responsible for the massacre of thousands of civilians during the Algerian war.¹⁶ With the divisions and impunities created by that agreement, Algeria soon entered a brutal civil war with death squads, horrific massacres, and indiscriminate violence against civilians, mirroring the atrocities committed in the French-Algerian war.¹⁷

During the 1980s, in an effort to facilitate transitions to democracy, the governments of Argentina, Chile, El Salvador, Guatemala, and Uruguay each granted amnesty to members of former regimes, many of whom had commanded death squads that tortured and killed thousands of civilians within their respective countries.¹⁸

This trend of trading justice for peace continued with the 1991 Paris Peace Agreement for Cambodia. The agreement did not contain any accountability provisions for the Khmer Rouge leaders under whose watch nearly two million people died.¹⁹ It would take several more

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13. See Treaty of Peace with Turkey [Treaty of Lausanne] arts.138–140 (Jan. 30 1923).
 14. See e.g. H.R. 296, 116th Cong. (2019). (This resolution, affirming the United States record on the Armenian Genocide, was passed over 100 years after the end of the genocide.)
 15. See *Nuremberg Trials*, HISTORY, <https://www.history.com/topics/world-war-ii/nuremberg-trials> [<https://perma.cc/7A8Q-EHK8>] (last updated June 7, 2019).
 16. See Évian Accords, Mar. 19, 1962, 507 U.N.T.S. 33.
 17. See World Peace Foundation, *Algeria: Civil War*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/72/> [<https://perma.cc/8F7C-78SH>].
 18. See Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 451, 458–61, 484 (1990).
 19. See Ben Kiernan, *The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-79, and East Timor, 1975-80*, 4 CRITICAL

years of political turmoil until the Prime Minister of Cambodia wrote a letter in 1997 to the U.N. Secretary General requesting help in setting up a court to try the leaders of the Khmer Rouge.²⁰ Not until 2006—three decades after the genocide (which took place 1975-1979)—did the U.N. General Assembly approve a hybrid court, established with both Cambodian and U.N. judges presiding over the trials for the surviving Khmer Rouge leaders.²¹ The court would ultimately convict leaders Kang Kek Lew, Nuon Chea, and Khieu Samphan, among others, for crimes against humanity and genocide—thirty years later.²²

We can look to the current turmoil in Yemen for the consequences of providing amnesty in a peace agreement. Article 3 of the 2011 Gulf Cooperation Council Peace Agreement called for the Parliament to pass “laws granting immunity from legal and judicial prosecution to the President [Ali Abdullah Saleh] and those who worked with him during his time in office.”²³ The U.N. Envoy for Yemen had provided facilitative support to the Gulf Cooperation Council to secure such an agreement.²⁴ Following the signing of the Agreement, the U.N. Security Council stressed the need for a human rights investigation into the alleged violations from the conflict, “with a view to avoiding impunity and ensuring accountability.”²⁵ The U.N. High Commissioner for Human Rights also quickly condemned the Agreement when it was passed with the explicit amnesty provision for Saleh, urging Yemeni

ASIAN STUDIES 585, 587 (2003). *See generally* Letter dated 30 October 1991 from the Permanent Representatives of France and Indonesia to the United Nations addressed to the Secretary-General, U.N. Doc. A/46/608-S/23177 (Oct. 30, 1991).

20. *See* U.N. President of the S.C., Letter dated June 23, 1997 from Secretary-General to the President of the General Assembly and to the President of the Security Council, U.N. Doc. A/51/93 (June 24, 1997).
21. *See* G.A. Res. 57/228, art. 5 (May 22, 2003).
22. *See Trial Chamber Summary of Judgement Case 002/02*, ECCC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/20181217%20Summary%20of%20Judgement%20Case%20002-02%20ENG_FINAL%20FOR%20PUBLICATION.pdf [<https://perma.cc/B6W6-4T3K>] (last accessed Feb. 9, 2020)
23. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council art. 3, Nov. 23, 2011.
24. *See Background*, OFFICE OF THE SPECIAL ENVOY OF THE SECRETARY-GENERAL FOR YEMEN, <https://osesgy.unmissions.org/background> [<https://perma.cc/LY6D-JEH8>] (last accessed Feb. 10, 2020)
25. S.C. Res. 2014, ¶ 7 (Oct. 21, 2011).

lawmakers to ensure that the amnesty did not violate international law's prohibition against amnesties for gross human rights violations.²⁶

Notwithstanding, Yemen's national unity cabinet passed an amnesty law in 2012 that gave President Saleh and his aides complete amnesty for all abuses committed during his twenty-two years in office.²⁷

Three years later, in 2015, Saleh joined forces with Houthi rebels to tip Yemen into civil war.²⁸ He broke ties with the rebels in 2017, and Houthi forces assassinated him shortly thereafter.²⁹ The civil war continues today, in no small part due to the decision to grant Saleh immunity rather than use criminal prosecution to permanently remove him from the political landscape in Yemen.³⁰

In 1971, Idi Amin seized the Ugandan Presidency in a military coup.³¹ He suspended the constitution,³² turned Uganda into a military state that murdered nearly all political opponents, and sought to purge nearly every ethnic group except the Kakwas, Sudanese, and Nubians.³³

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26. See *March 2012 Monthly Forecast*, SECURITY COUNCIL REPORT (Feb. 29, 2012), https://www.securitycouncilreport.org/monthly-forecast/2012-03/lookup_c_glkwlemtisg_b_7996437.php [<https://perma.cc/S6EZ-5B8L>].
 27. See *Yemen cabinet approves President Saleh amnesty law*, BBC NEWS (Jan. 8, 2012), <https://www.bbc.com/news/world-middle-east-16463802> [<https://perma.cc/64EC-4MWZ>].
 28. See *Yemen's Saleh declares alliance with Houthis*, AL-JAZEERA (May 11, 2015), <https://www.aljazeera.com/news/2015/05/cloneofcloneofcloneofstrikes-yemen-saada-breach--150510143647004.html> [<https://perma.cc/8XGH-9FKR>].
 29. 'See *Yemen: Ex: President Ali Abdullah Saleh killed*, AL-JAZEERA (Dec. 10, 2017), <https://www.aljazeera.com/news/2017/12/houthi-media-ali-abdullah-saleh-killed-sanaa-171204123328290.html> [<https://perma.cc/V2VB-A5HN>].
 30. See *Unpunished Massacre: Yemen's Failed Response to the "Friday of Dignity" Killings*, HUMAN RIGHTS WATCH (Feb. 12, 2013), <https://www.hrw.org/report/2013/02/12/unpunished-massacre/yemens-failed-response-friday-dignity-killings> [<https://perma.cc/28XM-6BRU>].
 31. See John Fairhall, *Curfew in Uganda after military coup topples Obote*, GUARDIAN (Jan. 26, 1971), <https://www.theguardian.com/theguardian/1971/jan/26/fromthearchive> [<https://perma.cc/8PXR-ERV7>].
 32. See Hanibal Goitom, *Today in History: Idi Amin Overthrows President Milton Obote in Uganda*, LIBR. OF CONGRESS (Jan. 25, 2018), <https://blogs.loc.gov/law/2018/01/today-in-history-idi-amin-overthrows-president-milton-obote-in-uganda/> [<https://perma.cc/WZ2C-CAJA>].
 33. 'See World Peace Foundation, *Uganda: 2nd Obote Regime*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityEngine/2015/08/07/uganda-idi-amin->

The estimated death count was 100,000 - 500,000.³⁴ Tanzanian forces ousted him from power, but instead of facing prosecution, he was able to flee: first to Libya, and then to Saudi Arabia where he lived until his death in 2003.³⁵ The Saudi royal family allowed him sanctuary and paid him a generous subsidy on the condition that he stayed entirely out of politics.³⁶ During his almost 25 years in soft exile, no nation seriously tried to bring him to justice.³⁷ Human Rights Watch unsuccessfully attempted to bring his case before the U.N. Commission on Human Rights.³⁸

In Haiti in the 1970s and 1980s, Jean-Claude Duvalier, often referred to as “Baby Doc,” assumed power following the death of his father (“Papa Doc”).³⁹ Baby Doc’s repressive reign saw thousands killed, hundreds of thousands forced to flee to escape the country’s corruption and oppressive rule, and over half of the population living in abject poverty.⁴⁰ All the while, however, the U.S. and many other countries continued to financially and politically support Baby Doc.⁴¹ Even when Haitians revolted against Baby Doc’s rule in 1985, the U.S. helped him flee to France, which turned a blind eye to his stay and provided him with a de facto amnesty.⁴²

milton-obote-and-the-national-resistance-movement/
[<https://perma.cc/98F6-BGKD>]; Mamadou Tall, *Notes on the Civil and Political Strife in Uganda*, 12 A J. OF OPINION, 41–44 (1982).

34. *Uganda*, *supra* note 33.
35. See *Idi Amin Biography*, BIOGRAPHY, <https://www.biography.com/political-figure/idi-amin> [<https://perma.cc/6ZNV-8XKM>].
36. See, e.g., Ethan Bronner, *The Obscenely Easy Exile of Idi Amin*, GLOBAL POLICY FORUM (Aug. 19, 2003), <https://www.globalpolicy.org/component/content/article/164/28440.html> [<https://perma.cc/36SX-BVL7>].
37. See *id.*
38. *Id.*
39. See Hugh O’Shaughnessy, *Jean-Claude Duvalier: Brutal Haitian dictator who ruled the country for 15 years*, INDEPENDENT (Oct. 5, 2014), <https://www.independent.co.uk/news/people/jean-claude-duvalier-former-president-of-haiti-who-brutalised-his-opponents-and-was-prevented-from-9776019.html> [<https://perma.cc/4E8A-PMDN>].
40. See Nathalie Baptiste, *Terror, Repression and Diaspora: The Baby Doc Legacy in Haiti*, NATION (Oct. 23, 2014), <https://www.thenation.com/article/archive/terror-repression-and-diaspora-baby-doc-legacy-haiti/> [<https://perma.cc/8NVV-ANGG>].
41. See HELEN CHAPIN, DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES 235 (1989).
42. See Fran Quigley, *From cradle to grave, United States protected Jean-Claude Duvalier*, INDYSTAR (Oct. 13, 2014), <https://www.indystar.com/story/opinion/2014/10/13/cradle-grave->

STEPPING STONES: BUILDING A PATH TOWARDS JUSTICE

Although many twentieth-century mediators feared that pushing for justice would jeopardize peace, the demand for justice persisted. Even in instances where amnesty provisions seemed to contribute to the initial peace, most of the countries later felt it necessary to seek justice in some form.

For instance, after the 2010 earthquake that devastated Haiti, Baby Doc returned to Haiti under the guise of assisting in the reconstruction process.⁴³ Unlike the previous cases of amnesty discussed in this section, Haiti determined it could not risk accepting him back and ignoring his prior crimes.⁴⁴ Upon his arrival, the Haitian police immediately took him into custody and charged him with human rights abuses as well as corruption, theft, and misappropriation of funds.⁴⁵ Baby Doc appeared before a domestic Haitian court in 2013,⁴⁶ although he died of a heart attack in 2014 before the judicial process concluded.⁴⁷

In this case and in others, stakeholders began learning that to secure durable peace, negotiators must strive for *peace with justice*. Recently, the international community has increasingly recognized that securing justice helps create stable, peaceful societies after conflict by: (1) establishing individual responsibility and denying collective guilt, (2) delegitimizing institutions and war criminals responsible for

united-states-protected-jean-claude-duvalier/17191805/
[https://perma.cc/WR2U-M9M9].

43. See Joseph Guyler Delva, *Jean-Claude Duvalier Taken to Haiti Hospital after Falling Ill*, REUTERS (Mar. 21, 2011), <https://www.reuters.com/article/us-haiti-duvalier-idUSTRE72N5L920110324> [https://perma.cc/S9F4-7MM7].
44. Mark Memmott, *In Haiti: 'Baby Doc' Duvalier Taken into Custody*, NPR (Jan. 18, 2011), <https://www.npr.org/sections/thetwo-way/2011/01/18/133021050/in-haiti-papa-doc-duvalier-taken-into-custody> [https://perma.cc/C9Z4-6PWA].
45. Amelie Baron, *Former Haitian dictator Jean-Claude Duvalier dies at 63*, REUTERS (Oct. 4, 2014), <https://www.reuters.com/article/us-haiti-duvalier/former-haitian-dictator-jean-claude-duvalier-dies-at-63-idUSKCN0HT0KI20141004> [https://perma.cc/Q3YE-QVGK].
46. *The Baby Doc Duvalier Prosecution*, CENTER FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/amicus-briefs/the-baby-doc-duvalier-prosecution/> [https://perma.cc/Q3TL-Y78F].
47. Baptiste, *supra* note 40.

the commission of atrocities, (3) establishing an accurate historical record, (4) providing victim catharsis, and (5) promoting deterrence.⁴⁸

This switch to peace with justice, however, did not happen instantaneously with the case of Yugoslavia. In fact, the international community was much slower to act to achieve a just peace than is often recalled, doing so only after embargo,⁴⁹ deploying multiple iterations of peacekeeping missions,⁵⁰ and adopting and then later enforcing a no-fly zone.⁵¹

The push towards justice started first with a U.N. Commission of Experts led by Cherif Bassiouni,⁵² which found evidence of “grave breaches of the Geneva Conventions and other violations of international humanitarian law” including “willful killing, ‘ethnic cleansing’ and mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests.”⁵³ In the face of such a comprehensive and damning report, the U.N. Security Council was forced to pass Resolution 827 in 1993 to establish an international criminal tribunal to further investigate these claims.⁵⁴ Justice Richard Goldstone of South Africa was appointed as Chief Prosecutor in 1994.⁵⁵

In the summer of 1995, just before the Dayton talks, Justice Goldstone indicted Bosnian Serb politician Radovan Karadžić and military commander Ratko Mladić, preventing them from attending the negotiations.⁵⁶ Though the Tribunal was accused of undermining the potential for peace, Justice Goldstone maintained that the exclusion of Karadžić and Mladić from the talks facilitated the participation of the

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48. Michael P. Scharf & Paul R. Williams, *The Functions of Justice and Anti-Justice in the Peace-Building Process*, 35 CASE W. RES. J. INT'L L. 161, 170 (2003).
49. See G.A. Res. 713 (Sept. 25, 1991).
50. See G.A. Res. 743 (Feb. 21, 1992).
51. See G.A. Res. 816 (March 31, 1993).
52. See *International Commissions of Inquiry, Fact-finding Missions: Europe*, UNITED NATIONS RESEARCH GUIDES, <http://libraryresources.unog.ch/c.php?g=462695&p=3162820#21494667> [<https://perma.cc/HA2N-Y2X8>].
53. U.N. Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808* (1993), ¶¶ 7, 9, U.N. Doc. S/5704 (May 3, 2003).
54. See G.A. Res. 827 (May 25, 1993).
55. *Hon. Richard Goldstone*, WORLD JUSTICE PROJECT, https://worldjusticeproject.org/about-us/who-we-are/honorary-chairs/richard_goldstone [<https://perma.cc/X6NX-S3SQ>].
56. See *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-I, Indictment (Int'l Crim. Trib. for the Former Yugoslavia, July 25, 1995).

Bosnian government.⁵⁷ Indeed, in his written account of this period, Justice Goldstone notes that these cases were prioritized because of the “persistent stories of the massacre of thousands of Muslim men and boys by the Bosnian Serb Army, led by Mladić.”⁵⁸ In this sense, the Bosnians would likely not have sat across the negotiating table from Karadžić and Mladić, who were widely understood to be committing mass atrocities against the Bosnian people.

Justice Goldstone urged Richard Holbrooke, who was mediating the Dayton Accords, to include accountability provisions in the final language, particularly terms obligating the parties to cooperate with the Tribunal and for NATO forces to arrest indicted war criminals.⁵⁹ Even having removed Karadžić and Mladić from the negotiations, three of the four signatories of the Dayton Accords would ultimately be indicted or indictable for atrocity crimes.⁶⁰ Though the Accords themselves contain provisions requiring the parties to cooperate with the Tribunal and preventing indicted individuals from running for office,⁶¹ they prioritized peace at the expense of justice, accommodating war criminals as signatories. In an ironic twist, the U.S. Secretary of State Warren Christopher titled his speech announcing the Dayton Accords “Peace with Justice,” even though the underlying public declarations of support for justice were maneuvers made to legitimize the arsonists of the conflict as firemen.⁶²

True accountability and justice proved to be timid and tardy; most of the Tribunal’s significant prosecutions would not take place until after the conflict in Kosovo occurred three years later. Most of the initial individuals tried by the Tribunal were low-level perpetrators,

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57. PURSUING JUSTICE IN ONGOING CONFLICT: A DISCUSSION OF CURRENT PRACTICE 3 (International Center for Transitional Justice Prosecution Program, 2007).
58. RICHARD J. GOLDSTONE, *FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR* 108 (Yale University Press, 2000).
59. Michael P. Scharf, *The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal*, 49 DEPAUL L. REV. 925, 953, 955 (2000).
60. Julian Borger, *Bosnia’s Bitter, Flawed Peace Deal, 20 Years On*, THE GUARDIAN (Nov. 10, 2015), <https://www.theguardian.com/global/2015/nov/10/bosnia-bitter-flawed-peace-deal-dayton-agreement-20-years-on> [https://perma.cc/BSC6-ETF9].
61. Madeleine Albright (Permanent Representative), *Letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General*, U.N. Doc. A/50/79c, S/1995/999, art. 8, 10 (Nov. 30 1995).
62. PAUL R. WILLIAMS & MICHAEL P. SCHARF, *PEACE WITH JUSTICE: WAR CRIMES AND ACCOUNTABILITY IN THE FORMER YUGOSLAVIA* 157 (Rowman & Littlefield 2002).

including traffic cops, foot soldiers, prison camp guards, and some members of paramilitary units.⁶³ The Tribunal's myopic mandate was focused narrowly on individual responsibility, and when combined with a fear of mission creep, it produced a timid tribunal that provided limited accountability, especially in its early years.⁶⁴ Unfortunately, it also failed to deter Serb nationalists from committing similar atrocities in Kosovo just a few years later.⁶⁵

During the conflict in Kosovo, the Serb army, police, and paramilitary waged a systematic and targeted campaign of violent terror against ethnic Albanians.⁶⁶ 850,000 Kosovar Albanians were forcibly expelled from Kosovo and about 590,000 were internally displaced.⁶⁷ It was not until after a humanitarian intervention in Kosovo by NATO, and subsequent economic pressure that Serbia sent its former President, Slobodan Milošević, the "fireman" of the Dayton Accords, to The Hague.⁶⁸ There, the Yugoslavia Tribunal tried Milošević for his atrocity crimes, although he died before the trial concluded.⁶⁹

Biljana Plavšić was also eventually indicted by the Tribunal for war crimes, but only after she had served as President of Republika Srpska for two years.⁷⁰ Additionally, Momčilo Krajišnik, who served as President of Bosnia for two years, and Jadranko Prlić, who served as the Foreign Minister of Bosnia, were also convicted of war crimes after

63. *Id.* at 114–15.

64. *Id.* at 119–20.

65. *Id.* at 120–21.

66. *Under Orders: War Crimes in Kosovo*, HUMAN RIGHTS WATCH (Oct. 26, 2001), <https://www.hrw.org/report/2001/10/26/under-orders-war-crimes-kosovo> [https://perma.cc/7DA8-YX89].

67. KOSOVO/KOSOVO: AS SEEN, AS TOLD 167 (Organization for Security and Co-operation in Europe 1999).

68. Matthew Stevenson, *Across the Balkans: Diplomatic Fault Lines in the Sandžak of Novi Pazar*, COUNTERPUNCH (Jan. 10, 2020), <https://www.counterpunch.org/2020/01/10/across-the-balkans-diplomatic-fault-lines-in-the-sandzak-of-novi-pazar/> [https://perma.cc/ST4W-BYMU].

69. Prosecutor v. Milošević, Case No. IT-98-29, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galic (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 30, 2006); Peter Beaumont, *Slobodan Milosevic Dies Alone with History Still Demanding Justice*, THE GUARDIAN (March 11, 2006), <https://www.theguardian.com/world/2006/mar/12/warcrimes.milosevictrial> [https://perma.cc/VH25-98X7].

70. Prosecutor v. Plavšić, Case No. IT-00-40-I, Indictment, (Int'l Crim. Trib. for the Former Yugoslavia, April 3, 2000).

serving in political offices.⁷¹ In significant part, the region is peaceful because those who had committed war crimes and then assumed power were ultimately removed by the Tribunal, but this accountability was seriously delayed.

The 1990s also saw genocide in Rwanda. In 1994, 800,000 Tutsis and moderate Hutus were killed over the course of 100 days.⁷² There was not a formal peace agreement after the violence because the Tutsi exile-led Rwandan Patriotic Front forces seized control,⁷³ but there was nevertheless a stark need for justice. In 1995, the U.N. Security Council passed Resolution 995, establishing the International Criminal Tribunal for Rwanda.⁷⁴ Interestingly, Rwanda was the only state to vote against the creation of the Tribunal.⁷⁵ Rwanda objected on the grounds that the Tribunal's temporal jurisdiction only covered crimes committed from January 1 to December 31, 1994, omitting crimes from the early 1990s; the Tribunal was based in The Hague not Kigali; and the Tribunal would not be able to impose the death penalty.⁷⁶

Although the Rwandan Tribunal could not provide accountability for all perpetrators—relying on domestic prosecutions and *gacaca* courts to complement its proceedings—it nonetheless was a vital part of the effort to provide justice after the genocide. The Rwandan Tribunal was the first to deliver verdicts against those responsible for committing genocide; the first to deliver verdicts that established rape as a method of committing genocide; and the first to hold people responsible for media broadcasts intended to provoke the public to perpetrate acts of violence and genocide.⁷⁷ In total, the Tribunal indicted 93 people, convicted 62,⁷⁸ and made significant progress in establishing the international criminal tribunal as a model for post-conflict accountability.

71. Prosecutor v. Krajišnik, Case No. IT-00-39-I, Amended Indictment, (Int'l Crim. Trib. for the Former Yugoslavia, March 21, 2000); Prosecutor v. Prlić et al., Case No. IT-04-74, (Int'l Crim. Trib. for the Former Yugoslavia, March 2, 2004).

72. *Rwanda genocide: 100 days of slaughter*, BBC News (April 4, 2019), <https://www.bbc.com/news/world-africa-26875506> [<https://perma.cc/5KVX-J5TK>].

73. *Id.*

74. S.C. Res. 955 (Nov. 8, 1994).

75. Payam Akhava, *The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment*, 90 AM. J. INT'L L. 501, 505 (1996).

76. *Id.* at 505, 507–08.

77. *The ICTR in Brief*, U.N. INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS, <https://unictr.irmct.org/en/tribunal> [<https://perma.cc/93MZ-M46U>].

78. *Id.*

In the case of Sierra Leone, the parties agreed to an amnesty in their peace agreement, similar to the case of Yemen discussed earlier. For Sierra Leone, however, accountability managed to pierce the initial amnesty.

From 1991 through 2002, Sierra Leone's army fought against the National Patriotic Front of Liberia led by Charles Taylor and the collaborating Revolutionary United Front, led by a former army corporal, Foday Sankoh.⁷⁹ On July 7, 1999, the Government of Sierra Leone and the Revolutionary United Front signed the Lomé Peace Agreement.⁸⁰ The agreement granted full pardons and amnesty to Corporal Foday Sankoh, as well as to all combatants, collaborators, and members of the armed parties.⁸¹

U.N. Secretary-General Special Representative Ambassador Francis Okelo was a signatory to the Lomé Agreement.⁸² Yet, U.N. Secretary-General Kofi Annan explicitly instructed him to append his signature with a statement that the U.N. "holds the understanding that the amnesty and pardon in article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law."⁸³ Though the Lomé Agreement prioritized peace over more immediate justice, the U.N. sought to preserve the chance for future accountability mechanisms.

The Revolutionary United Front failed to respect the Lomé Agreement. Shortly after signing, the Front took 500 peacekeepers hostage, prompting the British to intervene to bring an end to the violence.⁸⁴ A year later, a push for justice emerged when President of Sierra Leone Ahmad Tejan Kabbah made a formal request to U.N.

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79. *Sierra Leone*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Sierra-Leone/Civil-war> [<https://perma.cc/FX7J-6KTF>] (last visited Sept. 30, 2019).
80. *Letter to Sierra Leonean Rebel Group the Revolutionary United Front on Peace Accord Violations*, HUMAN RIGHTS WATCH (Aug. 30, 1999, 8:00 PM), <https://www.hrw.org/news/1999/08/30/letter-sierra-leonean-rebel-group-revolutionary-united-front-peace-accord-violations#> [<https://perma.cc/88WL-BZCG>].
81. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone [Lomé Agreement], July 7, 1999, S/1999/777 at art. 9.
82. *Id.*
83. S.C. Res. 1315, preamble (Aug. 14, 2000).
84. Unisa Sahid Kamara, *Conflict Resolution and Peace Building: The Case of Sierra Leone* (Feb. 14, 2009) (on file with the University of Malta).

Secretary-General Kofi Annan for investigations of those responsible for war crimes perpetrated during the civil war.⁸⁵

The U.N. and the Sierra Leonean government jointly established a hybrid tribunal, the Special Court for Sierra Leone, in January 2002.⁸⁶ The Special Court for Sierra Leone, under the leadership of Chief Prosecutor David Crane and Chief of Prosecutions Jim Johnson, sought to prosecute those most responsible for the most serious crimes.

The Court ultimately indicted Foday Sankoh, who had previously been granted amnesty by the Lomé Agreement, for crimes against humanity conducted both before and after the signing of the Agreement.⁸⁷ Sankoh's amnesty was invalidated, as the Court's mandate included prosecuting those most responsible for violations of international humanitarian and Sierra Leonean law since November 30, 1996, including those who threatened the peace process.⁸⁸ Sankoh had also previously failed to disarm following the signing of the Agreement, and was arrested prior to this indictment.⁸⁹ He died while awaiting trial.⁹⁰

The Special Court also indicted Charles Taylor, the Liberian President, for war crimes and crimes against humanity due to his role providing support and planning attacks during the Sierra Leone civil war.⁹¹ Taylor claimed immunity from prosecution as a sitting Head of State.⁹² The Appeals Chamber of the Special Court rejected this claim on the basis that international law does not protect Heads of State from

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85. U.N. Secretary-General, *Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council*, U.N. Doc. S/2000/786 (Aug. 10, 2000).
86. Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, Jan 16, 2002, 2178 U.N.T.S. 137.
87. Prosecution v. Sankoh, Case No. SCSL-2003-02-PT, Decision, (Special Ct. for Sierra Leone, May 23, 2003).
88. Statute of the Special Court for Sierra Leone art. 1, ¶ 1, April 12, 2002, 2178 U.N.T.S. 138.
89. Gillian Wigglesworth, *The End of Impunity? Lessons from Sierra Leone*, 84 INT'L AFFAIRS 809, 810-11 (2008).
90. Douglas Farah, *Foday Sankoh Dies*, WASH. POST (July 31, 2003), <https://www.washingtonpost.com/archive/local/2003/07/31/foday-sankoh-dies/6e4d2d41-d756-412e-92f3-f802f9b6a91a/> [<https://perma.cc/9THJ-UEUZ>]
91. Prosecutor v. Taylor, Case No. SCSL-03-01-T, Judgement, ¶ 560 (Special Ct. for Sierra Leone, May 18, 2003).
92. *Charles Taylor*, TRIAL INTERNATIONAL (last modified May 22, 2018) <https://trialinternational.org/latest-post/charles-taylor/> [<https://perma.cc/BH98-V4R6>].

being prosecuted for serious international crimes.⁹³ Taylor was convicted and sentenced to 50 years, which he is serving in the U.K.⁹⁴ Despite the challenges of post-conflict stabilization, Liberia and Sierra Leone have to a large degree persisted in peace because of the removal of Taylor and the RUF, including Sankoh, from the political environment.

THE FUTURE OF ACCOUNTABILITY

The current moment foreshadows a mixed future for post-conflict accountability and justice mechanisms. Although there has been important momentum in pushing for justice, political impasse has often made the justice mechanisms difficult to implement.

In the case of the Libyan revolution to overthrow Muammar Gaddafi there was an estimated 25,000 dead, 4,000 missing, and over 100,000 displaced.⁹⁵ In this case, the U.N. Security Council took two important actions. First, the Security Council acted quickly and unanimously referred the case of Libya to the International Criminal Court on the grounds of the use of violence against civilians, including peaceful protestors.⁹⁶ Second, the Security Council authorized a humanitarian intervention under Resolution 1973.⁹⁷

The ICC investigation produced three cases for “the crimes against humanity of persecution based on political grounds and murder committed.”⁹⁸ The first was against Muammar Gaddafi, for committing crimes against humanity.⁹⁹ The second was against Abdullah Al-Senussi, for the role he played as an “indirect co-perpetrator” while serving as the director of military intelligence under Gaddafi’s rule.¹⁰⁰

93. *Id.*

94. Press Release, Charles Taylor Transferred to the UK for the Enforcement of his Sentence (Oct. 15, 2003) (on file with the Special Court for Sierra Leone).

95. *Libya Civil War (2011)*, GLOBAL SECURITY, <https://www.globalsecurity.org/military/world/war/libya-civil-war.htm> [<https://perma.cc/YU4Q-ZEEN>].

96. S.C. Res. 1970 (2011), preamble, ¶ 4 (Feb. 26, 2011).

97. S.C. Res. 1973 (2011), (March 11, 2011).

98. Situation in the Libyan Arab Jamahiriya, Case No. ICC-01/11, Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minya Gaddafi, Saif Al-Islam Gaddafi and Al-Senussi, ¶ 1 (May 16, 2011) available at https://www.icc-cpi.int/CourtRecords/CR2011_06155.PDF.

99. *Id.*; *Situation in Libya*, INTERNATIONAL CRIMINAL COURT (last visited July 31, 2019), <https://www.icc-cpi.int/libya> [<https://perma.cc/4EFH-DLE8>].

100. Situation in the Libyan Arab Jamahiriya, *supra* note 98, ¶¶ 1, 2.

The third was against Gaddafi's son, Saif Al-Islam Gaddafi, also for acting as an "indirect co-perpetrator" of crimes against humanity.¹⁰¹

Halfway through the NATO-led air campaign, some diplomats became concerned about the outcome and wanted to begin negotiations with Gaddafi.¹⁰² The international community was able to invoke the ICC investigation to prevent a negotiation that may have led to the appeasement and accommodation of Gaddafi.¹⁰³ The NATO coalition and allied forces did ultimately succeed in defeating Gaddafi,¹⁰⁴ who was killed in an act of mob violence.¹⁰⁵

Despite these promising signs of ICC involvement in Libya, the ICC's investigations and prosecutions have been rife with political impasse. Gaddafi died before his trial could proceed.¹⁰⁶ The ICC's Pre-Trial Chamber I ruled Al-Senussi's case inadmissible in 2013 because domestic courts were willing and able to prosecute, a decision that was upheld by the Appeal Chamber in 2014.¹⁰⁷ Saif Al-Islam Gaddafi's case remains in the pre-trial stage.¹⁰⁸

In 2014 ICC defense lawyer Melinda Taylor was detained for three weeks by rebels in the Zintan region, while attempting to visit her client, Saif Al-Islam Gaddafi.¹⁰⁹ A local brigade commander accused Taylor of smuggling secret letters to Saif Al-Islam Gaddafi and of

101. *Id.*

102. *See Top Diplomats Agree: Gadhafi Must Go*, NBC NEWS, http://www.nbcnews.com/id/42319658/ns/world_news-europe/t/top-diplomats-agree-gadhafi-must-go/#.XkQKoWhKhPZ [<https://perma.cc/9SQN-FUPH>].

103. Charles, *supra* note 92.

104. *Libya's Col Muammar Gaddafi Killed, says NTC*, BBC NEWS (Oct. 20, 2011), <https://www.bbc.com/news/world-africa-15389550> [<https://perma.cc/5CDU-33PW>].

105. *Id.*

106. Adam Taylor, *Would Libya have been better off if Muammar Gaddafi had been captured?*, THE GUARDIAN (Oct 28 2014 at 6:00AM), <https://www.theguardian.com/world/2014/oct/28/muammar-gaddafi-death-impact-libya> [<https://perma.cc/4LAB-C567>].

107. Press Release, Al-Senussi case: Appeals Chamber confirms case is inadmissible before ICC (July 24, 2014) (on file with the International Criminal Court),

108. *Gaddafi Case*, International Criminal Court, <https://www.icc-cpi.int/libya/gaddafi> [<https://perma.cc/4ZG9-T2RU>].

109. Thomas Escritt, *ICC refers Libya to U.N. Security Council for not surrendering Gaddafi's son*, REUTERS (Dec. 10, 2014), <https://www.reuters.com/article/us-warcrimes-libya/icc-refers-libya-to-u-n-security-council-for-not-surrendering-gaddafis-son-idUSKBN0JO1Y220141210> [<https://perma.cc/AF3H-RH7V>].

smuggling in a video camera.¹¹⁰ Three other members of ICC staff were held with Taylor, for allegations that they shared documents with their client that could harm national security.¹¹¹ Libya's Prosecutor General ruled that the ICC team should be held for 45 days, but they were later released after three weeks on the grounds of diplomatic immunity.¹¹²

With a new wave of violence that began in 2019,¹¹³ and the continued perpetration of war crimes during the conflict,¹¹⁴ the outlook for accountability and justice in Libya remains mixed.

Accountability similarly faces an uncertain future in Colombia. In 2016, Colombia's Peace Agreement with the Revolutionary Armed Forces of Colombia (FARC) established one of the most comprehensive and detailed arrangements for transitional justice in a peace agreement, giving hope to a durable peace in the country.¹¹⁵ The agreement included the structure for a Special Jurisdiction for Peace—a collection of six bodies, centering around a Tribunal for Peace.¹¹⁶ The Tribunal can deliver judgements and impose sanctions on those responsible for crimes committed during the armed conflict, including atrocity

110. Luke Harding, *Libya frees international criminal court legal team accused of spying*, THE GUARDIAN (July 2, 2012), <https://www.theguardian.com/world/2012/jul/02/libya-releases-icc-officials> [https://perma.cc/T4UQ-7D9E].

111. *Id.*

112. Kate Cronin-Furman & Amanda Taub, *Is the International Criminal Court Facing Its 'Black Hawk Down' Moment?*, THE ATLANTIC (June 14, 2012), <https://www.theatlantic.com/international/archive/2012/06/is-the-international-criminal-court-facing-its-black-hawk-down-moment/258528/> [https://perma.cc/GTR5-BYW2]; see Luke, *supra* note 110; Lisa Miller, *Melinda Taylor freed from Libyan detention*, ABC (July 3, 2012), <https://www.abc.net.au/worldtoday/content/2012/s3537695.htm> [https://perma.cc/WR94-NLJL].

113. See Bill Chappell, *Fighting Grips Tripoli As Libya Faces New Violence Among Rivals*, NPR (April 8, 2019), <https://www.npr.org/2019/04/08/711123040/fighting-grips-tripoli-as-libya-faces-new-violence-among-rivals> [https://perma.cc/TR62-SUM9].

114. See *Libya: Evidence of possible war crimes underscores need for international investigation*, AMNESTY INT'L (May 16, 2019), <https://www.amnesty.org/en/latest/news/2019/05/libya-evidence-of-possible-war-crimes-underscores-need-for-international-investigation/> [https://perma.cc/GCU9-PXQ9].

115. Refik Hodzic, *ICTJ Welcomes Historic Peace Agreement Between Colombian Government and FARC Rebels*, INT'L CTR. FOR TRANS. J. (Aug. 25, 2016), <https://www.ictj.org/news/colombia-farc-peace-agreement> [https://perma.cc/ERG4-S3G9].

116. Brian Harper & Holly K. Sonneland, *Explainer: Colombia's Special Jurisdiction for Peace (JEP)*, AMERICAS SOCIETY COUNCIL OF THE AMERICAS (Aug. 3, 2018), <https://www.as-coa.org/articles/explainer-colombias-special-jurisdiction-peace-jep> [https://perma.cc/YGJ2-Y6KY].

crimes.¹¹⁷ The Special Jurisdiction for Peace includes non-traditional or alternative sentencing options, sanctions which depend on the degree of truth expressed, the gravity of the act, the level of responsibility and liability, and reparations undertaken and guarantees of non-recurrence.¹¹⁸ Retribution is reserved only for those who do not cooperate with the process.¹¹⁹

The people of Colombia rejected this peace agreement in a statewide referendum.¹²⁰ The rejection not only illustrated the people's opposition to creating a path for FARC to become a political party, but also the populace's belief that there was not enough accountability and prosecutions built into the agreement.¹²¹

The hybrid accountability framework set out in the 2016 agreement appeared to insufficiently hold accountable those who were most responsible for the most serious crimes committed during the conflict.¹²² Under the 2016 plan, members of the FARC that voluntarily came forward would be diverted into special criminal proceedings.¹²³ If they gave full and honest accounts of their acts, they could receive reduced sentences for their crimes.¹²⁴

For too many Colombians, it appeared that this piecemeal transitional framework overpromised and under-delivered, especially with regards to accountability.¹²⁵ Specifically, FARC members who had engaged in the decades-long violence could, through the procedures set forth by the Special Jurisdiction for Peace, remain unindicted.¹²⁶ After the negative referendum outcome, the government rerouted the

117. *Id.*

118. Final Agreement to end the Armed Conflict and Build a Stable and Lasting Peace, Nov. 24, 2016, <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [<https://perma.cc/6TTR-VH8K>].

119. *See id.*

120. *Colombia referendum: Voters reject Farc peace deal*, BBC NEWS (Oct. 3, 2016), <https://www.bbc.com/news/world-latin-america-37537252> [<https://perma.cc/4PDJ-JUDU>].

121. *See id.*

122. Paul Williams, *The Colombian Referendum: A Lesson on Peace Without Justice*, HUFFINGTON POST (Oct 7, 2016), https://www.huffpost.com/entry/the-colombian-referendum-a-lesson-on-peace-without_b_57f7d9dfe4b090dec0e71064 [<https://perma.cc/X3G5-ETXT>].

123. *See Harper & Sonneland, supra* note 116.

124. Final Agreement, *supra* note 118, at 50(b), (f).

125. Williams, *supra* note 122.

126. *Id.*

agreement through Congress, mostly without altering the provisions which angered voters in the plebiscite.¹²⁷

So far, peace has largely held in Colombia. Yet, in response to what they perceive to be inadequate guarantees of safety from the state, certain factions of the FARC have recently reneged on their commitment to the peace process, vowing a new stage of violence.¹²⁸ It remains to be seen whether the transitional justice arrangements set up in the Special Jurisdiction for Peace can bring peace with justice in the long term.

In Syria, atrocities and violations of international law are well-documented, yet there are insufficient routes for justice. The Geneva Communiqué, the outcome of a U.N.-backed peace conference on Syria, initially called for a “comprehensive package for transitional justice, including compensation or rehabilitation for victims of the present conflict, steps towards national reconciliation and forgiveness.”¹²⁹ This Communiqué was annexed into U.N. Security Council Resolution 2118,¹³⁰ but two years later when many of Resolution 2118’s provisions were embedded into Resolution 2254,¹³¹ the accountability provisions were omitted. In 2014, the U.N. Security Council made another attempt at accountability with a French-led referral of Syria to the ICC; however, the resolution was vetoed by Russia and China.¹³²

The U.N. General Assembly tried to overcome the impasse at the U.N. Security Council by creating an International, Impartial and Independent Mechanism (IIIM) to collect, preserve and analyze evidence of international law violations.¹³³ Notably, the IIIM is not empowered to prosecute or adjudicate cases.¹³⁴

127. Helen Murphy, *Colombian peace deal passed by Congress, ending 52-year war*, REUTERS (Nov. 30, 2016), <https://www.reuters.com/article/us-colombia-peace/colombian-peace-deal-passed-by-congress-ending-52-year-war-idUSKBN13P1D2> [<https://perma.cc/4APA-Y8RF>].

128. Sasha Ingber, *Former FARC Leaders Announce ‘New Stage Of Fighting,’ Upending Colombia’s Peace Deal*, NPR (Aug. 29, 2019), <https://www.npr.org/2019/08/29/755425619/former-farc-leaders-announce-new-stage-of-fighting-upending-colombia-s-peace-dea> [<https://perma.cc/97F3-K46D>].

129. U.N. SCOR, 66th Sess., agenda item 34. at 10(d), U.N. Doc. A/66/865-S/2012/522 (July 6, 2012).

130. S.C. Res. 2118(2013) (Sept. 27, 2013).

131. S.C. Res. 2254(2015) (Dec. 18, 2015).

132. Press Release, Security Council, Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution, U.N. Press Release SC/11407 (May 22, 2014).

133. G.A. Res. 71/248, at 4 (Jan. 11, 2017).

134. *Id.*

Though the permanent members of the Security Council may be divided over the potential of accountability mechanisms, smaller states may be starting to take the lead in demanding justice. For instance, Bangladesh—where most of the survivors of the Rohingya genocide in Burma have fled—is a state party to the Rome Statute.¹³⁵ This has allowed the ICC to launch an investigation of the crime of forced deportation of the Rohingya in Bangladesh as part of the genocide committed against the Rohingya.¹³⁶ The investigation is narrow in scope, however, because the ICC only has jurisdiction over the crime of deportation across the border into a state party to the ICC.¹³⁷ Other crimes against humanity and acts of genocide committed against the Rohingya in Burma are beyond the scope of the investigation, and as a consequence, currently beyond the reach of the ICC.¹³⁸

States have also reinvigorated the principle of universal jurisdiction to hold individuals accountable for certain crimes that present universal danger. Under this principle, states can prosecute criminals that are in their territory, regardless of the defendant's or victim's nationality, and no matter the location the alleged crime.¹³⁹ Though a nascent tool, in 2018, it was used to name 149 suspects in fifteen states. Of these, seventeen are standing trial, eight have been convicted, and two have been acquitted.¹⁴⁰

Despite these encouraging developments, universal jurisdiction has significant limitations. The accused must be present within a state that accepts the principle of universal jurisdiction.¹⁴¹ This principle is often invoked when other forms of criminal jurisdiction are not available, meaning that the defendant cannot be prosecuted elsewhere.¹⁴² Additionally, there is often domestic disinterest in universal

135. Owen Bowcott, *War crimes court approves inquiry into violence against Rohingya*, THE GUARDIAN (Nov. 14, 2019), <https://www.theguardian.com/world/2019/nov/14/war-crimes-judges-approve-investigation-violence-against-rohingya-icc-myanmar> [https://perma.cc/3BQJ-78CH].

136. *Id.*

137. See Press Release, ICC Prosecutor, Fatou Bensouda, requests judicial authorisation to commence an investigation into the situation in Bangladesh/Myanmar (July 4, 2019) (on file with the International Criminal Court)

138. *See id.*

139. VALERIE PAULET, EVIDENTIARY CHALLENGES IN UNIVERSAL JURISDICTION CASES 9 (TRIAL International, 2019).

140. *Id.* at 11.

141. *See Universal Jurisdiction*, INT'L JUSTICE RESOURCE CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> [https://perma.cc/RHV9-7EBX].

142. *Id.*

jurisdiction, as some residents wonder why resources are being redirected to prosecute crimes committed beyond their borders. While innovations such as universal jurisdiction and the IIIM are promising and necessary, they have not proven to be sufficient to secure peace with justice in contexts such as Syria.

Notably, however, there is a universal truth relating to the demand for justice by victims of atrocities. Last year, I organized a team of lawyers and investigators that deployed to the refugee camps in Bangladesh to document the atrocities that had been committed against the Rohingya. It was astounding how oftentimes when the investigators would describe the project, the refugees would reply, “this is good, we need justice, not just food.”¹⁴³ In November 2019, the International Criminal Court authorized an investigation into the crimes committed against the Rohingya.¹⁴⁴ The Registry reports that many of the victims consulted “believe that only justice and accountability can ensure that the perceived cycle of violence and abuse comes to an end and that the Rohingya can go back to their homeland, Myanmar, in a dignified manner and with full citizenship rights.”¹⁴⁵

These sentiments remind us that comprehensive transitional justice—as hard as it is to achieve—cannot be forgotten, and it is incumbent on peace negotiators to carve out space for accountability and justice in order to achieve a durable peace.

143. DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR’S RAKHINE STATE 105 (Public International Law & Policy Group, 2018)

144. Situation In The People’s Republic Of Bangladesh/Republic Of The Union Of Myanmar, Case No. Icc-01/19, Public (Nov. 14, 2019).

145. Final Registry Report, Case No. ICC-01/19-22-Conf-Exp-AnxI, ¶ 34 (Nov. 11, 2019).