Letter to "Amari": The New Global Head of Political and Peace Mediation

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IFIT
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(from my temporary hideaway)

My dear Amari,

I hope this finds you enjoying a well-deserved break after such a difficult period in your work. You have often been in my thoughts these past months and I have been remiss in not reaching out. I do apologise for that. But I hope that this rather long letter – yes, a second apology – will partly compensate.

When you wrote to me about your new appointment, it filled me with joy and hope. Hand on heart, I cannot think of anyone better suited to serve as the next Global Head of Political and Peace Mediation. Moreover, I am humbled that you reached out to me – and by extension to the members of IFIT's Law and Peace Practice Group – with your intriguing list of questions about "whether, when and how to tackle transitional justice (TJ) issues that are bound to arise" in your new role.

As such, if you will forgive my poor handwriting and the lawyerly format of this letter, allow me to comment one-by-one in response to your thoughtful questions. Regrettably – yes, a third apology in only three paragraphs – this letter will have to suffice until we see each other next month.

Yours sincerely, and triply apologetic,

Mark

PS: You'll find the answers to your questions on the following pages, since I thought that might make it easier for you to share the material with your new team or with anyone else who has the patience to suffer our thoughts.

1. What does transitional justice promise and what is the evidence about what it delivers?

Modern TJ – as reflected in the vast majority of published international guidelines, statements and reports – is promoted as a comprehensive package. It typically promises accountability against perpetrators, truth and reparation for victims, and reforms to law and institutions, with the hope and expectation of a more reconciled society and improved political system as a result.

Naturally, there are more detailed accounts and nuanced distinctions one could provide. But the overall gist is: "face the horrors of the past to ensure they never recur".

The problem? Little of the promise materialises in practice. The venerated TJ cases are moving ever further into the rearview mirror and being replaced by chronic TJ disappointment.

This stark reality is hard to deny or conceal on the ground, and is likewise confirmed in the best available research, in which the transformative claims of TJ across the pillars of truth, justice, reparation and reform are increasingly questioned and, in some cases, roundly refuted. Reconciled societies and improved political systems are simply not arising as outcomes of TJ interventions, including in the diminishingly few places where today any meaningful TJ is even being attempted.

What is more, TJ is deeply out of synch with prominent new areas of knowledge and discovery. For example, TJ does not yet offer even a basic response to the unpleasant fact that truth recovery rarely surmounts intractable narratives or reduces polarisation, even though critical findings about the limits of narrative change and the challenges of severe polarisation are well known.

But worst of all is what we might describe as inflexibility in the face of adversity. The exogenous conditions for TJ success are objectively worse today than at any time since the end of the Cold War, as authoritarian tendencies and historical revisionism proliferate and there are far fewer transitions to democracy or peace, and thus far fewer conditions for mounting quality TJ. Yet, with few exceptions, the self-directed conceptualisation and practice of TJ have grown more rigid and standardised, rather than less. The paradox is confounding.

2. Is there an international legal obligation to incorporate transitional justice into every negotiation or mediation agenda?

No. There is nothing in international law that ties the instruments of negotiation and mediation to the tools of TJ.

Of course, when the stated ambition of a negotiation or mediation is to resolve a conflict "comprehensively", a social and political expectation to include TJ will arise. The reason is axiomatic: if one is promising comprehensive talks, it would be contradictory to exclude legacies of mass abuse.

A similar expectation does not arise, however, in "limited agenda" talks in which the focus is on achieving partial agreements on topics ranging from ceasefires and humanitarian protection (in the case of conflicts) to improved electoral conditions and legal reforms (in the case of autocracies).

But whatever the circumstance, the inclusion or exclusion of TJ is in the first instance a choice of the parties to the talks – in comprehensive and limited agenda processes alike. Whether because of internal conviction, political pragmatism, or outside pressure, the parties may sometimes see the value of including TJ on the agenda. When that happens, the strategic question is when and how to tackle the issue.

3. When transitional justice is included in the agenda of a negotiation or mediation process, what are the do's and don'ts of practice?

In practice, TJ infrequently appears in negotiation and mediation agendas, the vast majority of which are limited rather than comprehensive in scope. However, there are several rules of thumb to consider when TJ is included.

First, it is advisable to initiate informal discussions on TJ at the front end of the process to elicit the parties' preliminary visions. This can help to assess how realistic each of the parties is and reveal any divergences or underlying fears or concerns, especially given that TJ has become equated with individual criminal accountability in the minds of many. In this regard, early exchanges about expectations can help to mitigate undue TJ anxieties that could otherwise induce delays or stalemates in the larger negotiation or mediation.

A second rule of thumb concerns international law. While there is no international legal obligation to incorporate TJ into a negotiation or mediation process, international and national law questions cannot easily be disregarded once TJ is explicitly introduced. In this respect, experience show that it can be advantageous to invite the parties to articulate their understandings and perceptions of the room of manoeuvre that international law allows on TJ and other related agenda items. The exercise makes it easier to identify an indicative zone of possible agreement – even when, as is often the case, the parties misunderstand what international law in fact allows.

A third rule of thumb is to seek early agreement on a minimal set of TJ concepts and guideposts, but to postpone discussion of the details. Doing so can help in the detection of initial conceptual gaps and, just as importantly, allow for momentum on the rest of the agenda – thus functioning as a sort of "informed deferral" of the anxiety-inducing issue of TJ. If the conditions of the negotiation or mediation later permit, the pre-discussed TJ guideposts can in time be 1) converted into a more detailed TJ blueprint or 2) embedded in the mandate of an agreed TJ advisory panel that is empowered to develop and recommend a TJ roadmap post-negotiation.

4. If transitional justice is not incorporated in the negotiation or mediation agenda, what implications does this have for the talks and the potential outcomes?

In a limited-agenda negotiation or mediation from which TJ is omitted, there may be pressure to add TJ to a future phase of the talks, but rarely more resistance than that. By contrast, in comprehensive-agenda talks, TJ's omission will stick out and tend to be criticised, including by victims' groups, and this may generate the appearance of an illegitimate process. Yet, there will be obvious exceptions. For example, if the conclusion of a major peace agreement or political settlement is perceived as necessary to prevent or stop a bloodbath notwithstanding the omission of TJ, the aura of illegitimacy will be lower.

Regardless, it is worth recalling that a negotiation or mediation is not the only cauldron through which TJ commitments can arise. They can be generated equally: 1) before any talks are mounted, 2) concurrently but externally to the talks, or 3) after the talks are concluded. In this sense, the omission

of TJ from a negotiation or mediation does not, itself, preclude the establishment of TJ. To the contrary, the independent documentation, mobilisation and advocacy efforts of victims, survivors, civil society groups and others will often keep TJ possibilities alive in one form or another.

5. What can be done inside a negotiation or mediation process to lessen the tension between peace and justice?

The threat of criminal accountability can easily prevent or derail a negotiation or mediation process. The reason is obvious: why would any party engage in talks if doing so could foreseeably result in jail time and political de-legitimation for its leaders afterward?

Yet, even if such fears and threats cannot be removed in full, they must be reduced or mitigated – otherwise, no peace agreement or political settlement will realistically arise and thus nothing will be gained through any talks that get underway: neither peace nor justice.

Of course, the most immediate scenario implicating the threat of individual criminal accountability is a negotiation or mediation process in which TJ is explicitly included on the agenda. Yet, due to the unpredictable reach of future accountability efforts, perceptions of legal danger often exist even when TJ is omitted from the agenda – and this despite the plummeting credibility and reach of international accountability efforts and tribunals.

Nevertheless, practical options for lessening the peace and justice tension exist. While primarily those options are a function of the structural or exogenous conditions of the talks (such as whether there is a "mutually hurting stalemate" or "mutually perceived way out"), they also can emanate from the creativity of the negotiating parties and facilitators – in particular, from innovative proposals to balance accountability and legal leniency.

The basic rule is as follows: the more lenient the legal treatment that is agreed, the greater the need to condition such benefits on corresponding eligibility and retention requirements. The conditions may include, for example, individual obligations to contribute to truth, reparation or reform, and group pledges to demobilise, disarm and faithfully implement the larger settlement.

6. Are amnesties for international crimes prohibited under international law?

No. There is no customary international law prohibition of amnesties and there is no treaty prohibition. An amnesty's international legality can be evaluated only on a case-by-case basis that takes account of the state's specific international obligations.

In terms of state practice, an exhaustive review of the last few decades shows that negotiated amnesties, even very broad and general ones, remain widely tolerated. At the same time, the broader the scope of the amnesty and the fewer the conditions attached to it, the stronger the political and ethical justifications will need to be so as to reduce the risk of non-recognition by future courts.

7. Can we consider transitional justice as a menu of options?

Yes. While the modern TJ paradigm is defended through the language of rights, TJ itself is a packet of objectives, not a packet of rights – and those objectives can be achieved through a variety of mechanisms and according to a variety of sequences and chronologies. As such, TJ should be understood as a flexible compendium of options rather than an all-or-nothing proposition.

This functional understanding of TJ in fact hearkens back to an earlier and more pragmatic era in the field when there was greater recognition that 1) political transitions are volatile and reversible, 2) getting started with limited forms of TJ is better than never having any TJ at all, and 3) an initial TJ mechanism's impact can, if well-conceived and prudently implemented, increase the odds of future ones.

8. Can one negotiate transitional justice with "unconventional" armed groups – such as criminal groups that lack political motives or jihadist groups with dystopian goals – in the same way one negotiates with authoritarian regimes or rebel groups?

Yes and no. On the one hand, negotiation and mediation are not instruments reserved to talks between governments and opposition groups, or between states and rebel groups. Negotiation and mediation constantly occur with unconventional armed groups as well. They just tend to be less publicly known, less ambitiously aimed, and less state led.

On the other hand, talks with unconventional armed groups tend neither to have TJ on the agenda nor TJ experts in the room.

Yet, there are unexplored possibilities for integrating TJ concepts into talks with unconventional armed groups, as they often encompass demands and expectations of legal leniency and thus open the door for TJ commitments akin to those arising in conventional political and peace talks. There is much room for exploration here.

9. What can transitional justice realistically deliver in the absence of a transition or a functioning state?

The modern TJ paradigm is anchored to a combination of international human rights and international criminal law. By and large, it has become reduced to a set of legal claims against the state and against perpetrators.

Yet, in situations where the state is weak or predatory – and where, consequently, TJ's legal claims are unlikely to be fulfilled – the limits of TJ as a framework are sobering.

When the state is predatory, TJ typically takes an external form driven by actors with international reach. Commissions of inquiry, ad hoc tribunals, reparation claims, and more are advocated and implemented from the outside because they cannot be done from the inside. Yet, these efforts have nothing to do with an inward-looking process through which a society faces its past. As such, they are transition-less accountability efforts, and not really TJ at all.

What about when the state is weak? Here, TJ's best shot is a transition: when one arises, new possibilities come to the fore. The core notion is that, although a transition's leadership may have limited capacity, it has goodwill. Yet, even in such cases, it matters greatly whether the transition arises through negotiation or vanquishment. All else being equal, negotiated transitions tend to fare better in terms of long-term political stability and inclusion, as there is greater structural pull toward reconciliation-oriented policies than vengeance-oriented ones.

Why is this relevant? As already noted, fewer and fewer negotiation and mediation processes are pro-

ducing comprehensive agreements, and thus there are both fewer inclusive transitions out of armed conflict or authoritarian rule, and fewer negotiated TJ policies to implement. What we are left with, on the whole, are weak states *not* in transition or weak states *not* oriented toward reconciliation; in either case, a situation that calls for a more pragmatic and less legalistic TJ paradigm.

10. Is transitional justice here to stay?

Maybe, but not in its current form.

In the face of steadily downward trendlines in peace, democracy, international aid and multilateral cooperation, TJ's survival will depend on a major reduction in ideological rigidity and a substantial reformulation of underlying claims and assumptions.

Within the context of negotiation and mediation, today's TJ paradigm has become an unwelcome guest. When present at all, it is functioning mainly as an extra obstacle to the realisation of peace deals and political settlements, and thus is perceived as an impediment rather than an accelerant of transitions and conflict resolution.

Beyond the context of negotiation or mediation, the current TJ paradigm is no less problematic. Rather than strengthening transitions out of war or misrule, it is 1) overpromising and underdelivering in its core pursuits of justice, truth, reparation and reform; 2) overstating the force of law against the realities of politics and power; and 3) operating as though in a world of willing and capable national governments and available resources – rather than their opposite – when it comes to the planning and implementation of TJ interventions.

Yet, all of this is surmountable. It begins with recognition of the depth of the problem and ends with a return to the kind of context-driven realism upon which TJ was first erected many decades ago.

11. Are there any final reflections or conclusions you wish to share?

It is evident that chronic failures in negotiation and mediation – combined with growing and more resistant forms of armed groups, warfare, weapons and autocracy – are testing old assumptions about the possibilities for meaningful TJ.

What is harder to understand is the response. Modern TJ's dogmatic claims and pretensions – and their mismatch to both the objective constraints of negotiation and the new conflict landscape – make matters worse rather than better.

What is called for is twofold: a reimagined approach to TJ and a more results-oriented paradigm of negotiation. A reimagined TJ would become a catalyst rather than a complicator of transition, and a reimagined negotiation paradigm would prioritise "getting to yes" above all else. In your role as Global Head of Political and Peace Mediation, there is the opportunity for you to contribute significantly to both.

*Amari is a fictional character. Any resemblance to real persons is coincidental.

Some relevant IFIT readings

1. Polarisation: The 'Hyper-Problem' Transitional Justice Can No Longer Ignore. July 2025. https://zenodo.org/records/16735681
2. *"Fast-track Negotiation":* A White Paper. January 2025. https://doi.org/10.5281/zenodo.14646340
3. *Dialogue with State Security Actors in Hybrid Regimes: Recommendations for Constructive Engagement.* March 2025. https://doi.org/10.5281/zenodo.14998481
4. *Negotiating with Criminal Groups: IFIT Guidance Note for Good-Faith Promoters.* January 2024. https://zenodo.org/records/10554933
5. *Partial Agreements: The Functional Alternative to All-Encompassing Settlements.* February 2023. https://doi.org/10.5281/zenodo.10425177
6. *Negotiating with Violent Criminal Groups: Lessons and Guidelines from Global Practice.* March 2021. https://zenodo.org/records/10474230
7. *Effective Participation in Political Peace Negotiations.* April 2021. https://doi.org/10.5281/zenodo.10473932
8. *The Role of Narrative in Managing Conflict and Supporting Peace.* February 2021. https://doi.org/10.13140/RG.2.2.11612.51847
9. *Transitional Justice and Violent Extremism.* September 2020. https://zenodo.org/records/10490176
10. *Tax Amnesties as an Aid to Peace Deals and Political Settlements.* November 2020. https://doi.org/10.5281/zenodo.10474332
11. *Rethinking Peace and Justice.* October 2019. https://doi.org/10.2139/ssrn.3842933
12. *Changing the Narrative: The Role of Communications in Transitional Justice.* November 2019. https://doi.org/10.5281/zenodo.10474409

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