International cooperation: global response in the area of the promotion of justice and reconciliation in Africa

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Introduction

The international community has as its foundation the various norms and statutes promulgated by the United Nations. Accordingly, and in accordance with Article 1, paragraph 3, of the Charter, one of the purposes of the United Nations is “to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”; thus, an international cooperation which is to be understood in the broader sense of economic, social, political and legal cooperation.

The question we have to answer is whether international cooperation is really a global response to the need for justice and reconciliation. To find a proper answer to this question, we must look back into our own history.

The first example of this kind is that of the Nuremberg trials, in which the jurisprudence that was applied excluded any general immunity for official actions. The connection between peace, justice and reconciliation was recognized in the preamble of the Charter of the United Nations in 1945, through the decision by the founding nations to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

The Universal Declaration of Human Rights, adopted three years later, lists certain elements which are essential for human dignity and social order. The Declaration affirms that all people are entitled to equal protection of the law, that all persons charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial by an “independent and impartial” tribunal and that no one shall be subject to arbitrary arrest, detention or exile.

An instrument adopted in 1966, the International Covenant on Political and Civil Rights, enshrines judicial norms as rules of law which go beyond mere principles. These include the right of every person to a fair trial and to immunity from arbitrary arrest and retroactive sentences.

This fundamental imperative of the promotion of justice and, by corollary, reconciliation, has been strengthened by the establishment of ad hoc tribunals, such as, in recent years, the International Criminal Tribunal for the Former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994. These two courts were created by the Security Council in response to situations involving massive violations of international law and the increasingly widespread practice of ethnic cleansing. The Security Council also brought into existence, on 11 April 2002, the International Criminal Court, commonly referred to as the Rome Statute on the International Criminal Court.

In 1993, the Belgian Parliament passed a law adapting the Geneva Conventions to its national legislation. In February 1999, a new version of the law gave Belgian courts “universal jurisdiction” to prosecute serious violations of international humanitarian law.
In a comparable decision, on 14 August 2000, the Security Council adopted by consensus its resolution 1315 (2000), proposed by the United States and calling for the establishment of a special court to judge those guilty of war crimes in Sierra Leone. The court was set up through cooperation between the United Nations and the Government of Sierra Leone.

Through these measures, the international community has manifested to international public opinion its determination to ensure protection of the rights of individuals against the interests of States, in accordance with the founding principles of the Universal Declaration of Human Rights.

**International cooperation and justice**

Article 1 of the Charter of the United Nations establishes as the purposes of the United Nations “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;…”

International cooperation, as one such purpose, is thus seen as a means of giving effect to international justice.

Only through the cooperation of sovereign States has it been possible to achieve the rapprochement among them that may be considered to constitute real progress. It would have been very wasteful for each of these States to act in isolation in organizing the various proceedings to prosecute crimes against humanity, the crime of genocide or other war crimes.

Accordingly, the international community is able to assist with the provision of the necessary financial, material and human resources for the administration of justice. The verdicts of the international courts can serve as valuable educational sources and States can cooperate in the enforcement of their judgements.

As an illustration, we need only turn to the example of the International Criminal Tribunal for Rwanda, the first international judicial body set up to combat impunity in Africa. In turn, this has significantly helped in deterring possible wide-scale violations of human rights.

The first lesson to be drawn from the work of the International Criminal Tribunal for Rwanda is that a great many States (e.g., Mali) have now taken proper account of the lessons of the Rwandan genocide by incorporating the notion of crime against humanity in their domestic law.

The second lesson is that the International Criminal Tribunal for Rwanda has international scope. This means that the decisions handed down by this body are enforced in other countries as well, such as Mali. It should be noted that international cooperation is also under way in respect of the enforcement of the Tribunal’s sentences. This cooperation involves the acceptance and the administration of the relevant international duties by the States concerned.

At the twenty-sixth ordinary session of the African Commission on Human and Peoples’ Rights, held in Kigali, Rwanda, Mr. Okali, United Nations Under-Secretary-General and
Registrar of the International Criminal Tribunal for Rwanda, spoke as follows in his opening statement, delivered in September 1998:

“The International Criminal Tribunal for Rwanda has sentenced Jean Kambanda to life imprisonment for genocide and crimes against humanity. The former Rwandan leader has entered a plea of guilty and in essence has acknowledged that a criminal conspiracy was mounted among the leaders of the State with the purpose of genocide.

“The sentencing of Kambanda was the very first trial at the outcome of which an individual – or to be more precise, a former head of government – was punished by an international tribunal for the crime of genocide. This was the first time that the nascent principle of international criminal justice was applied, a principle enshrined in the statutes of the two ad hoc criminal courts (for Rwanda and for Yugoslavia), in accordance with which the office of head of State of government does not relieve the incumbent of criminal responsibility for serious violations of international humanitarian law.

“The judgement handed down by the International Criminal Tribunal for Rwanda in the Kambanda case constitutes a precedent and has been cited by the House of Lords of the United Kingdom in the context of the extradition proceedings against the former President of Chile, Augusto Pinochet.

“The arraignment of the President of Yugoslavia, Slobodan Milosevic, a serving head of State, by the International Criminal Tribunal for the Former Yugoslavia, in the Hague, has further enriched the jurisprudence established by the International Criminal Tribunal for Rwanda. This indictment was the outcome of cooperation between a State and the United Nations.

“Continuing its trail-blazing work in establishing jurisprudence in the area of genocide, in the Akayesu case, the first verdict which it handed down, the International Criminal Tribunal for Rwanda gave the first ever definition in international law of rape and determined that rape may be an act of genocide if it is committed with the intention of destroying a group, such as had been established in the Akayesu case…”

Mr. Okali has demonstrated that the International Criminal Tribunal for Rwanda has actively promoted restitutive justice with regard to crimes against humanity and war crimes, although today the punishment of criminals is generally based on the system of retributive justice, which is a means of precluding any recourse to impunity.

This long and important quotation by a leading member of the International Criminal Tribunal for Rwanda very clearly demonstrates that international cooperation can serve as a global response to the need for justice.

It must be stressed, however, that, alongside international justice, a not inconsiderable role is also to be played by national jurisdictions.

Rwanda is a case in point: here we must pay tribute to the action by the country’s “gacaca” courts. The empowerment of national judicial bodies will be more successful in achieving the genuine reconciliation of the perpetrators and their victims or the victims’ families than an international court, which, while acting for them and on their behalf, more often than not is very far removed from the victims or their families.
We must insistently state, however, that the decisions of the international courts have great influence and a certain authority in the States of the Community. Yet we must also recognize that these same international bodies have certain shortcomings in their ability to enforce their decisions.

Taking the specific case of Rwanda and those sentenced for the crime of genocide, the most notorious among whom will be serving their sentences outside the country, we may observe that, while the decisions handed down provide a certain measure of comfort and reassurance to the victims or their families, the issue of the correction or the repentance of the convicted person remains open and even uncertain.

Those convicted serve their sentences in a milieu different from their own and far from the scrutiny of those who have suffered from their deeds. By contrast, for those who serve their sentences within the country, the milieu can play a role in helping them towards reconciliation (given, of course, that the verdict was reached in accordance with law).

This leads us, therefore, to dwell on the issue of the judgement itself, which is a very important aspect of reconciliation. The most important element in reconciliation is to be sought both in the forgiveness which the victim may be persuaded to grant the perpetrator of a crime and in the correction which the latter may undergo.

**Promotion of justice and reconciliation**

The promotion of justice and reconciliation are undoubtedly closely interlinked. Without justice, reconciliation would be no more than empty theory, while, without the Law, peace would be pure Utopia.

The promotion of justice and respect for legality inexorably lead to forgiveness and reconciliation, for the law has primacy over all excesses, abuses and settling of accounts.

In this context, I would like to refer to an observation by Richard Holbrooke, Permanent Representative of the United States to the United Nations, who said with reference to Sierra Leone that until there was justice, Sierra Leone could not live in peace.

Africa has lived through painful ordeals which have taken a heavy toll in human lives, causing massive destruction of property and the devastation of civilian populations. We are able, therefore, to understand the difficulties encountered by regional and subregional organizations. In this context, we must pay tribute to the work performed by the Organization of African Unity and the African Commission on Human and Peoples’ Rights, which, since its creation, has rendered immense service in campaigning for the promotion and protection of the rights of Africa, by awakening the collective and individual consciences of States.

The Economic Community of West African States (ECOWAS) has followed suit and it too plays an important role in the promotion of justice, peace and reconciliation. Drawing lessons from the past, it has launched a mechanism for the prevention, management and settlement of conflicts and for the maintenance of peace and security in the subregion.

Notwithstanding all this, it would be worthwhile also to work for the establishment of a federation of observers of public freedoms, with a view to harmonizing views and finding the
ways and means of ensuring that people live together in greater concord, more readily accepting one another’s differences.

It is true that human rights organizations everywhere denounce abuses, but this new body, with the status of a non-governmental organization, would have the function of educating people and ensuring that awareness of and respect for public freedoms were an integral part of school curricula.

Particular attention should also be given to the strengthening of the judiciary, particularly in African States, to ensure that its independence is properly safeguarded and to promote its further consolidation. To this end, thought might even be given to granting all heads of State presidency of the supreme council of the judiciary in their respective countries, but in return guaranteeing the irremovability of serving judges and adopting an election system for the appointment of presidents of the supreme court. All countries should be encouraged to establish extensive bar systems, with the necessary resources to be able to carry out their functions properly, and to ensure that the budget of the judiciary was independent and managed without outside interference.

A covenant might be envisaged for the strengthening of justice in Africa – which would be one way of ensuring that political leaders were held responsible for their actions – stressing the need to promote the law and for all countries in the African continent to be based on an independent justice system, thereby guaranteeing respect for all rights and fostering political stability in our countries.

If the political authorities wish to grant amnesties, these must be effected through a judicial process. All activities on the margins of the law – in other words, any activities which are not upheld by law – must be halted and no hindrance must be admitted to due process, for impunity leads to disorder.

**Conclusion**

In order to ensure that international cooperation has an effective impact on justice and, by corollary, on reconciliation, thought should be given to the establishment of a joint justice observatory, comprising national and international representatives. This would not be a cumbersome and sophisticated body, but a small office with human rights specialists and lawyers, who would not be tasked with shaping the destiny of countries, but would be exclusively concerned with specific cases, both present and future.

It would also be necessary to disseminate the concepts of public freedoms guaranteed by the international instruments for the protection of individual and collective rights, and to do so in strictly legal, rather than social or political, terms.

Above all, it is essential that we should not wait for events to happen so that we can then condemn them. We must prevent them and, to do so, we must even consider the conclusion of a convention to be signed by all heads of State, to ensure strict respect for public freedoms, which might have a deterrent effect.

To the idea of international cooperation as a global response to the need to promote justice and reconciliation in Africa, we say yes, but on condition that States agree to cooperate fully.