

Universal Jurisdiction and ICTR. Towards reconciliation?: Global approaches aimed at establishing harmony and featuring the involvement of victims and civil society

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Abstract. Are peace and reconciliation in the nerve centre of our thoughts and actions?. Even though one cannot deny that tensions exist between the paths of justice and those of international peace-building, a global approach to violent conflicts is becoming increasingly necessary. Within this context -beyond states and international global and regional organizations- we must take into account that victims and civil society are beginning to play an important role in achieving a peaceful solution to violent conflict; in participating, to a greater or lesser degree, in the process called for by the path of justice, - whether international or transitional justice during or after the conflict – as well as by international mediation and dialogue. This paper presents the experience obtained from the specific approaches to peace and justice in Central Africa featuring the involvement of civil society and truth as cornerstone of all action. Both International Criminal Tribunal for Rwanda and Spanish universal jurisdiction will be focus of analysis. To conclude, the paper argues that it is necessary to make a strong and ample financial investment in global peace processes and in the creation of a Global Center for Peace and International Conflict Mediation.

Key words: Justice processes, peace processes, civil society, victims, International Criminal Tribunal for Rwanda, International Criminal Court, Universal Justice, violent or armed conflict, mediators, peace-builders, peacemakers, Rule of Law, Transitional Justice, Rwanda, Democratic Republic of Congo, fighting impunity, facilitating dialogue, investing in peace, reconciliation.

1.- INTRODUCTION

Reconciliation can be one of the main goals of conflict resolution but, how to achieve it?. Several studies are known to state – either explicitly or in a veiled manner – that the path of the administration of justice stands at odds or is even incompatible with peace-building venues. In fact, this situation is very often regarded as a dilemma. Aware of the strain that can possibly arise, not just from the differences between these two ways, but first and foremost among the different players and professionals involved in the latter, this short paper aims at contributing elements that can integrate both approaches. The paper argues – forcibly in a short and incomplete manner– how the system of observance of human rights in place for the last sixty years, and the recent emergence of victims as international players - together with other individual and collective players from civil society and ethnic groups-, can offer more integrative approaches to reconcile both paths under the common umbrella of non-violent conflict resolution.

Above and beyond the decisive involvement of governmental players and of international, regional and universal institutions, a crucial question arises: what role do non-governmental players have? What role do the latter play – not only in generating, fostering, channeling, neutralizing or perpetuating violent conflicts of today's day and age, but also in preventing,

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handling, solving or transforming them in a non-violent way? We refer here to national and transnational civil societies, to victims both as individuals or collectively, to ethnic groups and peoples, or even to multinational companies, some of which hold more power, more resources and more leverage and influence than many nations in the planet. What role do victims play or should play, both in the processes of justice as well as in peace-building processes? Should they be involved, and, if so, how and to what extent? Regarding **processes of justice**, what role do victims play or should play in investigating or revealing hidden truths or truths that have been concealed about the violent conflict and in the fight against impunity? What role, more specifically, in investigating, producing and/or enabling evidence; in pressing direct or indirect charges for international crimes or systematic human rights violations, in indictments in application of current international law – or the rising ability to improve or create new concepts of international law? What role should victims play in matters dealing with moral and/or material compensation or damages, among others? All of the above refers to their potential involvement in universal and/or international justice processes which apply international law to the more serious international crimes, such as genocide crimes, crimes against humanity, war crimes – including gender crimes and large-scale pillage of natural resources -, torture, etc.

When it comes to peacemaking and peace-building, what role do victims play – or could play – in the following areas: in national and international negotiations, in mediation and reconciliation related to violent conflict; in processes of multilateral dialogue at varying levels; in other peacemaking or peace-building processes in a general sense; in initiatives known as preventive of future violent conflict; in the process of transformation of existing violent conflict; in moral and/or material compensation and damages; in post-conflict or post-war rehabilitation; in security systems and systems of protection of human rights; civil diplomacy; historical memory; processes of truth, forgiveness and reconciliation; in the restatement of the Rule of Law; in the political system, the security and defense systems, in humanitarian crises, among others?

These questions could broaden to include the potential involvement of other non-governmental players, especially that of national and international civil society. Clearly, the answers to these questions will affect, in fundamental ways, both the processes of justice and/or peace-building themselves as well as the outcome of their outcome.

2.- CIVIL SOCIETIES, VICTIMS, JUSTICE PROCESSES AND PEACE PROCESSES.

2.1) CIVIL SOCIETY, VICTIMS AND JUSTICE PROCESSES.

Undoubtedly, civil society at large, and victims in particular, have gone from being mere spectators falling prey to violent and/or armed conflict to getting actively involved at varying lengths in processes of justice and/or peace. Their participation has also extended to exerting an increasing influence on political and democratic processes related to armed or diplomatic intervention in armed or violent conflicts, both at the national and international levels. Many governmental players, formal diplomacies, as well as national and international organizations have not concealed their misgivings as they watched these developments, often perceiving them as invasive of a turf which ‘does not belong’ to victims or civil society, but rather only to those “with the knowledge and expertise” and those “who count.” On the other hand, many other governmental players, formal diplomacies, as well as national and international organizations follow this process with careful attention and even foster this development within the periods of time and frameworks that institutions and civil society have agreed on.

It is not my intent to be exhaustive, but with regard to Spain² and other countries with **Roman-Germanic or continental justice systems** which to varying degrees allow for victims to participate and be legally represented in processes of justice, it is worth highlighting the

² .- See Articles 101 and 270 of the Criminal Procedures Act in agreement with Article 23,4 of Spain’s Organic Law of the Judiciary (L.O.P.J.) concerning international crimes mentioned there. For a more detailed analysis of the established rule and of universal justice trials featuring the involvement of victims in different countries; see Martínez, 2008, Pages 10-11; as well as Palou-Loverdos, 2007, Pages 60- 63.

decisive involvement and intervention shown by Argentina's 'Madres y Abuelas de la Plaza de Mayo'; by Spanish, Argentine and Chilean victims; Spanish and Guatemalan Maya victims; Catalonian, Spanish, Rwandan and Congolese victims; Tibetan victims; Palestinian victims, etc – all of them with regard to their roles in articulating, presenting, investigating – and even filing formal charges – in processes of universal justice in application of current international law. In turn, given the practices of the Nuremberg and Tokyo Trials, or of *ad-hoc* Courts for the former Yugoslavia and Rwanda, or of other mixed courts, most of which were inspired on the Anglo-Saxon system of justice where the intervention or legal representation of victims is deemed unthinkable, the new International Criminal Court has created a new system of justice. A hybrid between the Continental and Anglo-Saxon systems, this new system marks the first time ever that an international court offers victims³ the real possibility of participating and having legal representation –albeit in a more restricted way than in continental national systems of justice.

2.2) CIVIL SOCIETY, VICTIMS AND PEACE PROCESSES

Likewise, it is worth noting the increasing involvement which representatives of civil society – including victims and relatives of victims – are having in peace processes, as well as the impact that their participation can make on the latter. Several different scholars investigating these processes have underlined in their empirical studies that participation of civil society in peace negotiations makes it easier for agreements to be more feasible and sustainable⁴. There is no shortage of examples showing that representatives of civil society have made important contributions to formal peace talks in countries as diverse as Sierra Leone, Liberia, Burundi, Aceh or Uganda. In these cases they have to varying degrees strengthened the content of the agreement, expanded and reinforced their legitimacy, as well as created conciliatory and integrative dynamics between the parties more reluctant to reach an agreement⁵. This paper gives below a brief account of processes in Rwanda and in the Democratic Republic of Congo.

3.- HUNGER AND THIRST FOR JUSTICE AND PEACE: DO THE GODDESSES STRUGGLE OR COOPERATE?

We hear it again and again everywhere on our planet. Literally and figuratively, the world starves and thirsts for justice and peace. In past papers I have talked about notions of law and mediation, looked at their etymological roots and principles, and delved into the symbols linked to mythological characters mentioned since times immemorial.⁶ Both *Goddess Maat* or *Goddess Themis*, who stand for the administration of justice among clashing parties, hold a sword as their major symbol. On the other hand, *Goddess Nefertem* or the *Goddess of Temperance*, who stand for mediation and enabling peace-building among opposing parties, feature water as their main symbol. Whether acting as ruling judge or as facilitator/restorer, this third middle character standing between the two adversary parties who represent the duality of the conflict, makes use of tools and symbols which are at the same time analogous and different. Since times past, human beings have satisfied their hunger by resorting to sharp and cutting linear elements, such as the flint, teeth or knives – tools which find their equivalent in the sword that rules justice between the two weighing pans of a scale. To quench thirst, human beings have used flexible, round elements, such as their hands, a leaf or a bowl, to contain water - element akin to the liquid that flows between the two amphorae of Temperance.

³.- See Articles 68, 69 and concordant articles of the Statute of Rome of the International Criminal Court and Rules 63, 85 and concordant rules of the Rules of Procedure and Evidence of the ICC, as well as Article 42 and concordants of the Regulation of the Trust Fund for Victims (http://www2.icc-cpi.int/NR/rdonlyres/0CE5967F-EADC-44C9-8CCA-A7E9AC89C30/140126/ICCASP432Res3_English.pdf) (June 4 2009 search). 108 countries have signed the ICC's Statute of Rome, 30 of them are African nations, 14 are from Asia, 16 from eastern Europe, 23 nations are from Latin America and the Caribbean, and 25 nations are from Western Europe and elsewhere.

⁴.- Pfaffenholz, Kew and Wanis, 2006.

⁵.- Hayner, 2009, Pages, 12-13.

⁶.- Palou-Loverdos, 1999, Pages 88-109; and Palou-Loverdos, 2006.

Justice and law experts, on the one hand, and experts in mediation and peace-building, on the other, often claim their respective venues and methods to be the most efficient when it comes to tackling or managing, solving or transforming violent conflict. When mediators, negotiators and facilitators of peace processes step in, legal professionals frequently regard them to be meddling with the evidence or sentences they have had a hard time securing. This is particularly the case when there is talk of possible peace agreements that would allow for partial or total amnesties or impunities. In turn, once they have reached an agreement with one or many key players in an armed or violent conflict, peace-builders or peacemakers perceive any arrest warrants, trial orders or sentences resulting from legal proceedings held in application of international law to be an outright attack to the peace process or to their hard-won agreements. Such tensions don't merely arise between these two fields which seem to start apart in terms of their methodology, principles and dynamics. They also appear within a same field, for example, between retributive and restorative justice; or between those which advocate abiding by the guidelines of the Rule of Law or those which focus on the range of measures known as Transitional Justice⁷ which comprises a useful mix of judicial and non-judicial measures centering on the responsibility for international crimes of the past. This approach includes initiatives for criminal accountability; truth commissions, reparations programs; reform of the security and judiciary sectors; demobilization and integration of ex-combatants and community-based justice initiatives⁸, among others. Legal professionals are well aware that during the course of the legal proceedings⁹, they sometimes need to replace the sword with the water. Peace-builders, in turn, know that they more often than not have to brandish the sword when negotiating, mediating or facilitating among opposing parties¹⁰, for the benefit of the two parties involved, the process itself and the actual outcome. There is increasing agreement that mediators should not validate an agreement between the parties which grants amnesty to the perpetrators of the most serious international crimes¹¹, since this would prove unacceptable to both the international community and the United Nations system.

Some authors point to these tensions or alleged dilemmas and conclude, through various arguments, that we are better off saying that the systems complement each other. They argue that establishing one single model applicable on a universal scope is ill-advised. It is preferable, they continue, to devise a distinct, custom-tailored approach to suit each individual territory, taking into account the historical cross-roads, the potential players, as well as the content, magnitude and degree of the violent conflict at stake, while at the same time bearing in mind certain principles or guidelines derived from past experience.¹² Although there doesn't yet appear to be consensus on this approach, it would seem advisable for the two goddesses to work with each other in a joint effort to alleviate –as much as possible – humankind's hunger and thirst in body and soul. In their endeavor these deities should make available their complementary venues of peaceful justice¹³ and just peace¹⁴, placing truth as the cornerstone and backbone of all other principles, interests and needs.

⁷ .- See Lekha, Martin-Ortega and Herman, 2009, Pages 3-4.

⁸ .- See, op.cit., Negotiating justice: guidance for mediators, Pages 11-12.

⁹ .- Especially in the case of protected witnesses or particularly traumatized victims.

¹⁰ - Mediators or facilitators must occasionally resort to 'sharp tools' in order to maintain the balance between the parties, ensure one party's capacity of self-determination, preserve respect towards both parties' dignity and face and react to issues of responsibility for serious international crimes, among other similar situations.

¹¹ .- See op.cit. Priscilla Hayner, Pages 6-7; and Mónica Martínez, 13-14.

¹² .- Op.cit., Monica Martínez, 2008, Pages 12-13 and 15-17, Priscilla Hayner, 2009 pages, 5-6 and 20-22, ; Chandra Lekha Sriram-Olga Martin Ortega and Johana Herman, 2009, pages 2-6. Pages 12-13 and 15-17, 5-6 and 20-22, 2-6.

¹³ .- That is, justice processes not centered on repression, punishment or revenge, (while not disregarding applicable sentences) but carried out by adversarial means, with all due guarantees and respect for fundamental human rights. These justice processes establish an internationally accepted criterion to determine responsibility and put an end to the impunity of perpetrators of serious international crimes- all along taking the utmost care to address the basic needs of the people and adhere to the truth of the facts.

¹⁴ - That is, peace-building processes that don't aim at securing partial and provisional agreements that may only make do. Rather, those processes which strongly observe the principles of mediation, reconciliation or the facilitation of dialogue, while at the same time not leaving out issues of social justice

4.- RWANDA/DEMOCRATIC REPUBLIC OF CONGO: A TWO-TRACK COMBINED APPROACH

This paper does not attempt to make even a brief analysis of the large scope of the conflict which has raged in Rwanda and in the Democratic Republic of Congo and the international crimes that have been -and still are- executed in both nations,¹⁵ nor of the number of peace processes conducted and/or stalled there.¹⁶ Nor, for that matter, can it look at the various interventions which international justice venues (International Criminal Court for Rwanda¹⁷) undertook to investigate the countless international crimes perpetrated in Central Africa. Causing the death of almost 8 million people - Rwandan, Congolese, Burundian, Spanish, Canadian, Belgian and British victims, among others – this conflict has claimed the lives of more civilians than any other conflict since the Second World War¹⁸.

This paper merely looks at a modest but forceful example of a joint initiative where civil society and the victims of this conflict have come together to create a mixed approach which combines the path of justice with that of peace¹⁹ in an attempt to transform the conflict by non-violent

and formal justice in order to merely reach a visible agreement (particularly issues that address the granting of amnesties and the establishment of some kind of accountability for the most serious international crimes). Likewise, these approaches take great care to address the basic needs of the people and adhere to the truth of historical processes.

¹⁵ .- For more information on the alleged war crimes and a factual and judicial analysis, see: Palou Loverdos, 2007.

¹⁶ .- Although a wide range of violent incidents have continued to occur in Rwanda since October 1, 1990, the UN and many international NGOs consider there aren't any violent conflicts or systematic violations of human rights which deserve special attention; in addition, most peace experts don't mention the Arusha Peace Agreement in their papers. The Arusha Agreement had been subsequently frustrated by several episodes, especially by the April 6, 1994 assassination of the presidents of Rwanda and Burundi that unleashed the infamous genocide in Rwanda as well as the chain of ongoing serious international crimes in this country and in the Democratic Republic of Congo which have only recently been subject to formal investigation.

¹⁷ .- Considering that ICTR Statute stands, among other provisions: “... *Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them, Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,...*”, but for that main purposes –national reconciliation and restoration and maintenance of peace- limits it's competence differently to what it's stated for the International Criminal Tribunal for the Former Yugoslavia, as following “... *The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute*” (article 1 ICTR Statute, <http://www.un.org/ict/statute.html>), I leave for the more ICTR experts and co-panellists (of the Conference “*International Criminal Tribunal for Rwanda: an independent Conference on its legacy from the Defence Perspective*”) the analysis whether those goals have been achieved partially or totally. A large number of Rwandans –and also a large number of “invisible” Congolese victims affected by Rwandan military operations after 1996 up to present- have the perception not only the ICTR goals have not yet been achieved but its incomplete and biased output fuels violent conflict not only in Rwanda but in Central Africa.

¹⁸ .- For a condensed analysis of the conflict and the two strategic paths used to transform it through the impetus given by civil society and victims: http://www.veritasrwandaforum.org/material/sintesi_en.pdf

¹⁹ .- To cite another example, in Colombia, institutional bodies have opted for using transitional justice mechanisms even though many experts believe this is happening at a time when the conflict is still alive (and hence talk of transition and post-conflict proves difficult). In this case, it is the government and its branches that hold this commitment, basing it on the Law of Justice and Peace passed in 2005 which the Colombian Constitutional Court reinterpreted in a resolution the following year. To this effect, see Felipe Gómez Isa, *Paramilitary Demobilization in Colombia: Between Peace and Justice*. Working Paper Nr. 57, April 2008. Rwanda and the Democratic Republic of Congo are both at different phases; it is difficult

means and achieve its resolution for the benefit of current and future generations in Central Africa. The initiatives, as we will see, do not aim at becoming a universal model to be applied on a global scale. Rather, they represent an example of how the venues of justice, on the one hand, and those of dialogue, on the other, can enhance and reinforce each other in order to reconstruct the social, political and economic fabric of a society devastated by armed conflict.

4.1) THE JUSTICE APPROACH

At the end of the nineties a number of prominent personalities, victims, relatives of Spanish, Rwandan and Congolese victims, national and international non-governmental organizations and some public institutions – all of whom constitute the organization International Forum for Truth and Justice in the African Great Lakes Region – joined forces and resources to initiate an international process to investigate major international crimes perpetrated in Rwanda and the Democratic Republic of Congo between October 1990 and July 2002²⁰ (start of the International Criminal Court's temporal competence) and which had not been subject to investigation by any national or international jurisdictional body.

4.1.a) Justice and the struggle against impunity for international crimes in Central Africa

In 2005, after years collecting information and documentary evidence and gathering witnesses, these parties²¹ filed a lawsuit at the Spanish courts in application of the principle of universal justice. On February 6, 2008, after years conducting their formal investigative proceedings, the Spanish courts issued a Bill of Indictment and international arrest warrants against 40 top officials of Rwanda's²² incumbent political-military helm which has held power in Rwanda since 1994. The arrest warrants charge them with the crimes of genocide, crimes against humanity, war crimes and terrorism, among others. According to that decision²³ that Spanish courts decided to make public²⁴ considering its entity, the Judge has obtained numerous pieces of testimonial and documentary evidence, as well as evidence from expert witnesses, regarding the afore-mentioned crimes allegedly perpetrated by the RPA/RPF in Rwanda and the Democratic Republic of Congo in the period 1990-2000, primarily. This investigation has allowed to reveal that the RPA/RPF's rigid, hierarchical chain of command, headed by current President Paul Kagame, is responsible for three major and closely interrelated blocks of crime²⁵.

to speak of post-conflict situations in their case as well. Especially in Rwanda; no process of transition has taken place. The two-path initiative explained in this section thus applies mechanisms of transitional justice to a situation of conflict where there is in fact an absence of transition. In contrast to Colombia, the initiative originates in the involvement civil society has had and coordinated at the national and international levels.

²⁰ .- For more information: <http://www.veritasrwandaforum.org/querella.htm>.

²¹ .- See victims, family victims, NGO's, personalities and public institution claimants http://www.veritasrwandaforum.org/querellantes_en.htm.

²² .- At least 9 of them were away from Rwanda the moment the decision was made public, holding important positions, even within the UN organization: 4 of them worked for the hybrid peace-keeping forces in Sudan (UNAMID), including a Rwandan army general who is the second commander of such forces. A fifth one served at the demobilization arm of the UN Development Program (UNDP) in Nepal. Several public institutions had formally requested the UN to destitute them and turn them over to justice (see all at: http://www.veritasrwandaforum.org/dossier/resol_Ban_Ki_Moon_es.pdf).

²³ .- See judicial resolution: http://www.veritasrwandaforum.org/dossier/resol_auto_esp_06022008.pdf; See also mistrust of Rwanda and African Union related to universal and international justice initiatives, (Martin Vidal, 2008), pages 3-6.

²⁴ .- A lot of international media and international experts reported about that universal jurisdiction preliminary decision. See a selection of it in various languages at http://www.veritasrwandaforum.org/dossier_40ordres.htm. See also experts reports as "*The Spanish Indictment of High-ranking Rwandan Officials*", Journal of International Criminal Justice, Vol 6 Num 5, pp 1003-1011, <http://jicj.oxfordjournals.org/cgi/content/abstract/6/5/1003>.

²⁵ .- Synthetically, a) crimes perpetrated against 9 Spanish victims - missionaries and aid workers- whose first priority was helping the local population and by so doing, were all inconvenient observers of the killings of Hutu inhabitants in both countries; b) crimes against Rwandans and Congolese, either perpetrated pointedly against various specific leaders, or systematically carried out as mass murders of

The investigation has shown that large-scale crimes took place in Central Africa at all different stages: prior to, during and after the mass killings of the Tutsi population that took place in the period April-June 1994 –all of them classified as genocide by the UN Security Council in its ad hoc resolution²⁶. The official version that has managed to prevail in international public opinion, however, only points to the killings occurred in the above-mentioned period. The judicial decision brings to light an array of facts: first, that RPA/RPF army units and around 2,400 military men – backed by military, logistical and political support from Uganda – had already, as early as October 1, 1990, invaded northern Rwanda, causing the death of countless Hutu civilians. Secondly, that from 1991 to 1993, the RPA/RPF had carried out a great number of open and carefully targeted military operations against civilians through its two executor agents – the RPA’s regular army and the Directorate Military Intelligence or DMI’s secret services- , creating likewise special death squads such as the “*Network Commando*”. Thirdly, that in 1994 the RPA buried and hid in Uganda large amounts of weapons (to be smuggled later into Rwanda) before planning the attack against J. Habyarimana, Rwandan president at the time, which was the event that triggered the entire chaos. Further to that action in 1994, as well as in 1995, the RPA and DMI perpetrated mass and targeted crimes against civilians, mostly Hutu, following Paul Kagame’s explicit instructions to eliminate the population indiscriminately. Following the decision the RPA and DMI also organized collective burials in mass graves and mass incinerations of corpses in Akagera or Nyungwe Parks. The investigation had also revealed that in 1996 and 1997, the RPA/RPF set out to systematically attack Hutu refugee camps in former Zaire, killing hundreds of thousands of Rwandans and Congolese. According to the decision –and the UN reports- it also organized the plundering of mineral resources such as diamonds, coltan and gold, thereby creating the intricate web of corruption led by the “*Congo Desk*”, the DMI and Rwandan companies –among them, *Tristar Investment*- all of whom were backed by multinational corporations and Western powers²⁷. During its second military invasion which started in 1998, it continued to engage in these activities setting forth its trail of killing and plundering which continues to date in the eastern part of the Democratic Republic of Congo.

4.1.b) Approach to Universal Jurisdiction and last changes in Spanish Law

As you may be aware, the doctrine of universal jurisdiction allows national courts to try cases of the gravest crimes against humanity, even if these crimes are not committed in the national territory and even if they are committed by government leaders of other states. Those courts apply international law. These initiatives have been both widely applauded and criticised²⁸. Last year, after the 2008 Spanish courts decision against the 40 high ranking Rwandan officials, the current President of the Republic of Rwanda asked to United Nations, African Union and European Union to stop the abuse of universal jurisdiction and not to execute the international arrest warrants. He had success with African Union in its 11th Summit in Sharm el Sheikh (7/1/2008)²⁹, in a previous decision to the well known decision about Sudanese President

hundreds of thousands of civilians; and c) crimes of war pillage- the systematic, large-scale plundering of natural resources, especially strategically valuable minerals.

²⁶ .- See also ICTR decisions (<http://www.un.org/ict/judgement.html>).

²⁷ .- See various UN Group of Experts Report on Illegal Exploitation in DR Congo (S/2001/357, 12 April 2001; S/2002/1146; 16 October 2002; and last S/2008/773 12 December 2008, among others).

²⁸ .- See two examples: “*The Pitfalls of Universal Jurisdiction*” By Henry Kissinger (US former Secretary of State and National Security Advise) for one side (Global Policy, <http://www.globalpolicy.org/component/content/article/163/28174.html>) and “*The case for Universal Jurisdiction*”, by Kenneth Roth (Executive Director of Human Rights Watch) for the other (Global Policy, <http://www.globalpolicy.org/component/content/article/163/28202.html>).

²⁹ .- See the 2008 AU Summit Resolution in : http://www.taylor-report.com/Documents/DECISION_ON_THE_REPORT_OF_THE_COMMISSION_ON_THE_ABUSE_OF_THE_PRINCIPLE_OF_UNIVERSAL_JURISDICTION.doc. This was also internationally reported, I quote “*the assembly made eight resolutions where it noted that the abuse of the principle of universal jurisdiction is a development that could endanger international law and order. It further noted that the political nature and abuse of the principles of universal jurisdiction by judges from some non-African states against African leaders, particularly*

Al Bashir International Criminal Court indictment. This year 2009 at the General Assembly of United Nations he addressed a speech congratulating himself that this initiative is taking place at UN³⁰.

On June 25th 2009 a bill to amend existing universal jurisdiction legislation in Spain was passed by the Spanish Congress and was later approved in the Senate on October 7th 2009. The bill follows an agreement between Spain's two main political parties on amending Article 23.4 of the Spanish Organic Law on the Judicial Power (LOPJ in its Spanish acronym). The purpose of this amendment is to limit the capacity of Spanish courts to exercise jurisdiction over international crimes committed abroad by non-Spanish nationals. This can be considered as a loss to our common humanity³¹. Spanish courts have been exercising universal jurisdiction for over a decade now. They have made an extraordinary contribution to the development of international criminal law and the fight against impunity. Article 23.4 LOPJ establishes that the Audiencia Nacional has jurisdiction over acts perpetrated by Spanish nationals and acts perpetrated by foreigners outside of Spain if such acts are alleged to constitute: genocide, terrorism, war crimes, and any other crime which should be prosecuted by Spain in accordance with international treaties.

The Spanish courts first exercised universal jurisdiction in 1998 when the Audiencia Nacional indicted several Argentinean and Chilean officials for their alleged roles in abuses committed as part of Plan Condor³². Spanish courts have continued to address serious violations around the globe for which no alternate forum has been found. Such efforts include a case initiated by the Nobel Peace Prize laureate Rigoberta Menchú concerning the genocide, torture, terrorism, assassinations, and illegal detention in Guatemala, the above mentioned case against officials of the Rwandan Patriotic Army (RPA) and the Rwandan Patriotic Front (RPF) for crimes allegedly committed against Hutu Rwandans, Congolese, and nine Spanish victims surrounding the Rwandan genocide (1990-2002). The courts have also addressed such human rights issues as Chinese abuses in Tibet and the US torture of Guantanamo detainees.

States have not only a right but a duty to guarantee that the most severe crimes— those which are considered to be committed not only against the victims, but against the international community as a whole — do not remain unpunished³³. The amendments introduced to the

Rwanda, is a clear violation of their sovereignty and territorial integrity”,

<http://allafrica.com/stories/200807071845.html>.

³⁰ .- Read his speech at UN General Assembly, October 5th 2009, “*Improving global governance has also to address international justice. International justice should be fair to all - rich and poor; strong or weak. We are pleased to note that the sixty third session of the United Nations General Assembly undertook to comprehensively examine the issue of universal jurisdiction.*” See:

<http://www.maximsnews.com/news20091005RwandapresidentUNGA1091000106.htm>. See works and contents at 2009 UN General Assembly about this matter (and the different positions of the countries) in <http://www.un.org:80/News/Press/docs//2009/gal3371.doc.htm>.

³¹ .- See also “*Preserving Spain's Universal Jurisdiction Law in the Common Interest*”, Jurist, University of Pittsburgh School of Law, by author of this paper and Olga Martin Ortega (Centre of Human Rights in conflict, University of East of London): <http://jurist.law.pitt.edu/forumy/2009/06/protecting-spains-universal.php>.

³² .- General Augusto Pinochet and other high ranking members of the former junta were among the 99 current or former members of the Argentinean military charged in the case. The fate of the proceedings against Pinochet is well known. While most of the indicted Argentineans were not extradited by Argentina, Mexico extradited former Argentinean military official Ricardo Miguel Cavallo in 2000. In 2001, Adolfo Scilingo was also detained, processed, and sentenced to a long prison term by the Audiencia Nacional for crimes against humanity committed in Argentina.

³³ .- Spain, therefore, is not acting as a “world policeman,” but is exercising both its right and its duty in international law. Now, Spanish courts would have to prove Spain’s specific interest in prosecuting any given crime. In order to do so, courts will have to evidence one of the following: the involvement of Spanish victims in the claim, the residence of the suspect in Spain’s territory, or a “special relation” between the crimes and Spain. The introduction of these conditions will severely restrict the use of universal jurisdiction as a complementary tool for the achievement of universal justice. In practice, this would mean that those crimes committed where there is no other option for justice — where the international community is unwilling or unable to establish international tribunals, or where the crime was

Spanish law constitute an important step backwards in the effort to develop coherent global processes of accountability for human rights atrocities. International law has developed since the Nuremberg and Tokyo trials to provide norms and venues for the exercise of universal justice, as seen in the ad hoc Criminal Tribunals for the Former Yugoslavia and Rwanda, the Special Courts for Sierra Leone, East Timor, and Cambodia, and the International Criminal Court. Each of these mechanisms, acting in tandem with domestic courts, serve as instruments for the enforcement of human rights and international humanitarian law. Universal jurisdiction is only one of the tools available in the fight against impunity for severe human rights violations. Until now, the Spanish universal jurisdiction law had managed to withstand political pressure rising to the level of that which ultimately compelled Belgium to revise its own universal jurisdiction legislation. It was in the interest of the international community as a whole - of all of us - to preserve this instrument as another avenue of justice, complimentary to the International Criminal Court and potential hybrid courts. As Human Rights Watch spokesperson Reed Brody recently put it, the Spanish universal jurisdiction rule belongs not only to the Spaniards, but to all of us. It is –it was- part of the heritage of the international community.

4.2) THE CHANNEL OF DIALOGUE AMONG MEMBERS OF RWANDAN SOCIETY.

Aware that the justice approach represented an important yet insufficient step towards transforming the Rwandan conflict, preventing further violent incidents and overcoming the tragedy of the two former decades, a group of prominent members of Rwandan civil society living abroad set out to start a dialogue from exile. Two persons initiated the dialogue: the Hutu president of a victims' association who lived in Brussels and the Tutsi former plenipotentiary ambassador of the current Rwandan government to the United Nations who lived in New York.

In 2004 ten Rwandan men and women of the diaspora met for the first time at a meeting organized by international facilitators in Mallorca (Spain). The Rwandans, both Tutsi and Hutu, were able to ascertain the different ways in which they each understood Rwandan history and the past according to their own personal, family and community experiences. At the same time, they also discovered the extent to which they agreed on constructive proposals for the future. In 2006, after two years in the works, a second encounter by then referred to as the Intra-Rwandan Dialogue took place in Barcelona (Spain), giving rise to the International Network for Truth and Reconciliation in Central Africa. Twenty Rwandan nationals, both Hutu and Tutsi from the diaspora and the Rwandan heartlands, took part in this event. The meeting was organized with the sponsorship of Nobel Peace Prize nominee/candidate Juan Carrero and the support of both Nobel Peace Laureate Adolfo Pérez Esquivel, present at the meeting, and of the President of Senegal Abdoulaye Wade. The protocol of findings of the 2006 event, which called for a more inclusive Inter-Rwandan Dialogue— served as the foundation for the talks held at five subsequent meetings entitled Dialogue Platforms in 2007 and 2008³⁴: These five events took place in Washington DC for 20 participants from the USA and Canada; in Amsterdam for 20 participants from Holland, Belgium and Germany; in Orléans (France) for 20 participants from France and Italy; in Barcelona, where the Platform for Rwandan women was held; and finally in Kinshasa (Democratic Republic of Congo) where a special *ad hoc* platform was organized for Congolese participants coming from the eastern region of this country bordering with Rwanda.

In 2007 the Spanish Parliament extended its support to this initiative and passed a resolution where all political parties unanimously agreed to offer technical, legal, diplomatic and political support and urged to take it to an international³⁵ level.

committed before the International Criminal Court was established — will not be addressed. In such cases, victims will not be vindicated and justice will not be served.

³⁴ .- With the support of, among others, Nobel Peace Laureate Adolfo Perez Esquivel; and of Federico Mayor-Zaragoza., former UNESCO Secretary General (1987-1999), President of “Cultura de Paz” and co-chairman of a top level UN group of Alliance of Civilizations.

³⁵ .- See original Proposal of Non-Legislative Motion of support to Intra-Rwandan Dialogue dated April 25 2007: http://www.veritasrwandaforum.org/dossier/congreso_diputados_eng.pdf (June 4 2009 search).

In early 2009 the eighth Dialogue held in Mallorca, Spain, featured the participation of thirty Rwandan men and women from all Rwandan ethnic groups- Hutu, Tutsi and Twa-, as well as two Congolese, who had come from Africa, Europe and North America. Celebrating five years since the dialogue started, they agreed to formally ask a Central African government to hold a Highly Inclusive Inter-Rwandan Dialogue, and request institutional and financial support from the international community.³⁶ During the course of these five years, almost 150 Rwandan leaders have participated in the process. Among them, it is worth noting the involvement of two former prime ministers, various former cabinet ministers, former ambassadors, political leaders, representatives from civil society, from victims' as well as human rights organizations, from institutions devoted to peace and economic research. All of the above have set their eyes on the future and on carrying on this inter-Rwandan dialogue as the legitimate foundation upon which to build a new Rwanda that can be widely accepted by all political, ethnic, social and economic groups as well as by the international community.

5.- INVESTING IN GLOBAL PEACE PROCESSES

Numerous studies study and analyze military expenditures worldwide. Military spending for 2007 alone, for example, reached 1,339 trillion dollars³⁷. That same year, 61 "peace operations" were carried out worldwide (41% of them in Africa), deploying a total of 169,467 people in missions which were almost entirely military: 119 countries sent troops, military observers or police officers totaling 150,651 people, a stark contrast to the 18,816 civilians³⁸ overall.

There is no knowledge about the existence of studies that look at the amount spent worldwide on national and international processes of justice. Yet, if we want to have a rough idea of the huge disparity between military spending and expenditures on justice, we only need to point out the annual budget of the world's leading international court: in 2009, the International Criminal Court, which is currently investigating four major situations in the Democratic Republic of Congo, in Uganda, in the Central African Republic and in Sudan, has a total budget of Euro 101.229.900³⁹. *Ad hoc* Tribunals have an impressive budget -even considering its partial results-: the General Assembly of the United Nations allocated a budget of 267, 356, 200 million dollars to the International Criminal Tribunal for Rwanda (ICTR) for the 2008/2009 period⁴⁰, which constitutes 6,4% of the total budget of the United Nations for the two years to come.

³⁶ .- All documents with Findings and Proposals of the eight Intra-Rwandan Dialogue sessions to date (2004-2009) are available in several languages at: <http://www.veritasrwandaforum.org/dialogo.htm> (June 4 2009 search).

³⁷ .- See Stockholm International Peace Research Institute, *SIPRI Yearbook 2008*, Catalan translation, Fundació per la Pau 2008, -Petter Stalenheim, Catalina Perdomo e Elisabetk Sköns- Page 10. This organization notes that military spending increased by 6% in 2007 compared to 2006, and by 45% since 2008, and that it accounted for 2.5% of the Global Gross Domestic Product, or US\$ 202 per capita worldwide. Spain ranks 15th in terms of military spending, with military expenditures of 14.6 billion dollars that constitute 1% of the total amount spend worldwide.

³⁸ .- Op.cit., Sharon Wiharta, Pages 7-8. There is no information about the cost of the 61 afore-mentioned peace processes which were primarily carried out by military parties. Furthermore, it is sometimes difficult to tell whether these operations were aimed at maintaining peace or at securing geostrategic military objectives. While serving in Sudan for the UNAMID, four Rwandan military officials were prosecuted in February 2008 (see footnote Nr. 20). Months later, on September 3, 2008 the US Department of State made a donation of military equipment worth US\$ 20 million to the Rwandan defense force led by one of the above-mentioned prosecuted officials, whose UN appointment in Sudan was, in fact, ratified by UN Secretary General a few weeks later and extended for an irrevocable 6-month period until March 2009. (see official information from the US Embassy in Rwanda: http://rwanda.usembassy.gov/u.s.embassy_donates_equipment_to_the_rwanda_defense_forces).

³⁹ .- See Report of the Assembly of Member States of the International Criminal Court ICC-ASP/8/5 dated May 13 2009, http://www2.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-5-ENG.pdf (June 4 2009 search).

⁴⁰ .- See official UN ICTR site: <http://www.ictr.org/ENGLISH/geninfo/index.htm>

Compared to military spending, this amount is clearly a drop in the bucket - even if we compare it to military spending in Spain which accounts for 1% of military expenditures worldwide⁴¹.

Many scholars and experts on peace and peaceful conflict resolution continue urging for an increase and restructuring of private and public investment in favor of peace⁴². Investing in global peace processes is imperative. There are no studies which look at how much has been invested in theoretical analysis, research,⁴³ infrastructure and the practical implementation of the different venues for peace-building worldwide. It took ages before a global criminal Court was created, and even now, it still needs to grow, become stronger and spread out around the world. We need to roll up our sleeves to establish a true Global Center for Peace and International Conflict Mediation. This center should be the outcome of an international agreement between the different countries of the world, have an adequate and sufficiently-endowed budget⁴⁴, and operate in a concerted effort with regional and global institutions, governments, public and private entities. It should be authorized to intervene within the framework of accredited international experts – governmental, non-governmental and independent- , work on the basis of multidisciplinary teams comprising people from different geographical, social, racial, ethnic, religious and intellectual backgrounds and viewpoints, and focus on preventing violent conflict and on solving and transforming conflict by peaceful means. We cannot wait for ages, we cannot even wait for decades. We are jointly responsible for making it happen in the next decade for the sake of the earth and all present and future generations.

⁴¹ .- This amount pales when compared even to weapon sales figures of leading North American weapon manufacturer Boeing which had a turnover of 30.69 billion dollars in 2006. Op. Cit, SIPRI, Page 12. See an other example: African Union-United Nations Hybrid Operation in Darfur (UNAMID) approved budget for \$1, 569.26 million (A/C.5/62/30) for financing that mission from July 2007 to June 2008 (see: <http://www.un.org/Depts/dpko/missions/unamid/facts.html>, June 4 2009 search). UNAMID was established by the Security Council, in resolution 1769 (2007) for an initial period of 12 months, to help achieve a lasting political solution and sustained security in Darfur. This budget provides for the deployment of 240 military observers, 19,315 military contingent, 3,772 United Nations police, 2,660 formed police units, 1,542 international staff, 3,452 national staff, 548 United Nations Volunteers and 6 Government-provided personnel. In addition, the budget includes 55 international and 30 national staff under general temporary service (see <http://www.un.org/News/Press/docs/2007/gaab3828.doc.htm>, June 4 2009 search).

⁴² .- See, as example, Anatol Rappoport, 1989.

⁴³ .- See Escola de Cultura de Pau, 2008, Page 13. This study shows that most Spanish research centers do not reveal their budgets, but notes that the budget of four centers totaled 6 million euros.

⁴⁴ .- To set it in motion, it would suffice that all countries contribute 0,1% of what they presently allot to military spending and earmark it to establish and authorize the first annual budget of this Global Center.

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