

ACCOUNTABILITY FOR INTERNATIONAL CRIMES THROUGH ALTERNATIVES TO PROSECUTION¹

Abstract

Criminal prosecution of those accused of committing international crimes is a fundamental aspect of international justice. Over the past twenty-five years, international law has progressively developed to create a corpus of international criminal law; prosecuting those responsible for committing the most heinous crimes. However, in certain cases of serious violations of international criminal law, the notion of remedial or retributive justice for victims often has to be balanced against the need of the territorial State to deal effectively and progressively with past atrocities and not to provoke or maintain further violence. Focusing on the normative rather than the punitive objectives of criminal law, it is suggested that essentially the same essence can be achieved by other means rather than prosecution. In this paper, we consider these other means of accountability for international crimes. This paper justifies the need for these methods, as means of achieving sustainable justice and peace in the international community. The methodology we adopt is the doctrinal research approach.

Key words: *crime, prosecution, accountability, alternatives, justice and victims*

1. Introduction

Accountability for crime, a theme central to Shakespeare's plays, is also extraordinarily pertinent in our times. Aware of the occurrences during World War II and the effect of tyrannical leadership, no question can be more cogent than personal criminal responsibility. Throughout recorded history, leaders have ordered most egregious crimes: the mass atrocities, the genocides and the crimes against humanity; they should therefore be held accountable. So must all those who directly carried out the orders. Meron² captures the attitude of Shakespeare to crimes committed or ordered by leaders, the leader's special responsibility, command responsibility, superior orders etc in his time. She compares his times with the latest developments in international criminal law showing an intellectual genealogy of our modern humanitarian law and a justification for accountability for international crimes.

International crimes can only be created by international law. Individual states cannot, by mere declarations, create an international crime. Yet, states have the duty to enforce international criminal law through customary international law or the obligations they assume by treaty, hence the principle *aut debere aut iudicare* (prosecute or extradite). In some states, national criminal law is entrusted with the task of enforcing international criminal law by means of domesticating international legal proscriptions and then prosecuting, extraditing and lending assistance to other states in their investigation, prosecution and enforcement endeavors. In others, international law (either custom or treaty-based) has been incorporated directly for purposes of criminal prosecution.³

Sometimes, the political will to prosecute may exist, but common problems may cause a need to consider other options. For instance; having functioning judicial system due to lack of human resources (including expertise) or financial resources; having police and prosecutors without skills to investigate and present a strong case, or worse, the presence of corrupt or compromised officials; a lack of concrete evidence; the practical or logistical impossibility to prosecute large numbers of accused; and absence of the necessary national legislation (implementing international treaty obligations). Other reasons may not be related to the judicial system, but to the need for peace and security. The "right to justice" advocating prosecution does not mean prosecute for prosecution's sake⁴. The socio-political conditions

¹By **Elizabeth Ama OJI, PhD, BL**, Senior Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Phone: 08033123974. E-mail: lizzyejitu@yahoo.com, or ae.oji@unizik.edu.ng

²"Crimes and Accountability in Shakespeare", *AJIL* 1998 Vol. 98 p. 1

³M. C. Bassiouni, "Policy Considerations on Inter-State Cooperation in Criminal Matters", in *Principles and Procedures for a New Transnational Criminal Law* 807 (A. Eser & O. Lagodny eds. 1992) reprinted in 1992 *Pace Y.B. Int'l L.*

⁴Laura Olson, "Mechanisms Complementing Prosecution", *IRRC March* 2002 Vol. 84 No. 845, p. 174

may be such that the country may be thrown into a never ending conflict. In such situations, other methods of resolving the quagmire must be considered.

2. Prosecution for Punishment

Accountability for international crimes through prosecution always refers to punishment. This is usually imposed on a wrongdoing, especially in the form of imprisonment or fine. The view of punishment as a means of deterrence through “fear of punishment” does not reflect the variety of approaches in modern criminal law thinking⁵. Among the various purposes and functions of penalties that have been put forward in legal theory and practice, also in the particular context of international criminal justice, are retribution; general prevention or deterrence; individual prevention; protection of society; collective reconciliation and reparation to crime victims⁶. On the international level, in spite of features, which may be recognized, as common to various national systems through comparative legal studies, there also are some seemingly irreconcilable national values, norms, standards and judicial practices in this field. Conflicting views on the purposes and functions of penal sanctions are thus compounded by significant differences in legal cultures and political perspectives.

The application of criminal penalties belongs traditionally to the core competencies of national sovereignty. However, this area of the law has been affected by the changing face of international law in the area of human rights and humanitarian law. Human rights law sets limitations on the application of the most severe forms of punishment, in particular with regard to the death penalty and through the prohibitions against torture as well as cruel, inhuman and degrading treatment or punishment⁷.

The penalties provisions of earlier and existing international criminal tribunals are not uniform. The Charters of the Nuremberg and Tokyo Tribunals provided for the death penalty, life imprisonment or other punishments determined by them to be just, with the additional possibility of ordering deprivation of stolen property⁸. With regard to the Nuremberg Tribunal, Article 27 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 states that “the Tribunal shall have the right to impose upon a defendant on conviction, death or such other punishment as shall be determined by it to be just”. Article 28 states that “in addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany”. Similar provisions were contained in the Charter of the Tokyo Tribunal. At the Nuremberg and Tokyo⁹ Tribunals most convicted persons were in fact sentenced to death, while other sentences ranged from ten years to life imprisonment. The same degree of discretion given to the former tribunals was not provided for by the Statutes of the International Criminal Tribunal for the former Yugoslavia and Rwanda. The only applicable penalty is imprisonment, with the additional possibility of ordering return of property or proceeds.

Article 24 (1) of the Statute of the International Criminal Tribunal for the former Yugoslavia States: “The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”. Article 24 (3) provides that, “in addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.” Analogous provisions are contained in Article 23 of the Statute for the Rwanda Tribunal with the sole exception that reference is naturally made to the general practice regarding prison sentences in the courts of Rwanda instead of the former Yugoslavia. The two statutes did not state what the heaviest penalty of imprisonment might be.

⁵Rolf Einar Fife, “Penalties”, in Roy S. Lee (ed). *The International Criminal Court*, (The Hague, Kluwer Law International, 1999) 319

⁶On purposes of penalties in an international criminal law context, see Williams A. Schabas. “Sentencing by International Tribunals: A Human Rights Approach”, (1997) 7 *Autre J. Comp. Int L.*

⁷ICCPR 1966 Article 7, 2nd Optional Protocol to the ICCPR 1989, Article 1

⁸E A Oji, *Responsibility for Crimes under International Law*, (Lagos, Odade Publishers, 2013)

⁹In *Re Hirota & Others (Supra)* out of 28 persons accused seven were sentenced to death, 17 to life, one each to 20 years and seven years. Two died, of natural causes while one was declared insane. See p. 360.

However, in rule 101 (A) of the Yugoslavia Tribunal Rules, the judges adopted that, “a convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person’s life”. A similar provision is contained in rule 101 (A) of the Rwanda Tribunal Rules¹⁰.

The Statute of the International Criminal Court strove to achieve a consensus between the extreme penalty of the Nuremberg and Tokyo Tribunals and the vagueness in the Statutes of the existing Yugoslavia and Rwanda Tribunals. Article 77 of the statute provides: -

1. Subject to article 110, the court may impose one of the following penalties on a person convicted of a crime referred in Article 5 of the statute:
 - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the court may order:
 - (a) A fine under the criteria provided for in the rules of procedure and evidence,
 - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 77 builds on the principle of equality of justice through a uniform penalty regime for all persons convicted by the court. Therefore, there is no reference to national law and the choice of penalties will be made irrespective of the nationality of the convicted person or the place where the crime was committed. However, in further compliance to the complementarity principle mentioned in Article 1 and the 10th preambular paragraph, Article 80 provides that “nothing in this part affects the application by states of penalties prescribed by their national law, nor the law of states, which do not provide for penalties prescribed in this paragraph.” A non-prejudice clause as contained in Article 80 makes it clear that the solutions achieved in the statute with regard to penalties do not influence national courts trying the same offences. A system of mandatory review is also specified in Article 110. This does not signify any automatic early release, but rather a mandatory consideration after a specified number of years of whether certain criteria are met for allowing such release. The provision for fines and forfeiture of proceeds and property derived from the crime represents the first time in international criminal justice that the possibility of ordering fines for international crimes is explicitly provided. The money or other property collected through fines and forfeiture would be transferred to a trust fund for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims¹¹.

3. Alternatives to Judicial Prosecution

The above clearly show the various forms of punishment or accountability, which perpetrators of international crimes may face. However, as has already been stated, this may not be what the country may need at the material time. Sometimes, sending perpetrators to jail in highly volatile and conflict prone countries may heighten the crises situation. This scenario played out in the case against Charles Taylor, before the Special Court for Sierra Leone where due to the fear of insecurity, he could not be tried in Arusha. He had to be taken to The Hague for trial. According to Oko,¹²

The objectives of using criminal prosecution to reestablish social equilibrium and promote reconciliation, though laudable and rhetorically inspiring, are simply unattainable. The hope that international criminal prosecutions will reconcile mutually distrustful ethnic groups with a long history of reciprocal hatred is quaint, perhaps even naïve

Speaking on Africa, he wrote that it is becoming increasingly obvious that criminal prosecutions are a weak reed on which to hoist the strategy of reestablishing social equilibrium and reconciling inter-group

¹⁰Cited in Roy S. Lee (ed) *Op. cit.*, P. 324

¹¹ICC Statutes, Article 79

¹²O Oko, “The Challenges of International Criminal Prosecutions in Africa”, *Fordham International Law Journal* Vol. 31, Issue 2 2007

hostilities in post-conflict African societies. He noted that efforts to use criminal prosecution to modify behaviour and contribute to social equilibrium rest on a failure to appreciate the causes of conflict in Africa cannot be resolved through the criminal process. Again, according to him, criminal prosecution is a poor vehicle for restoring social equilibrium in increasingly fragmented societies balanced on the edge of anarchy where violence is viewed as a legitimate means to attain desired objectives. In the light of these, there is need to begin to consider, alternatives which can be used to achieve accountability for crimes, in place of prosecution. It may be apt to consider some of these alternative measures.

The Granting of Amnesty

Amnesties are designed to preclude the prosecution of persons suspected or accused of war crimes. They usually take the form of legislative or constitutional acts of States, or are contained in treaties or political agreements. However, other State practice may also prevent domestic or international courts from adjudicating war crimes cases, such as decisions not to exercise jurisdiction and Security Council exemptions. In addition, certain principles of international law may bar prosecutions for war crimes such as immunities for State officials¹³. As a case in point, at the height of the crises in Liberia, former Liberian President Charles Taylor, indicted for war crimes by the United Nations-sponsored Special Court for Sierra Leone, was asking for the indictment to be removed as a condition for leaving the presidency. Had this deal been accepted, the removal of the indictment would not strictly speaking constitute an amnesty in the sense of a national law or negotiated agreement barring prosecution, but its object and effect (dropping war crimes charges to secure a peace deal) would essentially be the same.¹⁴

Amnesties for war crimes and other international crimes come into being mainly when States are going through periods of transition, often from war to peace, extreme political upheaval or extreme situations of insecurity¹⁵. During such turbulent and politically sensitive times, international law reconciles the competing needs of the territorial state (to move on from the past and not to upset the delicate political process towards peace or democratic consolidation) and those of the international community (to prosecute those accused of international crimes). Over the last few decades, with the emergence of an international criminal prosecution system, a general presumption of illegality of amnesties for international crimes has developed. However, if all amnesties for war crimes in all circumstances were to be considered as invalid and never to be accorded international recognition, this might seriously blunt a useful tool for ending or preventing civil wars,¹⁶ facilitating the transition to democratic civilian regimes,¹⁷ or aiding the process of reconciliation.¹⁸ Other policy reasons for the international recognition of amnesties include the fact that mechanisms for discovering the truth might be compromised if a person subject to a domestic amnesty (on condition of full disclosure of his or her involvement in the international crime) fears prosecution if he or she crosses a border. By generally obliging governments to prosecute and punish those accused of international crimes, international law is able to some extent to de-politicize trials of former leaders or members of military regimes. At the same time, by not requiring governments to risk provoking or maintaining a civil war and by recognizing the importance of other objectives such as reconciliation, international law is able, through the mechanism of principled and limited amnesties, to accommodate the transitional process.

¹³Yasmin Naqvi, "Amnesty for War crimes: Defining the Limits of International Recognition" *IRRC* September 2003 Vol 85 No. 851 p. 583

¹⁴*Ibid*, p. 584

¹⁵In Nigeria, amnesties have been granted to militants, kidnappers and illegal possessors of firearms.

¹⁶For example, amnesties have been negotiated as part of peace deals in Sudan, (Sudan Peace Agreement of 21 April 1997), the Democratic Republic of Congo (1999 Lusaka Ceasefire Agreement) and Sierra Leone (Lome Peace agreement of 8 July 1999), among others, as measures to stop the bloodshed. More recently, the Russian Duma has enacted new amnesty laws as a means to help resolve the conflict in Chechnya.

¹⁷During the past several years, Argentina, Cambodia, el Salvador, Guatemala, Haiti and Uruguay among others have each granted amnesty, as part of the peace arrangement, to members of the former regime that committed international crimes.

¹⁸The clearest example is that of South Africa, where the Promotion of National Unity and Reconciliation Act 34 of 1995 set up a mechanism to grant a broad amnesty for those who had committed politically motivated crimes during the apartheid regime.

Civil Suits for Atrocities that Violate International Law

It has been suggested that like in the case of *Filartiga v. Pena-Irala*¹⁹, national laws such as the Alien Torts Claims Act (“ATCA”)²⁰ and the Torture Victims Protection Act (“TVPA”)²¹ make alleged atrocities actionable within national laws. One of the persons indicted by the ICTY, Radovan Karadzic, was at the time of his indictment, a defendant in suits in the Second Circuit brought by victims of atrocities for which he was alleged to be responsible.²² The plaintiffs in these suits “allege that they are victims, and representative of victims, of various atrocities, including brutal acts of rape, forced prostitution, forced impregnation, torture, and summary execution, carried out by Bosnian-Serb military forces as part of a genocidal campaign conducted in the course of the Bosnian civil war.” The scenes for these events were the former Yugoslavia. Two actions were brought against Karadzic in the United States District Court for the Southern District of New York to recover compensatory and punitive damages. Jurisdiction was founded primarily on the Alien Torts Act and the Torture Victim Protection Act. The ATCA, which was part of the first Judiciary Act, in 1789²³ provides: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. The TVPA was enacted in 1992 and provides that “an individual who, under actual or apparent authority, or color of law, of any foreign nation ... subjects an individual to torture ... or ... to extra judicial killing shall, in a civil action be liable for damages ...”²⁴ Without going into the merits of the case and the reasons given by the courts in the above case to reject jurisdiction, it must be noted that several cases have been heard under the ATCA²⁵ and the TVPA in the US and related legislation can be used in other jurisdictions.

Truth Commissions

“Truth commission” is the title commonly used when referring to commissions of inquiry today²⁶. This title presumes that a commission will reveal the truth; it also presumes that there exists a clear understanding of what is ‘truth’. Truth commissions can be identified as bodies of inquiry with the following characteristics; A truth commission focuses on the past. It investigates a pattern of abuses over a period of time, rather than a specific event. It is a temporary body; typically operating for six months to two years, and completing its work and the submission of a report. It is also officially sanctioned, authorized or empowered by the State.

Truth commissions serve a variety of purposes. Their investigations establish an accurate and authoritative record of the past, acknowledged by the government. A truth commission provides victims the platform to tell their stories, which many consider necessary for the healing process of reconciliation to proceed. However, certain precautions must be taken so as not to re-traumatise them. Because truth commissions aim to gather as much information as possible within a relatively short time, they request individuals to tell their stories in significant detail. For some, this may provide a release and represent a form of justice after years of silence or denial by the government. Truth commissions also serve as a means to identify victims so they may obtain some form of redress. They also recommend institutional or legislative reforms necessary to avoid repetition of past abuses.

To better ensure the successful work of a truth commission, it should meet certain minimal requirements. The truth commission’s mandate or terms of reference, which set its aim, scope of inquiry and powers, must be clear. It should be set up as soon as possible after resolution of the conflict or government transition, during this momentum for change, and should operate for a limited, specified period of time. Finally,

¹⁹630 F.2d 876 (2d. Cir. 1980)

²⁰28 U.S.C 1350 (1994)

²¹Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C 1350 (Supp. V 1993)

²²*Kadic v. Karadzic*, 70 F. 3d 232 (2d Cir. 1995), For a suit against a Rwandan political leader accused of atrocities there, see *Mushikiwabo v. Barayagwiza*, No. 94 Civ. 3627, 1996 WL 164496 (S.D.N.Y.) Apr. 9, 1996 (awarding compensatory and punitive damages)

²³The Judiciary Act of 1789, ch. 20, §9(b), 1 Stat. 73, 77.

²⁴In Russel J. Weintraub, “Establishing Incredible Events by Credible Evidence: Civil Suits for Atrocities that Violate International Law”, *Brooklyn Law Review*, 1996 p. 755

²⁵For instance, *Abebe-Jira v. Negewo*, 72 F. 3d 844 (11th Cit. 1966);

²⁶It is sometimes called truth and reconciliation commissions.

agreement to establish a truth commission must coincide with a real commitment to making improvements. Some Commissions in chronological order include Uganda (1984), Bolivia (1982-1984), Argentina (1983-1984), Uruguay (1985), Zimbabwe (1985), Uganda (1986-1995), Nepal (1990-1991), Chile (1990-1991), Chad (1991-91992), South Africa (ANC)(1992), Germany (1992-1994), El Salvador (1992-1993), South Africa (ANC) (1993), Sri Lanka (1994-1997), Haiti (1995-1996), Burundi (1995-1996), South Africa (1995-2000), Ecuador (1996-1997), Guatemala (1997-1999), Nigeria (1999-2000), and Sierra Leone (2000-2001).²⁷ Truth Commissions in Peru and East Timor are currently underway.

Lustration

Lustration means purification or illumination.²⁸ It is an administrative mechanism, defined as “the disqualification and, where in office, the removal of certain categories of officeholders under the prior regime from certain public or private offices under the new regime.”²⁹ This consists mainly of exclusion from candidacy for political office but also sometimes denial of a license to exercise certain professions. Primarily the former Soviet Bloc countries chose to deal with the past through lustration, disqualifying former Communist officials and collaborators and sidestepping criminal prosecution; hence these lustration laws were also sometimes referred to as “de-Communization laws”. Lustration statutes were passed in the Czech Republic and Slovakia (1991), Albania (1992), Bulgaria (1992, 1997, 1998), Poland (1992, 1997, 1998,) Hungary (1994, 1996) and Romania (1998). However, only Albania, the former Czechoslovakia and Germany conducted purges affecting large numbers of individuals³⁰.

Lustration as a policy of settling accounts with the past raises serious concerns of procedural fairness and due process: the right to defence becomes extremely fragile, and often the burden of proof is reversed onto the accused. Lustration³¹ presents other disquieting dilemmas. Many governments have had recourse to lustration statutes during a period of transition to democracy, purging people for being part of a now condemned group; this is contrary to basic democratic principles to which the States employing this method aspired. How far should disqualification extend? Who was truly innocent? Harmful effects of lustration extend to families and friends of those purged, resulting in the alienation of a huge proportion of the population. In practical terms, the new State also deprives itself of many of its specialists. Pavel Dostal, a member of the Czechoslovak Federal Assembly, commented on the Czechoslovak Screening Act of 1991: “Providing we are not blind with hatred, we must incorporate these people, since among them are specialists and experts whom we will need if we really want to join Europe.”

Reparations

Reparations focus more on the victim than on the offender. International law establishes the “right to reparation”, thus imposing an obligation on States to provide reparations for violations of their international obligations. In order to successfully fulfill this obligation, States must dedicate the significant time and resources required for any reparations programme. The four main forms of reparation are restitution, indemnity, satisfaction, and declaratory judgment. They may be material or non-material. Material reparation may be in cash or other monetary terms, e.g. education, housing or restitution of wrongfully seized property. For example, Germany has paid over US \$600 billion to Nazi victims and their families in the last fifty years. More than fifteen years after the end of military rule in Brazil, the government instituted a reparation programme providing approximately US \$100,000 to each of some 135 families of disappeared person. In Chile, 4,886 persons receive monthly cheques beginning at US \$345 as part of a “pension plan” set up in 1997 for family members of those killed or disappeared under the military dictatorship. The South African Truth and Reconciliation Commission also made recommendations for material and non-material reparations for victims, which have resulted in limited programmes³².

²⁷Priscilla B. Hayner, “*Unspeakable Truths: Confronting State Terror and Atrocity*”, Routledge, London, 2001, Appendix 1, Chart 1, pp. 291-297, cited in Laura Olson, “Mechanisms Complementing Prosecution”, (March 2002) *IRRC* Vol. 84 No. 845. p. 176

²⁸Herman Schwartz, “*Lustration in Eastern Europe*”, in Neil J. Kritz (ed), “*Transitional Justice: How Emerging Democracies Reckon with Former Regimes*,”, Vol. 1, United States Institute of Peace Press, Washington, 1995 p. 461. Cited in Laura Olson, *Ibid.* p. 177

²⁹*Ibid.*

³⁰*Ibid.*

³¹Lustration is also referred to as purges. This term comes from the Latin *lustratio*, which means Purifying by sacrifice.

³²Laura Olsen, *Op.Cit.* p. 184

It is difficult to quantify in monetary terms, suffering and loss. Are all victims entitled to the same amount? For some victims or their families, even a small sum can be a symbolic demonstration of the State's responsibility. For others, such as the members of Mothers of the Plaza de Mayo in Argentina, where a reparations law for families of disappeared was put in place in 1994, any sum is rejected, as "blood money" for life has no price. Even if a monetary amount can be agreed upon, many governments do not have the means to provide for direct financial compensation to all victims. Non-material reparation includes a range of measures. One of the most important forms of non-material reparation is disclosure of the truth accompanied by the government's formal acknowledgement of this truth and its responsibility for the wrongs done. Erecting memorials in order to show respect for the victims and establishing preventative measures such as constitutional and institutional reforms or human rights training are other examples of this form of reparation. The prosecution of perpetrators, hence the rejection of amnesty laws, is furthermore extremely important not only because victims feel that justice is done, but also, if perpetrators are not prosecuted, it becomes extremely difficult for victims to gain access to the necessary evidence, even if they have the means, to bring their case to court for awards from the State. In some countries, general amnesties block both criminal prosecution and civil claims.

Customary Methods

All the complementary mechanisms described above can contribute to successful transition and reconciliation, but the extent may be determined by the local, customary methods available. For example, in Mozambique, traditional rituals opened the path to reconciliation after an extremely violent fifteen-year conflict between the Government and the Mozambican National resistance (Ranamo), which ended in 1992 with the Mozambican peace settlement.³³ The *gacacas* in Rwanda is an example of a customary mode of justice. In Rwanda, approximately 120,000 individuals are detained in connection with the 1994 genocide, and it has been estimated that Rwanda national courts and the International Criminal Tribunal for Rwanda (ICTR) would need at least or about 100 years to try them all. In order to alleviate the situation, the Rwandan Government decided to set up the *gacaca*, an alternative system of transitional justice using participatory and proximity justice whereby individuals from the communities' act as "people's judges". The Rwandan President contends, "if the *gacacas* succeed, it will show our ability to find a typically Rwandan therapy for the ills of our society. Classical justice, even endowed with all the necessary means, cannot resolve all the problems inherited from the genocide. The *gacacas* will bring out the truth on what happened, accelerate the process, eradicate impunity, reconcile Rwandans and consolidate the unity of the country.

Public Apologies

Though this can be subsumed in reparations, some have treated it as a distinct process³⁴. The expression of regret by a head of state or by high-ranking state officials is nothing new. But since the end of the cold war, the increase in the number of such acts of remorse has been unprecedented. In the late 1990's all Western leaders voiced public apologies for past crimes, some of them committed several centuries ago. Tony Blair, for instance, apologized for British responsibility for the Irish famine in the nineteenth century, Jacques Chirac for France's responsibility in the deportation of Jews, Gerhard Schröder for Germany's Nazi past, and Bill Clinton for his country's attitude during the Rwandan genocide, for the slave trade and slavery, and for the support of dictatorial regimes in Latin America.

4. Conclusion

It has been suggested that one should not always look for judicial remedy to international problems, especially on issues so highly contentious that an armed conflict is already under way. We do not overlook the important function of judicial remedies in times of war and lawlessness, as it is widely accepted that the rule of law rests on the impartial application of well-known laws and rules, irrespective of any political discretions or justifications. Therein lie the advantage of judicial remedy. The mechanisms discussed above are often referred to as alternatives to prosecution. They can, in appropriate circumstances, also act as complements not only to prosecution but to one another as well. Rarely can one mechanism satisfy all the needs for a successful transition after serious violations have taken place.

³³*Ibid*, p. 185

³⁴Hazan Pierre, "Measuring the Impact of Punishment and Forgiveness: a Framework for Evaluating Transitional Justice", (March 2006) *IRRC* Vol. 88 No. 861