Promoting human rights and achieving reconciliation at the international level (part 2)

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6.4 Dissolution of one state and consequent birth of numerous smaller states

6.4.1 *Former Yugoslavia*

At times, achieving reconciliation between groups may necessitate that the warring parties or factions be separated and set apart from each other. While this is an interesting way of achieving peace and stability and possibly even reconciliation, it is somewhat out of step with the conventional understanding that polarised and divided groups need to be brought together to learn about each other, to establish dialogue and to see the reality of each other's circumstances. The strategy of separating the parties is implemented when the conflict seems so protracted and so divisive that peace seems impossible, unless they are segregated on some permanent basis. In these cases the parties are separated into discrete independent states to allow each community to rule over itself and deal with its issues on its own. In this regard, the Appeals Chamber found that,

> [w]hile previously wars were primarily between well-established States, in modern inter-ethnic armed conflicts such as that in the former Yugoslavia, new States are often created during the conflict and ethnicity rather than nationality may become the grounds for allegiance. Or, put another way, ethnicity may become determinative of national allegiance. Under these conditions, the requirement of nationality is even less adequate to define protected persons. In such conflicts, not only the text and the drafting history of the Convention but also, and more importantly, the Convention's object and purpose suggest that allegiance to a Party to the conflict and, correspondingly, control by this Party over persons in a given territory, may be regarded as the crucial test.[88]

These new states can, therefore, be established in multi-ethnic or heterogeneous societies where ethnic, religious, or other differences have been used to blame and shame members of other communities. This does not mean that separation has been the dominant approach in such cases. On the contrary, with globalisation and the opening of borders, the phenomenon of

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88 Judgment of the Appeals Chamber, *The Prosecutor v Tadic*, ICTY case no. IT-94-1, 15 July 1999 para 166: 62

completely homogenous states is decreasing. As a result, as Will Kymlicka asserts: 'Modern societies are increasingly confronted with minority groups demanding recognition of their identity, and accommodation of their cultural differences'.[89] According to Andries Odendaal, there 'is no existing constitutional model that can claim to be successful under all conditions. In fact, judged from a historical perspective, the prognosis for multi-ethnic states succeeding in solving ethnic conflict in a non-violent manner is rather poor'.[90] Yet the reality is that heterogeneous societies have become the norm and the communities that live in those states find ways of accommodating each other. There are, however, heterogeneous states with intractable conflict and instability that seem unable to find a resolution or model acceptable to all. While the conflict in these states might well concern access to resources and power, existing divisions are used as fault lines.[91] Examples of the countries in which the option of separation has been chosen include India and Bangladesh, Israel and Palestine,[92] and the states that have emerged out of the former Yugoslavia.

This process of separation, which sees a state split into one or more new independent states, may be necessary to allow each of the groups to be accommodated separately and peace to be achieved. This route makes peace likely and reconciliation possible by 'developing a mutually concilia-tory accommodation between former enemies'.[93] The former Yugoslavia constitutes such an example in which separating the parties was regarded as the best way forward to achieve peace, stability and, eventually, recon-ciliation. As was noted by John Mearsheimer in 1998: 'The breakup of large countries into smaller states can sometimes lead to stability. But unless we intend to intervene in Kosovo and to occupy Bosnia and Mace-donia forever, the only way to stop the spread of violence and civil war is to help the antagonists find the best ways to divorce'.[94] Timothy Sisk questions the success of such a partition:

> There are, however, a number of problems inherent in most partition arrange-ments. First, partition rarely produces a definitive solution to the problems of multinational societies. Partition solutions simply rearrange the pattern of mi-norities and majorities, creating new grievances and establishing new dynamics of conflict. If Yugoslavia were to be further partitioned and Kosovo recognized as an independent state, the problem of an Albanian minority in Yugoslavia might be solved. However, a new problem, an aggrieved Serb minority within a newly sovereign, Albanian-majority Kosovo, would be created. The only way to definitively resolve this problem is forced migration, a solution that is in viola-tion of international norms.[95]

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89 Kymlicka W *Multicultural citizenship – A liberal theory of minority rights* (1995) 10.
90 Odendaal A *Ethnic conflict and its management. A position paper* (1998) Centre for Conflict Resolution, Cape Town 7.
91 See Stavenhagen R *Ethnic conflicts and the nation state* (1996) 31.
92 The comparison with former Yugoslavia is noted by Gross A 'The constitution, recon-ciliation, and transitional justice: Lessons from South Africa and Israel' (2004) 40 *Stan-ford Journal of International Law* 47, 55.
93 Kegley W and Raymond G (fn 4 above) 237.
94 Quoted in Sisk TD 'Deeply divided and failed states: Democratization in unfavorable circumstances' in *Freedom in the World: 1998-1999*.
95 *Ibid.*

While peace might be achieved in these circumstances, the separation can often retard the process of reconciling the parties. Since they are separated and live in different ethnic states, the opportunities to bring the communities together and establish dialogue are invariably limited and the process is complicated. If reconciliation is sought, it happens very slowly and often remains a problem. The ethnic differences and tensions can actually increase, but, because the groups are often in different states, the tensions can be managed. Yet the possibility of war between these states remains, unless it is carefully managed by the respective parties or by a regional or other body.

In the Balkans, divisions along ethnic lines have been present for decades. Former British Foreign Minister and European Union mediator in the conflicts in the Balkans, Lord David Owen, noted that the issues in the region go back to the Second World War.[96] In fact, some of these divisions date back centuries and, for at least a hundred years, mutual accusations of human rights abuses have been made. Ostensibly to promote greater stability and reduce the power of some groups over others, a new constitution was inaugurated in 1974. This afforded the previous Serbian regions of Kosovo and Vojvodina more autonomy. These regions became autonomous but did not achieve the status of republics as was the case with Bosnia, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Like the other republics, they were, as autonomous regions, entitled to representation in the federal presidency and were allowed their own regional parliament and government, their own central banks and police force. Accordingly, various previously excluded ethnic groups were now included.[97] In this way the divisions between the different groups were managed to some degree, although schisms between the various ethnic groups ran deep. The divisions along ethnic lines in the region that caused ethnic conflict in the former Yugoslavia are 'Serbo-Croatian in Croatia, Serbo-Moslem, and Serbo-Croatian in Bosnia and Herzegovina, and Serbo-Albanian in Yugoslavia, i.e. Serbia'.[98] New ethnic tensions are now evident between 'Moslem-Croatian in Bosnia and Herzegovina, Macedonian-Albanian, Macedonian-Bulgarian and Macedonian-Greek'. In addition, other potential tensions may emerge, including those between Montenegrin-Serbian.[99]

In 1990, elections brought new governments in the republics of Slovenia, Croatia and Serbia. Bosnia-Herzegovina became independent of Yugoslavia in 1990 and Slovenia and Croatia declared independence in 1991. Serbia which, under Slobodan Milosevic, had attempted in 1989 to

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96 Owen D 'Reconciliation: Applying historical lessons to modern conflicts' (1995) 19 *Fordham International Law Journal* 324, 335.

97 Human Rights Watch *Under orders: War crimes in Kosovo* (2004), last accessed on the Internet on 8 August 2006 at http://www.hrw.org/reports/2001/kosovo.

98 Zlatko I 'Democracy, human rights and ethnic conflicts in the process of globalisation' (2002) *Copenhagen Peace Research Institute Working Paper* No. 3.

99 *Ibid* at 32.

restrict the autonomous status of those two regions, went to war with Slovenia, Croatia and Bosnia-Herzegovina.[100]

When Kosovo declared independence, Serbia did not accept its status. Groups in Kosovo were placed under stringent rule and the human rights of various groups were attacked. In the name of 'ethnic cleansing' hundreds of thousands of people in the region were forcibly driven from their homes, endured torture, rape, genocide, crimes against humanity and war crimes. After going on the offensive against the population in Slovenia, Croatia and Bosnia-Herzegovina, Milosevic attacked the Albanian population in the Serbian province of Kosovo by reviving old hatreds and stereotypes rooted in a flawed view of history manipulated by members of the political elite, such as Milosevic himself.[101]

The Dayton peace agreement concluded in December 1995 ended the fighting in Bosnia and divided Bosnia-Herzegovina into two states – *Republika Srpska* and the Federation of Bosnia and Herzegovina. As a result of ethnic cleansing, *Republika Srpska* had a population that was almost exclusively Serbian. The conflict resulted in mass flights of peoples of certain ethnic groups – in Kosovo about 800,000 Kosovar-Albanians fled to Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, other parts of the former Yugoslavia and even other countries. Another 100,000 Serbs also fled Kosovo.[102]

To address the atrocities, the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (ICTY), was established by SC Res. 827 on May 25, 1993. As a consequence, a number of persons have been indicted, prosecuted and convicted. The highest profile person indicted was Slobodan Milosevic, who remained in power until May 2000. However, in June 2001 the Serb government surrendered him to the International Criminal Tribunal on the Former Yugoslavia.[103] He is the first serving head of state to have been indicted for violating the laws of war and crimes against humanity. While he was initially only charged with what was perpetrated against the Kosovo Albanians, the charges were later extended to include grave breaches of the Geneva Convention and other violations, such as genocide committed against Croats and other non-Serbs in the Republic of Croatia. The decision of the government to hand him over to the Tribunal for trial has, however, been criticised. It was noted that 'fears are growing in Belgrade that the trial of Slobodan Milosevic at The Hague is going horribly wrong, turning the former Yugoslav President in the eyes of the public from a villain charged with war crimes into a Serbian hero'.[104] Milosevic's death in March 2006, which ended his trial, may see the end of these problems.

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100 Article on BBC website, 'Country profile: Serbia and Montenegro', dated 14 July 2004, http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1039269.stm.

101 Baroni F 'The International Criminal Tribunal for the Former Yugoslavia and its mission to restore peace' (2000) 12 *Pace International Law Review* 233, 241.

102 World Bank Technical Paper Kosovo economic and social reforms for peace and reconciliation (2001) 509.

103 De Than C and Shorts E *International criminal law and human rights* (2003) 289.

104 Judah T 'Serbia backs Milosevic in trial by TV' *Mail & Guardian* 8 -14 March (2002).

However, Dayton did not resolve the issues in Kosovo and the continuing attacks on Kosovo prompted the NATO (North Atlantic Treaty Organisation) decision to use force to stop these attacks. As permanent members of the Security Council, Russia and China objected to the intervention and were supported by countries such as India and Iraq. China denounced it as a 'flagrant violation of international law'.[105] The intervention was welcomed by NATO member states and supported by Eastern European governments like Bulgaria, Romania, Slovenia, Poland and the Czech Republic. On March 25, 1999, the Security Council dismissed a resolution, proposed by the Russian Federation, Belarus and India, condemning Operation Allied Force as being unlawful, by a vote of 12 to 3.

As far as attitudes are concerned, as a measure of reconciliation, a 1999 survey of Kosovo Albanians found that 86 percent of men and 89 percent of women had strong feelings of hatred towards the Serbs and 51 percent of men and 43 percent of women desired revenge most or all of the time.[106] Ethnic intolerance has remained a major problem and violence has continued.

Nonetheless, there have been moments of reconciliation. One of those was when *Republika Srpska* Prime Minister, Dragan Mikerevic, went to a funeral for those killed at Srebrenica in July 2003 and acknowledged that it was 'obvious that a crime was committed in Srebrenica'. Although he was criticised for only attending the funeral because of pressure from the international community, for inadequately expressing his feelings and for lack of attendance by other Bosnian Serbs, this acknowledgement – not only that the event had taken place, but that it was a crime – represented a positive step in the reconciliatory process.[107] This was enhanced in October 2003 when Mikerevic announced that the *Republika Srpska* government would establish a Committee for Truth to deal with the Srebrenica massacre. Another example occurred when Croatian President Stipe Mesic visited Serbia and Montenegro. During this visit the two presidents took the opportunity to apologise for 'all evils' that were carried out by their countries during the 1991-1995 war.[108] Thus, the leaders of the two states made public statements of atonement which may affect general attitudes in those countries towards the citizens of the other state. It certainly makes the public relationship between these two states more cordial.

6.5 Decolonisation: a call for further reconciliation

'"Colonisation" designates a process of territorial acquisition, "colony" a particular type of socio-political organisation, and "colonialism" a system of domination. The basis of all three concepts is the notion of expansion

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105 See *The Times* London 26 March (1999) 6.
106 Summerfield D 'Effects of war: Moral knowledge, revenge, reconciliation, and medicalised concepts of "recovery"' (2002) 325 *British Medical Journal* 1105 at 1106.
107 Transitions Online '*Of reckoning and reconciliation*' 14 July 2003.
108 *The Independent* 'After the war crimes and genocide, old Balkan foes make up' http://news.independent.co.uk/europe.story.jsp?story = 442202.

of a society beyond its original habitat'.[109] When the 'expanded' society finally departs and allows the colonised people to choose their independence, a series of problems are left behind; 'post-colonialism' does not mean after-colonialism. Rather, 'it begins when the colonizers arrive and doesn't finish when they go home . . . The term "postcolonial society" does not mean an historical left-over of colonialism, but a society continuously responding in all its myriad ways to the experience of colonial contact'.[110]

Pal Ahluwalia's definition of reconciliation, which examines the etymological roots of the word, fits perfectly into the decolonisation model of international reconciliation. For him '(re)conciliation entails returning to a prior stage, a stage where there was conciliation'.[111] However true, it is difficult to speak of a past conciliation where the enmity is so deeply rooted that it seems impossible that the people had ever experienced real conciliation and peaceful coexistence, as is the case with the century-long Franco-German enmity. Yet, in a post-colonial situation, it is often possible that an original state of conciliation existed before colonisation. In Rwanda, for example, the Tutsi minority and the Hutu majority peacefully coexisted prior to colonisation, but colonial policy rendered them separate and incompatible communities. In the moment of decolonisation, the coloniser, who had until then encouraged Tutsi dominance, reversed the practices of governance and aided the Hutu to prevail over the Tutsi.[112] While the indigenous people often lived in harmonious cohabitation, conciliation between the colonised and their colonisers obviously did not exist. Because the very act of colonisation has a fundamentally rupturing effect on the previously colonised society, it is impossible to achieve reconciliation by simply attempting to return to the pre-colonial situation. International policies of reconciliation cannot return societies to a time of pre-existing conciliation, because their histories do not comprise periods of real harmony and peaceful coexistence between the former colonialist powers and the former colonies. Colonialism fundamentally alters the basis of societies by tampering with historical trajectories. A totally new 'conciliation' between the two actors of the colonialist scene is required in order to deal with the collective trauma left behind by former colonisers. Ethnic divisions and racial discrimination imposed on Africans by the colonisers are not the only factors that brought Africa to a spiral of internal

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109 This plain definition is quoted by Osterhammel J *Colonialism. A theoretical overview* (1999) 4.

110 If this definition is accepted, the Rwandan genocide of 1994 can only be understood through the lens of the country's whole colonial historical background. The abovementioned description of the term post-colonialism is cited by Bill Ashcroft, quoted by Ahluwalia P 'Towards (re)conciliation: The postcolonial economy of giving' in Goldberg D and Quayson A (eds): *Relocating postcolonialism* (2002) at 191 196.

111 *Ibid* 197.

112 The Belgian colonisation, which started in 1916 and ended in 1962, polarised the indigenous identities into Hutu, Tutsi and Twa. For Ahluwalia 'the very structures of colonialism continue to predominate within post-colonial Rwanda with the process of identity formation firmly locked into the representations and practices once ascribed by the colonial power. Hence, for a people inseparable in terms of culture, language and religion, it is the colonial identity card that above all becomes the signifier of the difference'. See Ahluwalia P (fn 110 above) 192 and 197.

violence and civil wars. The arbitrary setting of boundaries constructed a number of states as artificial creations of the European imperial powers. Heedless of pre-existing nations, ethnicities, states, kingdoms and empires, these boundaries formed multi-ethnic states fomenting ethno-cultural hatreds.[113]

Decolonisation, therefore, requires the reconciliation policy to assume two different forms: one national, to take place within the indigenous people, often left in a state of ethnic division which easily degenerates into civil wars; and one international, to take place between the ex-colonial power and the former colony. Only the latter, being a foreign policy negotiated between two different countries, falls within the scope of the present paper.

At the global level, an important expression of reconciliation can be debt cancellation of decolonised countries (money atonement or financial forgiveness or monetary debt forgiveness). It entails that the country that mainly profited from exploiting the former colony chooses to stop the spiral of debt, interest, more borrowing and further impoverishment, and finally frees the decolonised country from the last residue of colonisation – financial dependence.

6.5.1 *France faces its Algerian sins*

Since 2000, France has confronted the ghosts of the Algerian War, reanimated by revelations of key French military actors concerning the practice of torture, disappearances and summary killings by French forces in 1954-1962. In this period Algerian nationalists struggled and ultimately secured their country's independence from French colonial rule. In September 1959, Charles De Gaulle announced that the Algerian people would be permitted to exercise their right to self-determination.[114] As Raoul Ageron points out: 'The Algerian War was not viewed simply as a belated conflict in the broader historical process of decolonisation. A segment of the French population, most particularly French nationals in Algeria, experienced this war as a national tragedy'.[115] Algerian independence could only be seen as a 'national tragedy' if one considers the political position held by the French elite of the period. In the early 1950s every single significant political figure declared that there was only one way to respond to Algerian claims to independence: war. The public face of France clearly opposed any possibility of mediation with the FNL and, as Smith points out, 'from the outset of the war, not only the French public, but the French army particularly, were given to believe that France was fighting to retain Algeria'.[116] The public position of 'no compromise' was colluding with the more realistic private position of many politicians who actually knew that independence would be inevitable. Because the

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113 For a broader analysis of the colonial legacy, see Boahen A *African perspectives on colonialism* (1994) 94-112.
114 Eftekhari S 'France and the Algerian War: From a policy of "forgetting" to a framework for accountability' (2003) 34 *Columbia Human Rights Law Review* 414, 417.
115 Ageron R quoted in Eftekhari S (fn 114 above) 414, 418.
116 Smith J *Stopping wars. Defining the obstacles to cease fire* (1995) 82.

real aim was to allow an honourable loss of the region, the French army had been sent there to give Algeria away while retaining control of the battlefield so that France could negotiate from a position of strength. De Gaulle handled the situation in the same contradictory manner. The logic of the time was that France was to win the battle in order to lose the war.[117] The impasse was to be solved in a brusque way by De Gaulle, when, in April 1961, he announced that France was not going to object to any Algerian attempt to organise itself as an independent state. The abrupt decision to offer independence on a silver plate after six long years of war fought under different banners, led the way to a serious political crisis, dotted with attempted *coups* and terrorist attacks.[118]

During peace negotiations in the city of Evian, France promised to extend economic aid to its former colony and preserve cultural ties. Following the Evian Accords, French colonists opposed to decolonisation launched a final, desperate attack against French armed forces that they regarded as occupiers. April 1962 saw the exodus of many French residents from Algeria, but the extremists pursued their armed opposition until June of that year. In this chaotic period, the French government deserted those Algerians known as *harkis*, who had fought on the French side. Although a number of *harkis* were able to settle in France, tens of thousands remaining in Algeria were killed in reprisals by nationalists following independence. Finally, on July 1, 1962, Algerians voted for independence by a large majority.

In a formal sense, the loss of Algeria signalled the demise of the French empire and the culmination of a long decolonisation process. But such a view neglects the psycho-social consequences of the rupture. Having lost its status as a 'Great Power' because of World War II, France had come to rely on its colonies for the preservation of its historical and cultural *grandeur*. Algeria's liberation thus provoked a crisis of French consciousness, with President de Gaulle presiding over the ceremonial end of the empire.[119]

The post-1962 period in France echoes the context of emerging democracies. The newly born Fifth Republic needed a stable foundation and could not possibly flourish on scandals and horror revelations regarding the Algerian issue. Thus the political system discouraged the prosecution and punishment, if not the simple acknowledgment, of French abuses in Algeria. However, the seriousness with which the Rwandan inquiry has recently been undertaken seems to reflect an environment favourable to a critical examination of French crimes during the Algerian War. France's present re-examination of the abuses by its forces in Algeria demonstrates that the reconciliation process is not only ongoing, but sometimes also necessary, even after a long lapse of time.

France has always kept a privileged relationship with its former North-African colonies, Algeria, Morocco and Tunisia. The annual amount of

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117   See Smith J (fn 116 above) 83.
118   Smith talks about a 'political dissonance trap' as one of the main obstacles to cease-fires. See Smith J (fn 116 above) 73-102.
119   Eftekhari S (fn 114 above) 419, 420.

money donated by the French government to these countries for development purposes is more than 330 million Euros. In addition, the presence in France of around three million immigrants from this region requires both a healthy national policy towards these communities and an attentive foreign policy towards the abovementioned former colonies and their inhabitants.[120] The relationship between France and these countries can easily reflect the type of policy on French citizens of Algerian, Moroccan and Tunisian origins. It therefore seems short-sighted to regard the international reconciliation policy (between France and Algeria, for example) separately from what is being done on the national level towards the communities of North African origin living in the country of the former coloniser. To succeed at the international level, a reconciliation policy should be implemented in a coherent manner – through policies that facilitate immigration, settling (for example housing and schooling) and integration of immigrants coming from the former colonies, as well as through international economic aid and financial support for development plans and enterprise projects in the territory of the ex-colonies.

6.5.2 *Financial support to a dictatorship or a coup: US policy in Nicaragua*

In 1979 Nicaragua's former dictator, Anastasio Somoza Debayle, and his regime were overthrown in a democratic revolution led by the Frente Sandinista de Liberaciòn Nacional (FSNL or the Sandinistas). At first, the socialist Sandinista government under the Presidency of Daniel Ortega was favourably regarded, recognised and financially supported by the United States. However, as early as 1981 the American attitude towards the Nicaraguan socialist government swiftly changed, although diplomatic relations were not interrupted.[121] Nicaragua was, and still is, of crucial importance to the United States because of its proximity to the Panama Canal. The United States feared that if Nicaragua's wave of socialism were to consolidate, the Soviets and the Cubans would become the dominant powers controlling this fundamental corridor between North and South America. Furthermore, the Reagan Administration feared that the Sandinista revolution would affect other neighbouring areas, quickly spreading socialism to El Salvador, Guatemala and the Honduras, and in the longer term, to Costa Rica, Panama and even Mexico.[122]

As far back as 1982, when the Central Intelligence Agency reshuffled the original *contras* leadership, it had already became clear that the United States was supporting the rebels in Nicaragua. It was only four years later that the seriousness of the American role in the region became

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120 The information is available on the website of the Ministère des Affaires Etrangères: http://www.diplomatie.gouv.fr within *Dossier pays: Afrique du Nord. Note de fond sur la France et le Maghreb.* Reprinted at http://www.diplomatie.gouv.fr/actu/article.asp?art = 35103 (accessed 12 May 2004).

121 For a detailed analysis of Latin America's history of transition, see Daly M 'The US and Latin America: A lost decade?' (1988/1989) 68 *Foreign Affairs* 180-198.

122 For a further discussion on the 'domino-effect' theory, see Krauss C 'Revolution in central America?' (1987) 65 *Foreign Affairs* 570, 571.

internationally recognised. In 1986, the United States House of Representatives approved the expenditure of $100 million in aid to support, directly or indirectly, military or paramilitary operations in Nicaragua, aimed at overthrowing the Sandinista government. Shortly afterwards, the real extent of the American intervention became evident when it was shown that some $10 to $30 million had been diverted from the profits the United States made through secret arms sales to Iran.[123]

The ethics of the American policy of recruiting, financing, advising, training and supplying the *contras* (rebel groups which have been charged with numerous atrocities and human rights abuses) were formally questioned in 1986 when the issue was brought to the attention of the International Court of Justice.[124] In its judgment on the matter it becomes clear[125] that the US had been responsible, not only indirectly through the actions of the *contras*, but also directly through some of its own agents, for kidnapping, torturing, raping, illegally detaining and killing a number of civilians and prisoners. Among other things, the United States was found guilty of infringing international customary law by intervening in the internal affairs of Nicaragua.[126] Yet, the Court was not able to hold the government of the United States fully responsible for the violations of the laws and customs of warfare committed by the *contra* forces in Nicaragua.[127] It carefully premised this result on the finding that it had insufficient evidence to reach a definitive conclusion on such a delicate matter. Nevertheless, the Court held it established that the United States government largely financed, trained, equipped, armed and organized the *contras*. In an effort to minimize that criticism, the Court apparently decided to avoid adjudicating the politically charged issue of whether United States government officials were personally responsible for any degree of complicity in the commission of international crimes by *contra* forces against the civilian population of Nicaragua.[128]

The international scandal caused by the findings and the judgment of the International Court of Justice triggered a new American policy of financial support to Nicaragua. At present, the United States is involved in a number of developing projects: support for justice reform projects, modernising legal codes; strengthening judicial system institutions; strengthening civil society; improving governmental transparency; and improving political participation in the electoral process through fair elections. The United States also provides grants to civil society organisations that protect human rights, and helps farmers with technical assistance and training

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123 *Ibid* 564-581.
124 The judgment of the ICJ, delivered on 27 June 1986, is available in its Report. See *Nicaragua v. USA* 1986: ICJ *International Law Reports* 76, 349.
125 The judgment of the Court on this matter is actually not clear, because, in the Court's estimation, it remained to be proven that the Reagan administration actually exercised operational control over the *contra* forces.
126 See *Nicaragua v. USA* (fn 124 above) 349.
127 For a critical assessment of the Court's judgment, see Boyle F 'Determining US responsibility for Contra operations under international law' (1987) 81 *American Journal of International Law* 86-93.
128 *Ibid* 86, 87.

aimed at encouraging crop diversification and environmentally sustainable farming methods.[129] These programmes can assist in promoting reconciliation between these states. However, the depth of the antagonism and the wounds caused by the past might be too deep for such programmes to achieve their goals. The USA's role in world politics and its economic position may also be an impediment to reconciliation.

7 CIVIL WAR THAT HAS REGIONAL ROOTS AND REQUIRES REGIONAL RECONCILIATION

7.1 Transboundary conflicts

In the past two decades, West Africa has been affected by a cycle of recurring violence and destruction associated with various national wars. Reconciliation between the groups has remained an ongoing problem, partly because issues of governance and access to and control of resources remain major obstacles.

The war in Liberia broke out in 1989 and then spread to neighbouring Sierra Leone, when the Liberian-backed Revolutionary United Front (RUF) entered the country to overthrow the Sierra Leonean government. Since its independence from the United Kingdom in 1961, Sierra Leone had been a highly unstable state. In the following years, Guinea became the unwilling host of thousands of refugees from the wars in Sierra Leone and Liberia. At the same time, Guinea played an active role in the conflicts by supporting and sheltering the LURD (Liberians United for Reconciliation and Democracy), the Liberian militia operative against Liberian President Charles Taylor. During the conflict the LURD became one of the most violent groups across the borders, responsible for some of the worst human right abuses against civilians. Many combatants came from these two countries, showing another terrifying plight of the region: the existence of a destabilizing pool of fighters ready to participate in any war available. Their survival was guaranteed through the pillaging and exploitation of natural resources and civilian goods. The involvement in the conflicts of other states was a recurrent element in the foreign policies of many neighbouring countries. President Taylor, who officially played no part in the wars in Sierra Leone and Guinea, did, in fact, give massive support to rebel armies in both countries. The same tendency can be detected in most countries of the main regional grouping, the Economic Community of Western African States (ECOWAS). Officially ECOWAS has, for a decade, tried to play the role of regional peacemaker and honest broker. However, clandestinely, things were rather different. At the height of the war in Liberia in the mid-1990s many private militias operating in Liberia were receiving aid from one or other ECOWAS member state, while ECOWAS as a community was the sponsor of a regional peacekeeping force.

129 For further details on US monetary aid given to Nicaragua, see the US Agency for International Development's website: http://www.usaid.gov. Reprinted at http://www. usaid.gov/press/factsheets/2003/03fs_nicaragua.html (accessed 20 May 2004).

In June 1998, the UN became involved in the conflict with the establishment of the United Nations Observer Mission in Sierra Leone (UNOMSIL). Its mandate was to implement the program for the disarmament, demobilisation and reintegration of combatants (DDR), to report on the security situation and to monitor respect for international humanitarian laws. The fragility of the Sierra Leonean government and the weakness of the state pushed towards the creation of a reconciliatory solution aimed at ending the conflict and establishing an all-inclusive government. In 1999, the government entered into negotiations with the rebels and signed the Lomé Peace Agreement. With the aim of 'promoting full respect for human rights and humanitarian law', the Lomé Agreement provided pardon and amnesty to 'all combatants and collaborators in respect of anything done by them in pursuit of their objectives',[130] absolving them of responsibility for the vicious crimes they committed since 1991. In particular, the same absolute and free pardon was to be granted to Corporal Foday Sankoh. Moreover, the Lomé Agreement ensured that no official or judicial action would be taken against any member of the RUF.[131] The RUF never fully complied with the terms of the accord, which soon broke down.

Shortly after the evident failure of the Lomé Agreement, the UN Security Council authorised the creation of the United Nations Assistance Mission in Sierra Leone (UNAMSIL) to replace the previous force, which lacked military power. At the same time, the United Kingdom enlarged its commitment to bring peace to Sierra Leone, while neighbouring Guinea intervened directly in the conflict by striking back at the RUF. The combination of the new UN peacekeeping force and military backup from the United Kingdom made demobilization attractive to fighters, triggering a cycle of desertion that caused the war to start fading.

Meanwhile, Guinea became the theatre of another national conflict. The Guinean government responded to the heavy fighting through reprisals against refugees and groups of civilians suspected of being mercenaries. Apart from Guinea, Senegal and Liberia are also involved in ongoing or recurrent fighting. Although Sierra Leone recently witnessed a pause in the violence, it, too, could easily fall into the spiral of war again, together with Cote d'Ivoire and Guinea Bissau. The vicious cycle of warmongering will not cease until the true causes of the conflict are addressed in the region as a whole. Reconciliation needs to be brought about between these war-ravaged countries, bringing together leaders committed to peace and giving people of different nations a chance to share their common wounds. Nigeria's stability is also threatened by its proximity to the fighting and the transboundary nature of the bordering conflicts. If the war were to spread to Nigeria, the West African issue could no longer be

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130 See the Preamble and Article IX of the 'Lomé Peace Accord. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone', 7 July 1999, available at: www.sierra-leone.org/lomeaccord.html (accessed 12 May 2005).

131 *Ibid.*

ignored. With its population of 120 million and its oil exports to the US, a conflict in Nigeria would represent a major problem for powerful and influential countries. Nigeria's first step towards helping to heal the wounds of its neighbouring countries and simultaneously preventing the intensification of social tensions within its own boundaries, has been to hand Charles Taylor over to the Sierra Leonean Special Court. This puts to an end a shameful example of impunity and is a significant symbolic step in the path towards stable peace. The prosecution of Taylor by the Sierra Leonean Special Court, after he was extradited from Nigeria following a request by the new Liberian President, Ellen Johnson-Sirleaf, thus may assist the reconciliation process in the region. However, it may have negative consequences for reconciliatory processes, possibly only in the short term, in Liberia.

At present, the relative tranquillity in Liberia and Sierra Leone provide the best opportunity in years to stabilise West Africa. Permanent stability will depend on the ability to address the causes of the conflict at the regional level. The state institutions need strengthening, while the misery of the economy should be tackled by redistributing the profits and eventually the ownership of the natural resources. Comprehensive international support, consisting of peacekeeping and reconstruction operations, is still required,[132] as is economic growth.

7.2 Reconciliation through justice

For peace to endure, much more is needed, especially in the area of resources and resource allocation and control. Human rights abuses, such as those committed against the civilian population of the region, can only be healed if reconciliation goes hand in hand with justice. In this instance justice is a moral imperative. Those who allowed the mutilations, who encouraged the raping, who backed the kidnapping, who supported the killing, have to be punished. If not, the suffering of the people will remain unacknowledged and reconciliation alone will not be strong enough to lead the area into peaceful growth.

In Sierra Leone transitional justice was addressed by a Truth and Reconciliation Commission (TRC) and is being addressed by the Special Court.[133] In the spirit of national reconciliation, the TRC dealt with human rights violations and abuses from the beginning of the Sierra Leone conflict in 1991 to the signing of the Lomé Peace Agreement in July 1999. A primary function of the TRC in Sierra Leone was to provide healing to

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132 O'Connell J 'Where interest meets humanity: How to end the war and support reconstruction in Liberia, and the case for modest American leadership' (2004) 17 *Harvard Human Rights Journal* 208, 209.

133 On the relationship between the TRC and the Special Court, Evenson concludes that the concurrent operation of the two has been complementary, assuming that such an 'uncoordinated approach will not be significantly damaging to the underlying goals of transitional justice, given the particularities of the Sierra Leonean context'. For a precise analysis of coordination arrangements in transitional societies, see Evenson E 'Truth and justice in Sierra Leone: Coordination between Commission and Court' (2004) 104 *Columbia Law Review* 730-767.

victims and perpetrators, as well as to average Sierra Leonean citizens. Its mandate included: the creation of an important historical record of the violations and abuses of human rights; to deal with impunity; to respond to the needs of victims; to promote healing and reconciliation; to prevent a repetition of abuses suffered; and to investigate and to report on the causes, nature and extent of the violations and abuses to the fullest degree possible.[134]

The Sierra Leone Special Court is an internationalised domestic court, a hybrid national and international court, and while supposedly independent of any government or organization, it is a domestic institution. The Special Court is prosecuting various categories of crimes under international humanitarian law, including 'war crimes' and 'crimes against humanity', the latter not necessarily linked to war. The Special Court is also examining other serious violations of international and national law, such as the conscription of children into armed groups and the abuse of girls. The Special Court may pursue anyone responsible for serious crimes committed in Sierra Leone, including Sierra Leonean people who live in other countries and others who supported or directed atrocities, either from within Sierra Leone or from a foreign country.

The Sierra Leonean Special Court and the Truth and Reconciliation Commission both have had numerous difficulties in reaching the inner part of the country to hear witnesses, to affirm their existence among the rural population and disseminate their findings. International funding and human resources are essential for rendering the two bodies workable and efficient. As long as prosecutions, indictments and witness hearings remain unknown to the majority of the population, reconciliation is bound to fail. However limited, justice should help Sierra Leone's national reconciliation.

7.3 The way forward

A strictly national policy of reconciliation will be inadequate to help Sierra Leone or Liberia deal thoroughly with its past ghosts. West Africa, as a whole, should become the primary objective of any foreign investment in the peaceful development of one of those wounded countries. Sierra Leone needs to reconcile with its neighbouring countries, primarily Liberia and Nigeria, but also with Guinea and Cote d'Ivoire. Here reconciliation at the national level should go hand in hand with a broader policy aimed at bringing together all the countries that, directly or indirectly, profited or suffered from the conflicts. Because the war was not confined within certain national boundaries but ravaged the entire area, reconciliation should assume a regional dimension. The regional scope of the conflicts is demonstrated by the transnational jurisdiction of the Sierra Leone Special Court.

The main obstacles to achieving reconciliation in the region, and in third world countries in general, are socio-economic injustice and lack of

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134 See Hall L and Kazemi N 'Prospects for Justice and reconciliation in Sierra Leone' (2003) 44 *Harvard International Law Journal* 287-300.

access to resources. Redistribution of natural resources, diamonds, riches and political power all need to be addressed before any reconciliatory policy can succeed. Corruption is a major problem and hindrance for a democratic system. New national symbols are all-important in the creation of a popular feeling of belonging to a war-free state, a state which condemns the horrors of the past and is able to defend its people. Before the people can heed the call to reconcile, they should feel that there is the possibility of sharing resources, government jobs and military power. Creating real opportunities for civic participation and promoting a sense of inclusion in all these key areas of civil society are cornerstones of stable peace.

Underdevelopment, unemployment and conflict regarding the definition of borders are some of the worst problems that plague Africa and they all undermine the achievement of national, regional, ethnic and political reconciliation. Still, the conflicts in Sierra Leone, Guinea and Liberia were not triggered by border disputes. The various governments in the West African region supported armed groups in neighbouring states, not as a means of contesting the sovereignty or the internationally recognised borders of other states, but as a regular instrument of foreign policy. Political, military and economic elites support warlords and their militias in exchange for control of natural resources. The goods are then sold internationally and the revenues are used as payment for new arms. For example, the war in southern Senegal is linked to Liberia through trade in weapons and marijuana. The international trade of goods brings a global dimension to the West African conflict – the diamond trade, for example, reaches places as far away as Angola and Russia. Ellis refers to this extension and international interconnection of the West African conflicts as a 'new generation of wars'.[135]

Through the global media, the fighting forces of these 'new wars' are alert to what is happening in the rest of the world, particularly in other conflict zones. It makes them aware of their power over international organisations and statutory institutions. In contrast to the stereotype of the small-scale, context-less African conflict, the fighting in Sierra Leone and Liberia is part of a regional war with global connections. Hoffman also believes that the warlords' knowledge of the effect of the atrocities on the global community was one of the triggers for them to worsen their behaviour towards civilians, because the combatants had the perception that 'those who were most feared, who committed the worst abuses, would be those who received the greatest rewards'.[136]

The very nature of the conflicts renders former combatants one of the worst problems for achieving lasting peace and reconciliation. An array of initiatives is required to prevent fighting from recurring. Ideally combatants should be re-integrated in the social community, but without a prior official sign of atonement, their victims would not accept their presence in their day-to-day life. The governments need to start healing the wounds of

135   Ellis S 'War in West Africa' (2001) 25 *Fletcher Forum of World Affairs* 33 34.
136   Hoffman D 'The civilian target in Sierra Leone and Liberia: Political power, military strategy, and humanitarian intervention' (2004) 103 *African Affairs* 215-218.

society by bringing the worst criminals to justice, by establishing national holidays and devoting national funds to the memory of the victims. Former combatants have to be re-educated in the moral and psychological values of their fellow citizens. Unless combatants can be provided with alternatives to their prolonged strategy of abuse used to survive during the wars, such as assurances of employment, the possibility of reintegrating them seems small. West Africa is trapped in a cycle of violence and injustice that does not foster reconciliation. Disarmament and demobilisation of the cruel militias is only the first step in the process towards reconciliation and development. The frustration, the poverty, the unemployment, the social and political discontent that fuelled the wars all have to be addressed before peace and stability can be reached.

Military intervention and security arrangements might bring temporary peace,[137] but stable peace in the region requires reconciliation as well. In addition to a strong military force to back up the peacekeeping force and foreign investments to restructure and retrain the army, Sierra Leone and Liberia both need the continuation of programmes preventing illegal exports of natural resources that funded the wars. Given the financial difficulties faced by a region ravaged by years of horrible conflicts, foreign funding is essential to sustain all these initiatives. The international reconstruction efforts should be directed at facilitating the return of refugees, rebuilding the state, encouraging good governance and supporting development. Foreign countries that have continued importing diamonds from the region without questioning their provenance should be the first to invest in the future development of the area. Belgium, for example, has continued importing diamonds from Liberia throughout the conflict, even though it was clear that the diamonds came from neighbouring Sierra Leone because the amount well exceeded the mining capability of Liberia.[138]

O'Connell believes that:

ending wars often requires persuading or forcing predators who benefit from them to stop supporting fighting factions. The West African war illustrates how warlords and politicians can profit from war. Diplomatic pressure and targeted sanctions (such as travel bans on them, their families, and close associates) can dissuade such people from disrupting a newly attained peace in the short-term, but persistent spoilers may need to be removed permanently through prosecution and imprisonment. The international community is just beginning to recognize this aspect of ending wars, which is especially relevant in Liberia. The Special Court for Sierra Leone is explicitly mandated to pursue people who fuelled the war.[139]

If both Nigeria and Cote d'Ivoire would support a policy of regional reconciliation, it could also partially reconcile historic differences between English and French-speaking African countries. However useful it may be

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137 Savage T and Rahall J 'Sierra Leone: History hidden by horror' in Doxtader E and Villa-Vicencio C (eds) *Through fire with water: The roots of division and the potential for reconciliation in Africa* (2003) 50.

138 *Ibid.*

139 O'Connell J (fn 132 above) 224.

to keep the reconciliatory process rooted in the West African context, regional peacekeeping forces need to be supported by foreign forces. Even though foreign intervention is frequently perceived as an unwanted, intrusive and even damaging presence, the widespread involvement of local soldiers, who often took part in the most vicious crimes against the population, make it compulsory. As O'Connell puts it: 'In countries whose armed forces are militarily weak or prone to disloyalty or corruption, internationally supported military reform can reduce the chances of war recurring'.[140] To enhance the reconciliatory aim of bringing together countries with differing colonial histories, a joint force composed of French and English troops is recommended.

8 CONCLUSIONS

The discussed models of reconciliatory policy could be useful in situations where international relations are at stake and are threatening not only peaceful cohabitation and collaboration between two neighbouring states, but also global peace and tranquillity as a whole. The examined realities of reconciliation demonstrate that such a transformative process involves ongoing, dynamic, long-term confrontation of the lacerating conflicts and the painful past. Diversity should be expected and accepted and creative new institutions should be tailored to the reconfigured relationships. As a process of political and societal change, reconciliation must also find broad, not necessarily unanimous, support among publics and include extensive, regularised and structural networks of bilateral ties. As was shown, reconciliation at the governmental level, which would allow and promote reconciliation at the societal level, is a precondition for successful reunification. In the past, contact between governments was essentially political – many of the examined reconciliatory policies have been initiated and maintained only at government level, without considering the reality of modern policy-making. This is partly why reconciliation has often only remained an empty concept, devoid of public participation and widespread individual involvement. In contrast, modern policy-making, as a multifaceted organism, works through multiple institutions, many of which are not directly bound to the state's political apparatus. In today's world, multilateral contacts and intergovernmental organisations provide diverse channels for commercial, economic, cultural, humanitarian, environmental and trade issues that have increased the cooperative machinery in our global community.

Societies seeking reconciliation should consider the compatibility of fundamental values relevant to political decision-making. The two states attempting to reconcile should preferably be on the same level and share the same values, as far as possible. Because democratisation is a vital requirement for true reconciliation, they should ideally have the same popular support demonstrated through fair and democratic elections. Only if the government enjoys political legitimacy will reconciliation be

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140   *Ibid* 223.

supported by the population and be engaged in earnestly. Although the policy should eventually develop beyond political beliefs, it is essential for it to be rooted in a legitimate democracy. A successful policy of reconciliation develops the capacity of governments to respond to each other's needs, messages and actions efficiently, swiftly and adequately, obviating the need to resort to violence. [141]

Attaining reconciliation can take many years to achieve in some states and may even remain elusive. France and Germany are still showing their engagement in and support of the reconciliation process. It is an on-going, perhaps never-ending process that must be nourished constantly, at all levels (societal, political, economic, educational and artistic). For a reconciliatory policy – national or international – to work and result in stable peace, it must be kept active and alive for as long as it takes. Ultimately reconciliation must become a way of life. It can be compared to an ever-burning fire, which can keep people warm throughout their daily life, be a sparkling light in darker times, and illuminate the path to a brighter way of living.

In the Franco-German case the policy seems easier to identify because there are state bodies executing it at a visible level and bilateral institutions which can be set up for a dynamic exchange interaction. Even if two different states do not wish to unify and want to maintain their separate identities, ongoing reconciliation remains indispensable to overcome past antagonisms and build common institutions. In contrast, where reconciling countries seek reunification, integration is the primary goal, so a reconciliatory policy can easily be misrepresented as aiming only at political reunification. While such integration 'at home' (instead of on the international stage) may seem easier to accomplish, it could actually be more challenging, because, once reunification is achieved, reconciliation becomes less visible and can unravel itself between the creases of daily life. While reconciliation between countries that remain different countries is more formal, a matter of diplomacy, institutions and visible achievements, reconciliation within a newly unified people is a delicate matter of coexistence.

This is even truer in those cases in which reunification follows a civil war. In fact, internal war ceasefires are not the same as interstate truces. They are not made between ongoing, functioning agencies that can apply the provisions of the agreements while running their own affairs. Rather, they are made between weak, exhausted, wounded parties without the power or authority to monitor their implementation. For conflict-management devices to work, the states must be restored.[142] In Europe it even took several centuries for some states to complete a transformation that evolved them into democracies. Such a temporal framework should be heeded when dealing with a reconciliation that entails reunifying two completely different political systems. One of the two may not yet be a

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141 Rock SR (fn 24 above) 4.
142 Zartman W 'Cowardly lions: Missed opportunities for dispute settlement' (2002-2003) 18 *Ohio State Journal on Dispute Resolution* 1 at 18.

democratic state and would therefore require a comprehensive transformation. Such a change cannot be sudden and fast, because the introduction of a liberalised economy and a plural political scene does not necessarily bring more political participation or more economic wealth. Hence a divided country seeking reunification must implement a reconciliatory policy before political unity can be attained; to accomplish social and emotional unity, it should become even stronger afterwards.

In some cases the promotion of democracy can be seen as a method of enhancing peace between and within states, as part of a broader policy of reconciliation. In divided societies, however, the adversarial politics of democracy can sharpen confrontations and conflicts instead of fostering greater tolerance for different interests and opinions. As Robert Dahl has noted: 'In democratic countries political conflict is not merely normal, it is generally thought to be rather healthy'.[143] Like democracy, capitalism also encourages conflict because it creates inequalities that have historically fuelled resentment and confrontation. Regardless of a country's level of economic development, highly unequal distributions of wealth appear to be strongly associated with violent political conflict. The advanced industrialised states have responded to such issues by implementing welfare policies designed to redistribute income to poorer segments of society. Where two different economic and political states want to unify, or particularly where a communist system is absorbed into a capitalist one, this strategy should be employed. The practical examples show that where a communist country has been absorbed by a capitalist state, the latter must build in a strong welfare system to sustain the social tissue of the absorbed country and water down potential social collisions and conflicts. The more developed, powerful and/or absorbing country must take care not to place the principal burden of adjustment on the poorest and most vulnerable groups of society, because this could fuel political instability and corrode reconciliation. The developmental stage of democracy in the particular country should thus form the parameter in evaluating the probability and possibilities of the reconciliation process, and patterns of diplomacy and cooperation should be modified accordingly. In some cases, dividing warring parties can be more successful in lessening tensions and preventing further disputes than attempting to reconcile them under a common government.[144]

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143 Robert Dahl's statement is cited after Paris R (fn 87 above) 74.
144 Paris R (fn 87 above) 80.

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