Articles

Conflicts of Justice – An Analysis of the Role of the International Criminal Tribunal for Rwanda

I. Introduction

As long as the problem of war has existed, so too has the problem of reconstructing societies in the aftermath of war. The question of how to address legacies of political violence is often a primary concern for countries emerging from internal conflict and massive human rights abuses. Many states, particularly those that have made transitions toward democracy in the current Third Wave of Democratization, have become increasingly aware that creating mechanisms of accountability to address the political violence of the past is an integral part of forging reconciliation and establishing peaceful political orders. Accountability, however, can have vastly different meanings and different implications depending on the form it takes and the social and political context in which it is introduced. Indeed, accountability is not a cure-all. Processes of accountability may threaten a nation’s stability in large part because the authors of human rights abuses often continue to play a prominent role in politics. This threat may prompt leaders to curtail the accountability process, as in the Argentinean case, or may lead the electorate to choose amnesty over accountability, as in the Uruguayan case. In what circumstances different processes of accountability aid the process of reconciliation and democratization and in what circumstances they may undermine them is a matter of debate and empirical research.

A critical dimension of this issue is the role of the “international community,” particularly international criminal tribunals, in domestic processes of rebuilding and reconciliation. Through an examination of the Rwandan case, this article seeks to assess the role that international criminal tribunals might play in the aftermath of intra-state conflict and human rights abuses. In this paper, I suggest that the capacity of the International Criminal Tribunal for Rwanda (ICTR) to aid rebuilding in Rwanda has been significantly limited by three different types of conflicts with the Tutsi-led Rwandan government that have undermined the Tribunal’s legitimacy in the government’s eyes. First, the most formidable conflict between the ICTR and the government concerns philosophical differences over what constitutes the proper punishment for genocide. This conflict has its origins in the different orientations and interests that distinguish international humanitarian law from Rwanda’s legal system. Whereas the ICTR grows out of a tradition of international law based on the protection of universal human rights and the concept of an independent judiciary, the Rwandan court system emerges from a colonial and post-colonial history of inter-ethnic division and zero-sum politics characteristic of a number of other African states. Second, political conflict over the international community’s failure to intervene during the genocide has been a persistent source of resentment in Kigali that has in turn undermined the legitimacy of the United Nations and the ICTR in the government’s view. Third, pragmatic conflict over the manner and pace in which the ICTR administers justice has further eroded the credibility of the Tribunal in Kigali. Today, however, six years after the ICTR was established by the United Nations Security Council, the cooperation between the ICTR and the Rwandan government has increased and signs of overt conflict between the Tanzania-based court and Kigali have decreased to some degree. The first convictions at the Tribunal appear to have tempered the government’s pessimistic view of the court. As the Rwandan case shows, the conflict and disagreement between international tribunals and particular governments need not be static and unchanging.

In the remainder of this section, I will place the Rwandan case in a larger context of international-domestic interaction over responses to human rights abuses. In section two, I will assess the Tribunal’s mission from the perspective of the international community. In section three, I will analyze the three-fold conflict between the Tribunal and the Tutsi-led Rwandan government and discuss how this conflict has undermined the legitimacy of the Tribunal within the government. In section four, I will summarize my findings.

To understand the ways in which international criminal tribunals may affect states and their judicial and reconciliation processes, it is first important to place this question in a larger context of international-domestic interaction over responses to human rights abuses. As shown in Table 1, international and domestic actors often differ sharply over how to respond to the aftermath of political violence. This typology – which includes instances of actual and potential conflict – suggests that the international community and certain states may frequently clash over the pursuit of different interests and different norms. The ways in which these clashes play out is critical to the construction of human rights norms, state building, and the continued interaction between international and domestic actors.

As shown in the first line of Table 1, a decision by the international community to prosecute human rights violations,
for instance, may conflict with a state’s decision to seek full or limited truth about the past without prosecutions. Such a conflict would occur if international actors sought prosecutions of former leaders of the Apartheid government against the wishes of the new South African state that has offered amnesty to those who publicly disclose the extent of their participation in political crimes. The case of Guatemala – in which a recently released truth commission report was the product of domestic and international collaboration – shows that agreement between international and domestic actors on how to respond to human rights abuses is possible. Another type of conflict arose in Spain’s efforts to extradite General Augusto Pinochet, the former Chilean head of state, for crimes against humanity committed during his seventeen-year military reign. This quest for accountability conflicted with Chile’s prior decision to issue a general amnesty and to seek a partial accounting of political crimes through its Truth and Reconciliation Commission. Another potential conflict pits the international community’s attempt to uncover the extent of human rights abuses against a country’s bid for impunity. Such was the case following Laurent Kabila’s 1997 military victory over President Mobutu Sese Seko in the former Zaire. Following Kabila’s victory, the United Nations began to investigate allegations of widespread massacres of Rwandan Hutus in the eastern and northern parts of the Congo. But Kabila’s interference brought the investigations to an early halt.

This typology provides a sense of the type and range of international-state conflict that may occur over how best to address human rights abuses. It is important to note, however, that even when the international community and a particular state in which the human rights violations occurred agree on the same general approach, they may still clash over key elements of each other’s response. The international community’s conception of justice, for example, may be at odds, in part or in whole, with the type of justice pursued by that particular state. This is precisely what has occurred in the aftermath of the Rwandan genocide. While both the international community and the Rwandan government favour prosecutions for suspected genocidaires, their notions of what constitutes justice and their approaches to the judicial process have differed significantly. This conflict undermines the Tribunal’s legitimacy and interferes with its ability to positively influence reconciliation and rebuilding.

II. Assessing International Criminal Tribunals

International criminal tribunals can be assessed in two complementary ways. First, there is the question of what international tribunals can accomplish internationally. In other words, how, if at all, might tribunals influence the global formation of human rights norms as well as a community of like-minded states? The second question – and the primary focus of this paper – concerns what tribunals can accomplish domestically. To discern what tribunals may achieve domestically, I will focus on two general sets of inquiries. First, I will briefly analyze the ICTR’s progress to date. Second, I will evaluate how the Tutsi-led Rwandan government perceives the Tribunal. Since I am ultimately concerned with the Tribunal’s impact on the government, I will pay more attention to this line of inquiry. Even if Tribunal officials and members of the international community come to regard the ICTR as a success, the key question in this paper is whether the Rwandan government considers it a success. Indeed, justice does not only concern the reality of what transpires inside the courtroom, but how this reality is perceived beyond its walls. In order to be a relevant factor in domestic rebuilding and reconciliation, the Tribunal must have a substantial degree of legitimacy in Rwanda. The ICTR’s task is far more elusive than that of an organization such as the United States Agency for International Development which seeks to influence a country with the direct transfer of material benefits. This is because the ICTR seeks to influence Rwanda through the “transfer” of the amorphous commodity of justice. In essence, the challenge that the ICTR faces vis-à-vis Rwanda is one of legitimacy.

In this section, I will briefly evaluate the Tribunal’s efforts as viewed by international actors. Evaluating the ICTR’s attempts to carry out its mission relies, to a large extent, on whether one sees the criminal dock as half full or half empty. Until recently, many commentators have viewed the dock as half empty due to a range of operational problems that have undermined the Tribunal’s efficacy and reputation within and beyond Rwanda’s borders. Infrastructural problems and administrative difficulties have plagued the legal body, especially during its early years. These organizational factors have hampere...