

INTERNATIONAL JUSTICE, PEACE AND CRISIS MANAGEMENT:
THE EUROPEAN UNION AND AFRICA

NICHOLAS WESTCOTT
Managing Director for Africa, European External Action Service

Delivered at
Conference on Experiences and Reflections from Africa and the EU 50 Years after
Dag Hamerskjold

The Hague, 9 November 2011

One of the ironies of human existence is that everywhere mankind yearns for peace, and yet in so many places is still at war. Why is this?

Conflict and law

From a historical perspective, conflict started as a local activity, between small groups in a limited geographical space. Gradually over time it became global, so that conflict in one region spread to the other side of the globe. In the 20th century such global conflicts became so destructive that they were simply too damaging a way of settling disputes – any benefit was hugely outweighed by the cost. Instead the process has gone into reverse, and the bulk of conflicts have again become local.

This process seems to have happened independently of the evolution of the rule of law. Law defines the way in which people can resolve conflicts – of interest, commerce, property, family matters – peacefully, implemented through societal and governmental structures, whether by clan elders under a mango tree, or police and magistrature in a court house. Logically, the rule of law should bring greater peace internationally as well as domestically.

Since the Treaty of Westphalia, international law has evolved as a way of resolving international disputes without recourse to war. By the 19th century this jurisprudence had become sophisticated, and yet war continued to be a regular feature in the relations between states – albeit often the unequal conflicts between imperial powers and soon-to-be subject states. The laws of war tended to regulate conduct during war rather than prevent the outbreak of conflict. ‘Justice’ tended to be meted out on the battlefield, or by the victor afterwards.

The global wars of the 20th century persuaded people that stronger structures were needed to enforce the rule of international law. Thus was born the UN, the international financial institutions, the GATT (becoming the WTO), and – after a short while – the European Union.

The European Union

The European Union was founded to prevent conflict between the nations of Europe, in which it has been astonishingly successful. The rule of law lies at the heart of how we behave and manage our relations. It is one of the core values underpinning what we do internally, and how we seek to relate to other countries and regional organisations internationally. We have structures that support the peaceful settlement of economic and political differences, and support such structures globally. This includes, of course, the International Criminal Court (ICC).

The European External Action Service is the newest part of the EU's structures. Its objective is to help the EU and its member states act with greater coherence and impact throughout the world. Our aim is less to speak with a single voice than to deliver a single message in partnership with our member states. It is not yet a year old, and is still a work in progress. Its objective is one that Dag Hammerskjold would have recognised – to achieve peace and prosperity through partnership with others. And in that we are as persistent, even relentless, as Hammerskjold was in his time.

Conflict in Africa

But as Hammerskjold found, implementing these principles in Africa has been challenging. In the 50 years since he died – the 50 years of African independence – we can count the violent conflicts *between* states in Africa on the fingers of one hand. But to count the number of conflicts *within* states – coups, rebellions, mutinies, repressions, civil wars and terrorist attacks – would take the fingers and toes of everyone here.

Why? And what is the role of international justice in dealing with the internal affairs of these countries?

Africa is an example of interrupted political development. There was a normal process of political evolution taking place on the continent until the arrival of external actors in the shape of merchants, missionaries, miners and military adventurers. Africa's domestic political structures could not cope with the impact of globalisation. They crumbled or were crushed, and replaced by colonial administrations which accelerated the integration of the continent into the global economy. But these administrations themselves could not last. They imposed a rule of law, but neither the law nor the administration of it was accountable to the people on whom it was imposed. Nationalism was a natural reaction to this, and eventually made colonial rule unsustainable after – in the great historical scheme of things – a pretty short period.

Nationalism was a necessary, but not sufficient condition for building stable political structures on the continent. Nevertheless, the OAU and its successor the African Union have been remarkably successful in preventing conflicts *between* African states, despite the illogicality of the borders drawn almost randomly on the map by the colonial powers. But it has been less successful in preventing conflict within countries.

To build a stable political structure in any country you need three things: accountability, balance and (above all) trust. *Accountability* so that people feel their rulers are taking account of their views and making good use of the state's resources on their behalf. *Balance* so that no one group in the country feels excluded, on ethnic, class or regional grounds. People who feel excluded from a state will try either to take it over or to break away and create their own. So a way of ensuring balance is essential. Most important, people will only be willing to live together in a

state if they can *trust* their fellow citizens – trust them not to abuse power, not to exploit them unfairly, not to act outside the law. Putting in place just, efficient and accountable institutions is essential to building that trust. This can take a long time to build. In Europe it took centuries. Let us hope in Africa it takes less.

A critical part of building a stable political structure is to manage the problem of *succession*. How can power be passed from one generation to another, or from one person or group to another, without conflict? We all know that power is addictive. Very few people will give it up voluntarily. So rules must be created, enforceable rules, to make it happen. For centuries in Europe, the hereditary principle ruled, though even that gave rise to plenty of conflict (the Wars of Spanish Succession, Austrian Succession etc).

The problem of succession is closely linked to the problem of *impunity*. He who controls the state controls the levers of power – the law, the purse and the force of arms. People in power will often come to feel that they *make* the law rather than being *subject to it*. This makes it easy, and tempting, to carry on, and to carry off a disproportionate share of the country's wealth. Such people help themselves, and then protect themselves. In the worst case, rulers feel at liberty to kill their own people in order to stay in power. A lack of accountability permits it, but it effectively destroys trust and undermines a ruler's legitimacy.

What is particularly striking is that those African countries which have cracked the problem of succession are amongst the most peaceful and the most successful in reducing poverty. Think of Ghana, Mozambique, Botswana, Zambia, Tanzania, perhaps South Africa. Some of these have been through their own national traumas and emerged wearied but wiser.

But there are plenty of examples where the failure to establish a process for succession has precipitated conflict. If there are no rules, and no accountability, people will sooner or later take the law into their own hands. Gaddafi was a sad and inevitable victim of this. Others may follow. But this is one of the areas where the international community and international justice can help avoid such situations collapsing into conflict and encourage a peaceful transition.

Africa and international law

Two examples will suffice to illustrate this.

The Democratic Republic of Congo (DRC), where Dag Hammarskjöld met his own end, is a classic case of a country whose autocratic ruler hung on too long and failed to develop a structure that enabled peaceful succession. Even before Mobutu's final illness, the country was suffering a collapse of law and order. In this case the situation was complicated by the Rwandan genocide and subsequent war in the Great Lakes, a crisis more than any other that persuaded the international community it could not stand by and watch such events within one country. This led to the establishment by the UN of the "right to protect".

In the DRC, the people lacked any institutional means to protect themselves or enforce accountability. The international community has intervened to help, with the UN and EU amongst the largest contributors. With the support of the UNSC, MONUC/MONUSCO's presence has been indispensable in managing the two electoral processes since the transition, including that due this month, which the EU will again observe in strength. The ICC's existence enables cases against Thomas

Lubanga and others in DRC, as well as Jean-Pierre Bemba for his atrocities in the Central African Republic and Joseph Kony of the Lord's Resistance Army, to be pursued where national courts would not be able to do so.

Secondly, Cote d'Ivoire is another case of the disasters that follow a failure to establish clear rules of succession. Houphouet-Boigny stayed on too long, and in the 20 years since his death the situation in Cote d'Ivoire went from bad to worse - until this year. Administration decayed and the rule of law became a hollow phrase, with half the country under the control of ComZones responsible to no-one and the other half under the corrupt rule of a small clique. Again with the support of the UNSC and UNOCI, but also following the crucial political process brokered by President Compaore that led to the Ouagadougou Accord, a temporary peace was established that enabled a transparent electoral process to take place, fully monitored, which the clear loser refused to acknowledge. His attempt to manipulate the domestic legal structures failed, but only because the true winner was ultimately able to use force to establish his right to rule.

It will take many years to re-establish an effective and honest administration and impartial rule of law in the country. But meantime, Laurent Gbagbo must be tried for the crimes he and his supporters committed. The ICC is available to do this, and has been invited by President Ouattara to take on the task. This will set an example for other African leaders that believe they can remain in power whatever the majority of their people think.

The challenge here, as elsewhere, is to strike the right balance between justice and reconciliation. But as President Compaore has said, a degree of justice is necessary to enable reconciliation. And once justice has been seen to be done in a few cases, the *threat* of it will have a beneficial effect everywhere.

*

In an ideal world, every country would have a judicial system adequate to the task of ensuring justice on all, high and low. But the world is far from perfect. While we wait for that happy state of affairs, the international community can help by setting norms and providing mechanisms to ensure that justice can be done, even in the most lawless environments, and that even the most powerful can be held to account.

If the ICC did not exist, we would have to invent it.

And Dag Hammerskjold, were he to see how things have changed since his day, would be proud of what we have done.

Thank you.