

MAY THE PRINCIPLES OF RESTORATIVE JUSTICE BE APPLIED TO INTERNATIONAL CRIMINAL LAW?

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Abstract

The concept of restorative justice is generally adopted to indicate a specific approach to criminal justice which does not merely punish the offender but aims at restore the equilibrium broken by the criminal offence. This main aim is pursued through a specific path involving both the victim and the offender. It can be considered as a substantial form of *restitutio in integrum* which has the equilibrium and the well-being of the people involved as main objectives. It differs from the classical concept of *restitutio in integrum* as it does not merely try to re-form the objective *status quo*, but the focus is actually on the people involved in the crime at hand, in the belief that the commission of a crime breaks a social equilibrium. This approach aims at restoring the pivotal equilibrium in order to preserve peace and security within the society. Could this method be applied to international criminal law?

International criminal law is characterised by the inhumanity of humans against humans. This inhumanity is not merely the cause of the crimes committed but also the origin of future feuds within the society. The institution of International Criminal Tribunals can provide for verdicts on the breaches of criminal law, but it has not been a sufficient response to ethnic and cultural issues so far. Logically, trials deal with the rule of law, not with social matters, thus tribunals seems to be inadequate in order to really solve the inner problems of situations which end with international crimes such as genocides. An example of the deficiency of the system adopted so far is the Rwandan genocide. Developed between April and July 1994 as the latest clash of cultural syncretism between the Hutu and the Tutsi with approximately 800000 estimated victims, it has been only superficially solved by the decisions of the International Criminal Tribunal for Rwanda (ICTR) instituted by the United Nations with the Security Council resolution S/RES/955. The truth is the ethnic issues on the basis of the genocide never ended and it had an impact on the stability of the whole Great Lakes region.

This evidence shows how it would be important to establish a new method in crisis resolutions able to reveal untold social issues, deal with them involving all the parties concerned and re-create a lasting social equilibrium. The “nightmare” of the *homo homini lupus* which becomes real in case of crimes against humanity cannot be faced looking only at short term solutions. To really defeat the threat of these horrible crimes the international community has to deal with their inner reasons.

Restorative justice, with its attention to individualities and a deep social approach, may be the right method to fulfil this purpose. The following is an analysis of its possible application to international criminal law.

Keywords: Restorative justice, Criminal offence, International criminal law, International community.