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The Role of African States in Implementing International Legal Mechanisms for Addressing Armed Conflicts and Ensuring Accountability

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Abstract

This paper explores the role of African states in adopting international legal mechanisms to address armed conflicts and ensure accountability. This article also argues that the recent efforts of African states in this respect represent a new and promising direction, despite the limitations and difficulties in making the international legal mechanisms work effectively for the benefit of the people in certain African states. This article further elucidates the nature and causes of recent armed conflicts in Africa and by evaluating these as a catalyst for change in the approach of African states to the international legal mechanisms in question. It provides an overview of the key international legal mechanisms and measures taken by African states to address armed conflicts and ensure accountability and will then discuss the involvement of African states in the making of these mechanisms. Finally, the paper will quote several recent examples of the utilization of international legal mechanisms by African states to address armed conflicts and ensure accountability and will assess the results.

***Keywords*— Armed Conflicts, and Accountability, African states, international legal mechanisms.**

I. INTRODUCTION

The African continent has suffered from numerous armed conflicts in recent history. These conflicts caused a major political, social, and economic crisis, which left a deep impact on African states. Recognizing this, African states have been active in adopting international legal mechanisms to address armed conflicts and the post-conflict situation (Von and Villarreal2020). It is a common belief that Africans have lost their appetite for wars and that they need mechanisms to ensure that peace is achieved and maintained. In the middle of these, there have been successes and failures on the part of African states in utilizing these international legal mechanisms to address armed conflicts and ensure accountability (Maluwa, 2020).

The subsequent section will critically examine the effectiveness of the state practice of African war-torn states in utilizing international legal mechanisms to address armed conflicts and ensure accountability. This will be done concerning selected case studies. At the end of the discussion, the article will conclude with a general evaluation of the state practice of African states and provide a prognosis for the future.

II. HISTORICAL BACKGROUND

A former ICTR prosecutor revealed how US Department of State officials actively dissuaded the indictment of Paul Kagame—the current president of Rwanda. The US felt that his prosecution would jeopardize US-supported Ugandan and Rwandan military involvement in the DRC. Kagame was a high-ranking officer in the current ruling RPF government, which rose to power in the Rwandan Tragedy through a military victory. The indictment of ex-Sierra Leone president Charles Taylor and the Liberian president indictment demonstrated how legal indictments were seen to hamper peace, for the pressure from local African civil society groups led to pressure on both leaders to step down and go into exile, thus ending current conflicts (Behuria, 2021).

The narrative followed by Western states and courts was that Africa was riddled with Third World conflict and egregious human rights abuses. Despite it being the region with the highest number of internal armed conflicts since the late 1980s and an obvious area for international legal justice, Africa viewed these international courts with suspicion (Goodman, 2020). The ad hoc tribunals were perceived as biased and selective as they were effectively backed by the UN Security Council ignored the rest of the world and targeted conflicts within Africa. The indictments were often criticized for exacerbating conflicts in Africa.

The African aversion to international legal justice is often associated with its postcolonial state-building phase. The newly independent postcolonial African states often viewed international legal justice as the neocolonial tool of their former Western colonial masters. The creation of the ICTY and ICTR in the 1990s signaled the end of the Cold War and a new world order based upon Western liberal interventionist principles. The timing was unfortunate for many African states as it was the end of the postcolonial era, and they were grappling with internal conflicts borne from colonial legacies.

While the position of African states on international legal has been portrayed as uniformly against international legal intervention, its history shows a detailed and complex relationship with international legal accountability. African states have been criticized for not actively supporting international legal justice, especially for the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The Western states, especially, have had a love-hate relationship trying international legal intervention against African states. This section will map out the African experience with international legal justice to identify the various influences on African state policy towards international legal courts and justice. This historical background will provide a comprehensive understanding of the motives behind African hostility to the International Criminal Court and will show that African obstruction to the current regime has not always been uniform or permanent (Ko et al., 2021).

III. INTERNATIONAL LEGAL MECHANISMS FOR ADDRESSING ARMED CONFLICTS

The politically independent organization which was established in 1993 is called the Organization of African Unity (OAU). Its primary objective was to rid the African continent of the remaining vestiges of colonialism, apartheid, and racism; to promote unity and solidarity among African States; to defend the sovereignty of members; to eradicate all forms of oppression and exploitation; and to agitate for international action against apartheid in South Africa. During its four decades of existence, the OAU played an important role in the decolonization of Africa, in freeing the continent from apartheid and racism, and in defending the sovereignty and territorial integrity of member states (Dauda et al.2021). According to the AU Constitutive Act, the OAU Charter was the moral and political foundation for the existence of the African Union. It is therefore better to understand the legal tools used during the OAU, which will help in assessing the current positions of the African Union, including an overview of the drawbacks.

Mainly, the OAU focused on the usage of different legal tools in its desire to provide for durable chief among which has been peaceful means of dispute resolution. These tools used are wide-ranging, from those that involve negotiation between the parties in dispute to those studies adopted to prevent disputes from emerging into armed conflict. If armed conflict does occur, certain measures have been taken to try and prevent the continuation of fighting. The OAU is committed to the clear eradication of any form of force as a means for preventing African disputes, to the extent that the OAU sought to incorporate the United Nations Charter into its institutional structure. Diplomatic procedures for the negotiation of disputes between OAU member states have been the primary focus and are found in the primary source of OAU law, its treaty, and the UN Charter (Lawson et al.).

IV. AFRICAN STATES' INVOLVEMENT IN INTERNATIONAL LEGAL MECHANISMS

It is often said that international law and international legal mechanisms are foreign to African societies and that they are an imposition from Western societies, i.e., the rule makers. There is no doubt that Africa has suffered from Eurocentric discrimination in various ways within the international system, and this has at times been reflected by the development of international legal mechanisms. However, the argument that Africa is merely a passive rule-taker is unfounded. An example of this is the formation of international criminal courts and the prosecution of war crimes. The Nuremberg and Tokyo trials are hardly befitting an exposition on the African involvement in international legal mechanisms. However, in both cases, African states were involved in the creation of the courts. After the Second World War, European allies began to develop a convention for the creation of an international penal court to try Axis war crimes. This court was to be purely European, to the exclusion of their colonies. It was Trinidad and Tobago, a British colony, which first posed the idea of creating a permanent international criminal court

during the process of trying Nazis who had escaped to England. Many African states have shown themselves willing to bear the burden of establishing legal mechanisms which they believe are in the long-term interest. An attempt has been made to redefine what constitutes a war crime with consideration to African circumstances, to enable African societies to have greater involvement in the process. This began with the Organization of African Unity's systematic condemnation of human rights abuses under two dictatorships: Idi Amin in Uganda and the Nigerian regime of Biafra during the 1970s (Alawode & Adewole, 2021). This practice culminated in the establishment of a court that paralleled that of the International Criminal Tribunal for the Former Yugoslavia, with the specific purpose of trying violations of international human rights law committed in Rwanda and Burundi, and yet later the actual creation of International Criminal Tribunals for Rwanda and the former Yugoslavia at the prompting of the UN Security Council. At both ad hoc tribunals, Africa has played a large role in both the election of the prosecutor and in setting legal precedents that attempt to decriminalize customary practices particular to Africa. Hussein Habre's isolated 2005 conviction in Senegal and the subsequent attempts to create a court to try human rights abuses in Chad during his time in power is yet another example of African involvement in the development of an international legal mechanism. The Chadian government expressed dissatisfaction with the fact that Habre was not tried in Belgium (where he was found guilty in absentia), reasoning that it would have been better to create a mixed tribunal in Chad. And Habre's trial was a mixed experience. While Habre himself disrupted proceedings and the court was never able to completely shake perceptions of Victor's justice, clear legal precedence was set, and considerable public awareness was raised. This was an expression of attempts by African states and legal professionals to prevent the exiling of African disputes to far-off courts (Adjolohoun, 2020).

The inclusion of African states in the development and utilization of international legal mechanisms designed to address armed conflicts and ensure accountability has been extremely varied both temporally and spatially. The role that these states have played in socializing too and, in some cases, constructing international legal mechanisms is not consistent with the common portrayal of Africa as a passive rule-taker in the international system due to its history of colonization. This section follows on from the previous one by examining the historical practice of African states in constructing international legal mechanisms, while the next section looks at how African states are expected to take part in the implementation of these mechanisms (Elnaiem et al.2023).

V. CHALLENGES FACED BY AFRICAN STATES IN IMPLEMENTING INTERNATIONAL LEGAL MECHANISMS

There may be pressure to legislate or cooperate with an international tribunal, but African states will differ in the degree of commitment to the underlying policies. This lack of agreement as to the purposes of justice in a particular country can make it difficult for an incumbent government to garner support for international legal measures, especially if the situation is still volatile or if the party or persons targeted for accountability still have some influence. This influence can be used to obstruct the implementation of justice measures in domestic law, for example, by a veto over legislation or making the arrest and transfer of indictees an unpopular or difficult action (Beresford & Wand, 2020).

African states often change their governments, and many come to see the policies of their predecessors as an embarrassment in the light of international opinion. A few may even, for different reasons, have a very strong interest in bringing their predecessors or former allies to justice. Between the outgoing or discredited government and its domestic or foreign opponents, there may be a variety of opinions and actions regarding the accountability of past or present perpetrators.

African states face considerable hurdles in implementing international legal mechanisms at home. These often mirror the challenges identified above, but some are specific or more acute. First, many international legal developments are based on the push for reform by national governments. To the extent that international fora and organizations are convinced of the need for radical change, it is often because of the disastrous consequences of the policies and practices of those governments. The reforms are then framed to impact on these specific policies and practices (Moshtari & Safarpour, 2024).

VI. CASE STUDIES: AFRICAN STATES' EFFORTS IN ADDRESSING ARMED CONFLICTS

This section intends to look at the role African states have played in addressing armed conflicts and ensuring accountability. The case studies that have been selected are Uganda, the Democratic Republic of Congo, Sierra Leone, and Nigeria. These cases have been chosen for their variations in conflict, duration, and outcomes. Because of the limited space in this assignment, the case studies have been shortened and are merely an overview of the key points in each state's involvement in armed conflict and accountability (Haar et al.2021). It is clear that all African states, whether direct or indirect participants in armed

conflict, have shown a reluctance to adhere to international legal mechanisms and customs. National interests have almost always taken precedence over international pressures to resolve conflict. The legality of armed conflicts and accountability of state and non-state actors all vary, but there are common themes in the responses by African states in addressing the armed conflicts at both national and international levels.

In the case of many African states involved in armed conflict, the establishment of the conflict itself has been denied. This was the case in the DRC where government officials continued to deny the presence of any armed conflict despite signing ceasefire agreements and peace accords at negotiated peace talks. This denial has generally been due to fear of legal implications and losing credibility at the international level. In fear of possible intervention, states often look to resolve conflict as quickly as possible before significant international pressures are placed to enforce international legal mechanisms. This 'quick fix' to armed conflict can be seen in Uganda with the trial and error of military and diplomatic strategies in the involvement in neighboring states of DRC, Sudan, and more recently the Central African Republic. High military expenditure has often left states with poor credibility in addressing issues of accountability and reconciliation and fueled state interest in seeking amnesty for immunity from prosecutions of war crimes and crimes against humanity at both domestic and international levels (Tickner, 2020). This can be identified from Nigerian and Sierra Leonean interests to find amnesties for their respective conflicts.

VII. THE ROLE OF REGIONAL ORGANIZATIONS IN SUPPORTING AFRICAN STATES

During the process of African state practice involving customization of international law, the OAU played a central role in the crystallization of norms prohibiting unconstitutional changes of government and supporting the self-determination of peoples. The regulation of armed liberation struggles was an important aspect of the OAU's role in this period. From 1963 to 1976, the OAU's concerted effort to push the United Nations Security Council to label the racist minority regime in Rhodesia as a threat to international peace and security was successful because the UNSC eventually imposed mandatory sanctions against the rebel regime (Hellquist, 2021). The OAU, however, regarded these measures as inadequate and considered the armed struggle in Rhodesia to be a threat to the political independence and territorial integrity of the former colonized states in Africa. Thus, the OAU saw itself as the legitimate regional authority over matters of African security, and the armed struggle in Rhodesia became an early test case for OAU involvement in the maintenance of peace and security under the aegis of the UN Charter.

The Organisation of African Unity (OAU) and the Southern African Development Community (SADC) have been at the forefront of the regional organizations involving African states in the process of developing and implementing international legal mechanisms for addressing armed conflicts and ensuring accountability. The OAU has been a part of the development and implementation of international legal norms for conflict resolution and human rights since its inception. Through its global membership and its historical role in the decolonization process, the OAU was instrumental in the creation of various treaties and norms of customary international law aimed at preventing the occurrence of armed conflicts and defining the rights and obligations of belligerents during the conflict (Maluwa, 2020).

Regional cooperation is believed to be an increasingly important component of a strategy for addressing conflicts in Africa. As former United Nations Secretary-General Boutros Ghali has noted, "Cooperation at the regional level is an essential way to build confidence and it sets a framework for a much-needed sub-regional approach to security." (Mohamed et al., 2020)

VIII. CAPACITY BUILDING AND TRAINING INITIATIVES

Capacity building and training are fundamental aspects of the judicial and legal reform processes. The creation and implementation of the rule of law and accountability measures require well-trained and supported judicial and quasi-judicial officers, investigators, prosecutors, and defenders. International and hybrid accountability mechanisms for Africa have generally acknowledged the importance of training and capacity building for building a culture of accountability. In the field of international criminal law and prosecutions, this has involved everything from scholarship programs to send African lawyers and jurists to work at the International Criminal Court, to the ICC's efforts to provide training to lawyers, investigators, and others it employs in international and national forums. Similar efforts have been made by and on behalf of the ad-hoc international criminal tribunals (Xu et al.2021). At the same time, various NGOs and IGOs have implemented a liter of other efforts to try to raise the level of understanding of international criminal law and accountability measures among African lawyers, judges, and law students. In general, these efforts have proven to be of importance and are well received. However, it remains an open question as

to whether they are being given the priority and sustained support necessary to bring about significant changes.

IX. COLLABORATION WITH INTERNATIONAL PARTNERS

There are various reasons why African countries have sought the assistance of the international community in addressing conflict on the continent, which has resulted in a wide range of coordination.

The mandate of the United Nations Assistance Mission in Rwanda (UNAMIR) and the International Criminal Tribunal for Rwanda resulted from a specific request made by the Rwandan government amid genocide, reinforcing a legal obligation related to the responsibility of the international community to respond to situations of compelling human need with appropriate action. This action is to be collective, taking into account the principles of state sovereignty and non-intervention. With recent developments in international law, these two principles are now being perceived not as rights protecting the state, but as restrictions on the conduct of states, which in no way affects the entitlement of individuals to international intervention in situations of gross human rights abuses (Henderson, 2021). Though the Non-Aligned Movement encouraged the role of the United Nations in conflict resolution and peacekeeping, there has been a notable shift away from UN involvement in the African conflict to a pattern of non-UN mediation. This was to avoid Security Council involvement, giving the impression that the conflict was an international one, and the resulting perceptions and possible sanctions. Throughout the 1990s, there was a rapid increase in UN peacekeeping operations. An OAU/UN agreement recognized a need for a division of labor between the two organizations, as UN systems are more capable of large-scale operations. The establishment of a UN standing army or military rapid reaction force has further implications for this division (Duursma, 2020).

X. THE IMPORTANCE OF ACCOUNTABILITY IN ADDRESSING ARMED CONFLICTS

The last half of the article essentially outlines the different international and African-level mechanisms and policies in place that theoretically could address armed conflicts and promote accountability in Africa. We focus on the ICC and the various ways in which legal mechanisms are implemented in African countries to assess the feasibility and legitimacy of these mechanisms in addressing armed conflicts. What becomes clear in assessing these mechanisms and policies at both the international and African levels is that the world is very much still in the stages of development of effective ways to ensure that those responsible for violations of international humanitarian law are indeed held accountable for their actions (Costello & Mann, 2020). By outlining the various legal systems and policies in place that are designed to promote justice and accountability in the event of an armed conflict, it becomes clear that the most fundamental condition for these policies to be successful in reality is the establishment of the ability to determine the guilt or innocence of the accused parties. The presumption of guilt or innocence requires that the truth of the actions be established and it is only through the establishment of the truth that justice can be achieved. In a recent paper by Diane Orentlicher, the Effect of International Norms and Rule of Law on Security Detainees and the Disappeared in Iraq, she makes clear that in comparison to the vast growth in the preventive measures, there has been very little practical advancement in ensuring that those accused of violations of international humanitarian law are indeed brought to justice. This paper touches both on international and African levels and gives insight into the various requirements and initiatives that will see justice and accountability realized in the wake of armed conflict. In Iraq's situation, the effectiveness of preventive measures will be irrelevant in ensuring the accountability of any violators. It is therefore the measure of the development of a tribunal or court that will see justice done. This notion is supported by the ICC's Chief Prosecutor Luis Moreno Ocampo in a speech given in 2003 on the topic of the Court and the quest for justice in times of conflict. Ocampo states that "at the heart of the Court's quest for justice lies a fully developed legal concept. In a system of justice, justice is done when the truth of the matter is established and a link is drawn between the truth of the facts and the law." It is clear from statements and writings of members of legal and humanitarian organizations that the overarching objective is the truth of actions which will, in turn, lead to justice for victims of violations of international humanitarian law (Ocampo, 2021). This is ultimately the first step to accountability.

XI. IMPACT OF INTERNATIONAL LEGAL MECHANISMS ON CONFLICT RESOLUTION

An area needing further research is how to accommodate mixed non-state and state-actor conflicts within the international legal system. Given that most of today's armed conflicts are internal conflicts, often involving a government and a non-state group or several such groups, it is imperative to ensure that there is the applicability of most if not all, international legal mechanisms in these cases.

Often today it appears that the only international legal mechanism available in an internal conflict will be classic diplomatic mediation (Clément et al.2021). This is insufficient and often leads to peace agreements that are no more than a cessation of hostilities. One recommendation is that the creation of ad hoc or regional applications of some international legal mechanisms should be considered. A report on the applicability of the 4th Geneva Convention in the Israel/Palestine conflict demonstrates that without a finding or opinion as to the relevance of the Convention's terms to this conflict, the convention remains of limited relevance. This was likewise the case with the ICTY for several years as it only had jurisdiction over the conflicts in the former Yugoslavia and Rwanda. A more ideal solution, of course, would be the universal applicability of all international legal mechanisms, but currently, this is unattainable.

One key point is that while Western policymakers often assume that resorting to judicial or quasi-judicial proceedings is the best means of ensuring accountability in African conflicts, this assumption is often incorrect. The South Africa case study demonstrates that negotiation of an amnesty can be an effective way of ending a conflict and that the balance of when to implement criminal proceedings and when to employ restorative justice or truth and reconciliation processes will vary from case to case (Uwazuruike, 2021). This has important implications for the future development of the international legal system.

In the process of determining how to make these mechanisms relevant to African conflict resolution, the article outlines several categories of conflict resolution techniques and examines ways in which various international legal mechanisms can be applied. These categories include traditional mechanisms of dispute settlement, restorative justice, and peacemaking. The article concludes that what is needed in each case is a better availability of the full range of international legal mechanisms.

The article starts with a section on the necessity of African ownership of international legal mechanisms. In other words, it emphasizes that having the capacity to trigger and control international legal mechanisms is the best means of ensuring accountability in African conflicts.

XII. LESSONS LEARNED AND BEST PRACTICES

It provides an approach to assess the most useful lesson from the case study. We can see from above, that a less and best practice approach is very critical to future good results. The best practice usually stems from the lessons learned through experience or from the new initiative to improve the present condition. Identifying the best practice requires a systematic approach, and it is not easy to find the exact method to determine what that best is. To facilitate this, the United Nations has created peer review among the missions as one of the methods to identify the best practices in every mission. This peer review is a kind of knowledge management tool and it is indeed very useful, but it still needs political will among the missions to uncover all the strengths and weaknesses, as said by the ambassador from the member state of an African country (Salvo et al.2021)(Shkarlet et al.2020).

The text is focused on descriptions, comparisons, or relationships, and it may use a variety of cohesive devices within and between sentences. Rhetorical, probabilistic, or hypothetical meanings may be expressed. Lexical resources may be general or non-specialized, and there may be references within the text. A writer at this level may attempt to give less obvious information. This description is relevant to any further analysis and research.

XIII. RECOMMENDATIONS FOR ENHANCING AFRICAN STATES' ROLE IN IMPLEMENTING INTERNATIONAL LEGAL MECHANISMS

A scenario was considered in this paper which identified the possibility that the main attraction of the ICC for African states may simply be its ability to exact Western coercive interests against African leaders who fall out of favor with Western powers, rather than its potential to peacefully resolve conflicts and restore justice. This leads to African states selectively apprehending and surrendering indictees to the ICC, in instances wherein doing so serves the domestic political or security interests of the regime in power (Rastan2020). The Ugandan government's dealings with the ICC over the trial of Joseph Kony provide a clear example of this. Failure on the part of the ICC to apprehend indictees has led to African states feeling that they would be better off having more control over the international legal mechanisms being employed in their regions. This has further manifested in African states taking a stance against the use of international legal mechanisms to address armed conflicts where they would be the targets of intervention. A recent example relevant to this was South Africa's refusal to enforce an ICC warrant which called for the arrest of Sudanese President Omar al Bashir during his visit to South Africa in 2015.

Evident from the discussions included in this paper, an unfortunate trend has emerged wherein African states seem to be implementing international legal mechanisms for addressing armed conflicts more as an external imposition to fulfill the desires of the interveners, rather than as a

genuine means to resolving the conflicts themselves. This has been particularly evident in the realm of judicial mechanisms, most notably the ICC. In arguing that the ICC has 'outperformed' other ad hoc tribunals in its ability to prosecute African conflicts, the ICC's chief prosecutor reflected a widely held sentiment that the ICC represents a more permanent solution to ending Africa's culture of impunity (Okowa, 2020).

The role African states play in implementing international legal mechanisms to address armed conflicts on the continent has undergone several changes and evolutions over the years. At the most basic level, the legal mechanisms themselves have evolved. Their implementation has evolved quite significantly, though less consistently, and the role African states have played in determining the nature of their implementation, and the extent to which their implementation serves African interests, has been both varied and significant. In keeping with this theme, some of the most significant current trends in the role of African states in implementing international legal mechanisms to address armed conflicts in Africa relate to determining the nature and extent of the implementation of these mechanisms. This involves the manipulation of the mechanisms themselves, the extent to which they are implemented, and the identity of those implementing them (Börzel & Zürn, 2021).

XIV. CONCLUSION

The approach towards the prevention and settlement of armed conflicts in Africa has evolved. The OAU/AU has, since its inception, sought to take the leading role in addressing conflicts and promoting peace and security on the continent. These efforts have been demonstrated by the many initiatives on several different conflicts in regions such as Algeria, Burundi, Liberia, the DRC, Sudan, Somalia, and the various North African conflicts. These initiatives have entailed diplomatic peacemaking missions, the provision of mediation and good offices, the formulation of peace agreements, the establishment of peacekeeping operations, and the implementation of post-conflict peacebuilding strategies. The AU's efforts in this area demonstrate a positive trend towards addressing conflict and promoting security on the continent, considering that, hitherto, most African conflicts have been settled by informal mechanisms and 'winner takes all' formulas. However, the issue of promoting compliance with agreements (which is crucial to the notion of the rule of law) and preventing the relapse of conflict remains problematic because the majority of current conflicts are repeat conflicts.

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