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In the first half of 1994, two radically different events unfolded in Africa: the first was the genocide in Rwanda, the second was the end of apartheid in South Africa. 10 years before – when Habyarimana's program of 'reconciliation' was unfolding in Rwanda and SADF was unleashing a brutal occupation of townships – hardly anyone would have picked South Africa as the site of reconciliation 10 years later and Rwanda as the location of genocide.

What are the lessons of South Africa? To begin with, this was an internal conflict with no end in sight. It was also a time, end of the Cold War, when there was no significant external involvement. Both sides dropped their maximum goal – victory or revolution – so as to give the political process a chance.Each side de-demonized the other; yesterday's enemy became today's adversary. The difference is that you can talk to an adversary, but you have to eliminate an enemy.

When the fighting ended, there was no judicial process. The way ahead would be forged through a political process.

The political process unfolded through two sets of negotiations – Kempton Park and CODESA. The liberation movements made three key concessions: one, *sunset clauses* proposed by Joe Slovo promised that the personnel of the old apartheid state – including its security forces, judiciary and civil service – would survive into the post-apartheid order. Only the political establishment would have to subject itself to an inclusive electoral process. Second, there would be constitutional protection for white-owned property translated into a local government law. Third, there would

be no court trials of perpetratorsthere would be no judicial process. Instead, there would be amnesty for all. The much-lauded TRCreally functioned as a mock quasi-judicial process: no matter the quality of the truth offered, it had no choice but to grant amnesty.

Apartheid did not end in the courts. Its end was negotiated at the conference table. It could not have been otherwise, for at least one reason. A court trial shares a feature in common with a military contest: the winner takes all. In a court of law, you are either guilty or innocent, you can not be both. Yet, in a civil war, neither side is wholly innocent nor wholly guilty. Where violence is not a standalone event but an episode in a cycle of violence, each side has its victim narrative.

Today, these lessons have been applied in several places with varying success. The best known is Mozambique, where Renamo had unleashed the most brutal terror against children and women, a practice reminiscent of the kind of terror unleashed by LRA in Uganda. The difference is that the leadership of Renamo sits in Parliament, that of LRA on the run.

Perhaps the most instructive is the case of Zimbabwe, where SADCC under Thabo Mbeki successfully resisted demands by the West that the region isolate SADCC through sanctions. This gave internal dialogue a chance to fructify. Contrast this with Kenya where the 'international community' distorted the internal political process by threatening to give priority to court trials. It is of secondary significance whether these trials were to be internal or international.

Spin doctors have dubbed African enforcement of these solutions as 'African solutions for African problems.' But the spin evades the real issue in question: will militarizing the solution address the political problem or exacerbate it?

The 'International Community'

The UN was set up to ensure peace between states. Now, the UN is re-defining its key mission as that of ensuring peace within states. If the UN is evolving into a global governance institution, the P5 in the Security Council are emerging as its true governors.

Four trends contribute to this development. To begin with, the veto in the Council means that the P5 are exempted from the rules they make. *The P5 can thus act with impunity.*That their veto power also applies to the amendment rule means *that the impunity of the P5 is constitutionally protected.*The reality is even more troublesome: for the regime of impunity protects more than just the P5. There can be no enforcement of Charter principles against a permanent member or against someone they protect.

Alongside this is a second defining trend in the UN: the Security Council is emerging as a legislative organ. When it comes to the passing of Council resolutions, an essentially 'legislative' process, the rule for the P5 is unanimity. This means that the P5 can bind others, but the P5 cannot be bound without their own consent. In plain words, the same rules do not apply to all members of the UN. The P5 retain a Westphalian sovereignty vis-à-vis the UN. All other member states are subject to the rules and decisions of UN organs with or without their consent. The UN thus comprises two kinds of members: the vast majority are in the position of being governed; a small minority are emerging as its real governors.

A third defining trend concerns enforcement of resolutions. The lack of enforcement mechanisms means that enforcement is often privatized and executed without accountability.As the Libyan case demonstrates, the P3 are emerging as the real enforcers of resolutions passed by the P5.

The 'War on Terror' has provided the trigger for these changes. Let us compare the period before and after 9/11. The stage was set with the passage of Resolution 1267 in relation to Taliban. The resolution called for the establishment of the 1267

Committee to monitor state compliance with Council-imposed targeted sanctions and to maintain and update a consolidated list of individuals with 'terrorist' connections. This is how the list functions: Any state may propose a name for the blacklist; members may object, but within 48 hours. The 1267 Committee operates on the basis of consensus. There are no evidentiary guidelines and states are required to observe very few requirements. No court is in a position to evaluate the evidentiary basis on which a person or entity is placed on the list. There is no review mechanism and no procedure for formal appeal. The 1267 Committee is reminiscent of House Un-American Activities Committee in the US Congress during the McCarthy era.

In spite of the fact that those placed on the list have yet to be convicted of a crime, and that there is neither an accepted definition of terrorism nor due process for the accused, their assets are frozen and their movement is restricted. States can and do use the listing process for political purposes, say to silence internal opposition. We are witnessing a real threat to rights of due process, to the right to be heard, to the right of property, and to the right of movement.

This was before 9/11. A permanent war on terror followed 9/11. On September 28. 2001, the SC passed Resolution 1373 invoking Chapter VII Powers but in a language departing radically from previous practice. States are required to change domestic laws to criminalize terrorism and its financing, as a separate offence in domestic codes requiring a higher punishment than ordinary crimes. The Security Council behaves as a higher legislative body, yet its decisions are imposed on states who have no representation in it. This is highly undemocratic.

A fourth defining trend is most worrying: there is no judicial review of Security Council resolutions. Neither the rules the Security Councilmakes nor its decisions are subject to review by a court with constitutional powers.In the name of protecting individual human rights, the Security Council is undermining law as an

institution meant to control and limit the exercise of public power by legal and constitutional norms.

Conclusion

The UN is turning into a hybrid organization with two kinds of members. For the P5 the Charter is a treaty, and the UN a traditional international treaty organization; for the rest of the UN membership, the Charter is constitutionally binding. The UN is evolving into a global governance institution of which the P5 are the true governors.

No member state of the African Union is part of the P5, and none should be. This clears the way for the AU to lead the General Assembly in a vigorous endeavor to democratize the Security Council. The point is not to call for better representation– say by bringing in the BRICS – but by democratizing the rules by which the Security Council operates and subjecting its decisions to a formal review process.