

Three Challenges for International Criminal Justice

Antoine Garapon*

What are today's key challenges for international criminal justice? Its capacity to achieve its objectives, its costs and delays, or the treatment of victims? No matter how important these issues may be, they may hide others. Characterizing the current challenges of international criminal justice as mere questions of efficiency amounts to endorsing a certain number of implicit choices, such as equating justice with Western criminal process or assuming the applicability of domestic concepts of justice on the international plane. Ought we not to re-examine such postulates as (i) resort to judicial categories to describe history, (ii) foregoing political analysis or even (iii) the driving effect of justice on peace? These premises must be reconsidered.

This critique does not draw its source from a pure concept of the political, or from a positive, vision of law, but from a certain idea of international criminal justice that can be described as 'cosmopolitical'.¹ This model presupposes, on the one hand, a connection between the various states that commit themselves to non-violent reciprocity. On the other hand, it resolves the tension between culture and violence in favour of a universal legal community. From this angle, international criminal justice must be conceived as a regulatory idea – a concept of the human community that allows us to communicate with those who, at first sight, seem to be foreign or barbaric.

International criminal justice cannot be singularly identified with a specific institution. Rather, it is associated with a principle of communication between the domestic and international levels for which it provides the interface, the transitivity. Its purpose is to rebuild politics. This process is only in its infancy: its primary means is reciprocity.

1 This term is taken from Kant, who conceptualized humanity from the starting point of a suffering conscience. Kant had a premonition that wars and violence could develop the idea of a common and shared world (that would be far from the blissfully happy representation of a globally pacified community). Kantian cosmopolitanism foreshadows in a certain way the dynamic that exists between violence and culture and that can be perceived today. The recognition of humanity came from the experience of extreme inhumanity, and its general nature only came from singular experiences. By judging such crimes, judges take part in the constitution of a common space where humanity itself becomes a legal topic, without being able to renounce its violent roots (criminals themselves are recognized as men, i.e. subjects responsible for their actions).

Such a cosmopolitical concept enables us to move away as much from idealistic universalism as from Schmittian realism. It suggests (i) a requirement for reciprocity between all states, (ii) a willingness to combine the universality of the idea of justice with the unique characteristics of each culture and, finally, (iii) the necessity of rethinking the relation between justice and politics.

1. Working for a Truly Transitive Justice

One of the recurring criticisms directed at international criminal justice is that of 'double standards'. Why charge Milošević with ethnic cleansing in Bosnia and Kosovo, and not Putin, who is doing the same – or even worse – in Chechnya? This frequent reproach conceals a more subtle one: the lack of reciprocity. Prosecution seems to be the prerogative of a few states – those in the North and especially those in the West – that are themselves, for all practical purposes, beyond judicial scrutiny.

A. Unilateral Accusation, Mutual Questioning and Third-Party Appraisal

The power of justice is not simply the power to judge, but also, and perhaps above all, the power to prosecute. The power to prosecute takes place prior to that of judging; it is less visible and, in fact, draws its strength from its seeming political neutrality. On a domestic level, this power has gradually changed into a quasi-administrative technical power, to such an extent that any link with the political becomes suspect, and total political independence is expected.

The power to prosecute is both one of the most important political aspects of international criminal justice, and one of its least overt. This was, of course, the case at Nuremberg, where the onus of responsibility for the war was placed upon the Germans alone. It was also the case in the two ad hoc Tribunals, where the initial prosecution resulted in the definitive exclusion of a certain number of actors from the political game: Mladić and Karadžić from Dayton, then, with much effort, Milošević, but also the dignitaries of Hutu Power, who had, to that point, not abandoned the possibility of violent opposition to Kagame. Prosecuting these individuals meant that they fell from the level of key negotiators to that of stigmatized criminals – pariahs of the international community. To prosecute is to designate, isolate and, therefore, disqualify a human being.

It is probably not a coincidence that the Americans took immense care to occupy the International Criminal Tribunal for the Former Yugoslavia's prosecutorial positions from the start. Washington does not dread losing its power to judge; rather, it dreads being put before a tribunal. This is why the change that has been made to the ad hoc Tribunals in favour of a permanent Court represents a real break that forces states to forfeit the key power of initiative that they possessed in managing the prosecution.

It is also obvious, within the West, that resorting to foreign justice based on

universal jurisdiction – a cosmopolitical principle *par excellence* – has a ‘questioning function’. Let us take the example of the compensation of the Jews, forcibly deprived of their property in France under the Vichy regime: it was largely due to legal action taken in the United States that the deadlock in France was broken, bringing banks to the negotiating table. Curiously enough, legal action sparked off diplomatic and political action between governments. The same process occurred in the dispute over compensation for victims who testified at the South African Truth and Reconciliation Commissions. Archbishop Desmond Tutu has long been at loggerheads with the South African government over this very sensitive issue, which is the subject of a great many expectations: he used the submission of a case to a New York court, probably based on the US Alien Torts Claim Act, to assert that the payment of financial compensation would help to ‘promote reconciliation’, contrary to the government’s position.² The South African government officially disapproved of these legal proceedings, to little effect for the time being.

Using foreign courts as a way around this type of situation is sometimes the shortest (and the most efficient) route from oneself to oneself. Even ‘unsuccessful’ foreign legal actions may produce results. We must not overlook a very important dimension of the concept of international criminal justice – pressure to act, to negotiate, to yield, to change one’s behaviour or to adopt a new policy:

The arrest of General Augusto Pinochet on 16 October 1998 in London, with an arrest warrant from a Spanish judge, seems to have had more impact on the prosecution of members of the Chilean armies than the ‘truth’ presented in the Rettig report. On his return to Chile in 2000, Pinochet had to answer for several dozen charges of human rights violations: international human rights activism had been better able to seize upon the issue of impunity than local or national initiatives.³

The possibility of these prosecutions gives a new force to this dialectic – to these questions. Is, however, the reverse true? Will those who accuse respond to accusations? An international court of law – the International Court of Justice in The Hague – recently ordered American courts to reconsider the fifty-one pending executions of Mexican nationals in the United States.⁴ The Governor of Texas immediately rejected this decision, declaring that it did not apply to Texas. Up until now, the United States has certainly not paid much attention to decisions made by international courts unless the ruling has been in its favour. Such contempt, however, is not necessarily the best strategy at a time when the United States seems to be in need of allies.

Recent allegations by Paul Kagame regarding French actions in the Great Lakes region, echoed by many French journalists, are also revealing. Without going into detail, it is increasingly difficult for France to brush aside these allegations. Their seriousness indicates that they would not be levelled lightly – all the more so because,

2 *Ibid.*

3 A. Ross, ‘Les Politiques de Vérités ou la Vérité des Politiques? Amérique Latine et Afrique du Sud: Leçons d’Expérience’, 92 *Politique Africaine*, December 2003, at 22–23.

4 M. Simons and T. Weiner, ‘World Court Rules US Should Review 51 Death Sentences’, *New York Times*, 5 April 2004.

since 1994, ad hoc tribunals have implicitly called for these victims no longer to be written off along with the gains and losses of history. One cannot prosecute without running the risk of being prosecuted oneself. This is what France is finding out and what the United States wanted to avoid at all costs. For how much longer?

Does all of this not agitate in favour of a third party to short-circuit these unhealthy confrontations? Perhaps, in the form of a 'regulatory idea' rather than a court of law?

B. The Need for Continuity between the Domestic and the International Dimensions

Cosmopolitanism, we all know, has a twofold philosophical source: ancient Stoicism and the modern Enlightenment. According to the first source, citizens of the world are people who cannot be connected to a precise place, either by a territorial link or by law. According to the second source, they are 'people who belong to a specific community, who refuse to limit the world's horizon to its frontiers alone, and who like to think of "the other" not as "the same" but under the principle of non-closure of the community on itself. Taking on board territorial division and community exclusivism, they want to fight them and give this battle a *cosmopolitical* meaning'.

This is a definition of cosmopolitanism as a 'principle of non-closure' of the political community on itself, as a principle of hospitality that is not physical – welcoming all foreigners – but political. It signifies, in other words, a concern for people who do not share my soil. This concern will lead by extension, and incrementally, to the recognition of irreducible rights, including those of fellow citizens who live differently from myself. Cosmopolitanism is transitive: it contains two meanings that cannot be dissociated from each other, namely, on the one hand, the consideration that all human beings have a basic number of rights in common with myself, and, on the other, the acknowledgement that my fellow citizens are, to a certain extent, strangers to me.⁵ This definition of cosmopolitanism implies two consequences for international criminal justice: on the one hand, it requires a certain reciprocity between states that has, at best, not yet come to fruition and, on the other hand, it indicates a certain continuity between the way in which the state should behave towards people, domestically and internationally.

It will become increasingly difficult to use double talk at home as elsewhere. While differences will certainly persist, there cannot be total discontinuity. It is difficult for governments, including in the eyes of their own public, not to apply to themselves to (and, to a certain extent, to their foreign policy) their domestic legal commitments. It was to show that ad hoc tribunals were too costly and too slow that the United States wished to create the Special Court for Sierra Leone – at their risk and peril if, in the end, it is not very productive. In the same way, American hostility to the International

5 'The fundamental signification of cosmopolitanism [...] is the recognition of the otherness of others. [...] The concept is the one that is excluded from both previous positions: approving the existence of the other with his differences and sameness. This amounts to rejecting two other positions, that of *racism* and that of *universalism*' (U. Beck, *Pouvoir et Contre-Pouvoir à l'Ere de la Mondialisation* (Paris: Aubier, 2003), at 513.

Criminal Court (ICC) did not prevent the United States from copying its Statute for Saddam Hussein's trial.

2. Combining the Specific with the Universal

Cosmopolitanism, as opposed to other classical universalist positions, does not imply that the world is homogeneous; rather, it urges a restructuring of the specific and the universal. The international law of Westphalian inspiration could not envisage the transcendence of these boundaries. Universalism does not accept territorial division and is loath to accept idiosyncrasies, while cosmopolitanism takes them into consideration without, however, thinking that they are insurmountable. The second challenge that international criminal justice must, therefore, confront is to find a balance between a new moral imperialism hidden behind Western legal categories on the one hand, and a relativism that would dilute international criminal justice on the other. The universal claim of international criminal justice forces it to specify what in it is immutable and defining, and what can be adjusted to different cultures.

The historic conditions of the emergence of the idea of international criminal justice, closely linked to Western history and the development of democratic societies, also engender its congenital defect. Jacques Derrida insisted on the Christian origins of the vocabulary of justice, beginning with the idea of forgiveness in which he sees a 'latin-christianisation' of the world.⁶ The famous fight against impunity is, first and foremost, a preoccupation of European minds. Some have also been moved by the religious imprint of the Truth and Reconciliation Commissions.⁷

Perhaps, international criminal justice has to think of itself as a step between colonialism and the inauguration of a new, more political phase in international relations. This is the case for the relationship between Belgium and Rwanda, which prompted Danielle de Lame to observe that 'one could argue that post-colonial relations between Belgium and Rwanda, only really begin after the genocide. This calls for an appraisal by some, a complaint and a request for compensation by others without, however, historical criticism, coming to help a maturing of memories.'⁸

A. Ethical Aggression from the West?

It is impossible to deny the Western influence on contemporary justice and reconciliation processes established in certain countries, particularly in Africa: 'Talks on justice and reconciliation heard in Freetown faithfully echo the language promoted by international organisations and the NGO community. In particular, recurrent

6 'Le Siècle et le Pardon. Entretien avec Jacques Derrida', 9 *Le Monde des Débats*, December 1999.

7 D. Darbon, 'La "Truth and Reconciliation Commission": Le Miracle Sud-Africain en Question', 48 *Revue Française de Sciences Politiques*, Vol. 48, December 1998, at 713–715.

8 D. de Lame, 'Deuil, Commémoration, Justice dans les Contextes Rwandais et Belge. Otages Existentiels et Enjeux Politiques', 92 *Politique Africaine*, December 2003, at 41.

references to the credo of a pardon or reconciliation essential for peace and development answer too perfectly the expectations of donors not to seem suspect . . .'.⁹

What some denounce as a 'new moral imperialism' is all the more difficult to oppose, since it is animated by the best intentions. It is particularly difficult for Westerners to understand the expectations of populations who have been tortured for decades. The exceptional period that the West has lived through since 1945 has generated quite a specific frame of mind that is not shared by the rest of the world, and which may prevent it from understanding what most countries that are confronted with chronic political insecurity live through. Peace is not the normal experience of humanity – rather, war is. This may explain the misunderstandings generated by the real-life experience of Westerners and that of people afflicted by war. Perhaps, Westerners, full up with security, have forgotten the daily anguish of war and the cost of peace. Nor do they perceive the deep scepticism of the populations concerned towards politics in general and international cooperation, of which they understand the ambiguities more than anyone else.

The concept of 'fighting impunity' has no real significance for the majority of Sierra Leoneans, in so far as many people perceive justice and the law as the immutable reproduction of dynamics of corruption and power. In the absence of any previous experience of the 'rule of law' a major part of the Special Court for Sierra Leone's discourse is indeed, perceived as based on the 'rhetoric of conviction'.¹⁰

However, it would be a mistake to overemphasize the idea that international criminal justice cannot be separated from the concept of Westernization. First of all, this criticism varies, depending on who makes it. In each situation, the concept of international criminal justice is supported by human-rights activists and by victims, while being challenged by leaders. Moreover, one notices that while the general opinion of the Sierra Leoneans is sceptical about the objectives of the mixed criminal justice system instituted in their country, this is not the case for the victims, who are, instead, very interested. Once again, we should not, however, hide behind the victims to see in them a basis for generalization. Their request links a common human demand to what is owed to unjustly tormented dead souls. Contrary to a widespread misinterpretation, etymologically, the term 'humanity' does not come from *homo* – man – but from *humare* – 'to put into the ground' – and, therefore, deals with the obligation to bury one's dead. For the Italian philosopher, G. Vico, burials avert the wandering of the souls of the dead in search of their unburied bodies. Burials break with the animal state, in which 'no-one can distinguish arable land, source of food, from land meant to welcome the dead'. In this respect, for Vico, they feature among the first 'compacts of humankind' (*foedera generis humani*).¹¹

Too much Western guilt may prevent the confrontation of specifically African responsibilities in these historic catastrophes. We have to deal with 'the main signifier,

9 *Ibid.*, at 71.

10 A.-S. Rodella, 'L'Expérience Hybride de la Sierra Leone. De la Cour Spéciale à la Commission Vérité et Réconciliation et Au-Delà', 92 *Politique Africaine*, December 2003, at 64.

11 G. Vico, *Opere* (Milano–Napoli: R. Ricciardi, 1953), 482–483.

namely the murder of a brother by his brother'.¹² This is the feeling that one gets from *No Man's Land*,¹³ a film about the war in Bosnia in which a satire of the Blue Helmets provides the platform for the director to confront, head on, the absurdity of this fratricidal war. On the sad anniversary of the Rwandan genocide, we appear to be searching everywhere for the keys to this tragedy, except in 'the country of a thousand hills'. Western media are reluctant to ask themselves, 'why and how a neighbour kills his neighbour? The issue only seems to raise interest while it suggests there are French, Belgians, Americans or UN Blue Helmets guilty of not having prevented people from wielding machetes'.¹⁴ It is difficult, because colonial guilt and the search for a foreign scapegoat are two possible solutions – two ways of avoiding having to look at the enigmatic core of all crimes against humanity: the breakdown of politics. Practically all of the genocides of the century saw people attempting to put the blame on foreign influence: remember the historian, Nölte, in Germany.

B. Reinventing Tradition

Another universalization test for international criminal justice is its capacity to imagine forms of justice other than those of Western trials. In this regard, we may note that the most original forms of transitional justice were invented outside of Europe (think of South America and South Africa). If inspiration came from the European twentieth century, the most imaginative applications came from elsewhere.

Today, we are also witnessing attempts at mobilizing tradition to ensure that justice is done. The integration of this concept into non-Western traditional environments will create a two-way movement: the creation of Western rituals on the one hand, and a Westernizing of tradition on the other.

First of all, we are witnessing the creation of *rituals* that have nothing to do with tradition but 'are recognisable by foreigners: mausoleums, places of massacre conserved in memoriam, collective tombs, collective religious commemoration rituals'.¹⁵ 'What is left of their own is lost and sometimes set in mausoleums that have been imposed on them; they are cut off from their ancestors and their descendants and also from any link with the earth which is what funeral rites generally in normal times reassert.'¹⁶ Some go even further and claim that these commemoration ceremonies, conforming to 'an international code of conduct', sometimes even contribute to keeping divisions alive.¹⁷

Secondly, over the past few years, we have witnessed an increase in attempts at 're-traditionalizing' Africa, as much on the part of international agencies who fund

12 A. Mbembe, 'The Subject of the World', in G. Oostindie (ed.), *Facing up to the Past* (Kingston: I. Randle Publ., 2001), 26, quoted by D. de Lame, *supra* note 8, at 42.

13 Film by Danis Tanović, 2001.

14 S. Smith, 'Ces Dix Ans de Vertige et d'Arrangements qui Empêchent de Célébrer les Morts', *Le Monde*, 6 April 2004.

15 D. de Lame, *supra* note 8, at 46.

16 *Ibid.*, at 47.

17 *Ibid.*, at 54.

programmes for reconstruction – DFID (the UK Department for Finance and International Development) in Sierra Leone, the UNDP (United Nations Development Program) in Burundi, and certain African governments like the FPR-run (*Front Patriotique Rwandais*) state in Rwanda. To give an example, the concept of *ubuntu* risks being Westernized in translation and is likely to maintain a slightly ambiguous culturalism that glorifies an imaginary African past. True modernity consists in entering into deliberate critical reinterpretation of one's tradition.¹⁸

These initiatives are reasonably well challenged by pro-Africans and by some Africans themselves. Tradition raises the same issue as that raised by the concept of *normative shift*:¹⁹ the link between social standards and legal rules, the necessary bedrock of the law in an acknowledged and accepted social practice, a 'norm' recognized as the way in which things have to be done. In this case, however, the journey has to be done in reverse: from legal rules to social norms. The idea of international criminal justice is only achieved in this coming and going, in this interplay between the universal ideal and its localized implementation, this transfer from the West (where it was elaborated and where it received its first applications) to the rest of the world.

The idea of international criminal justice works as a principle of *reinterpretation* of tradition – as a hermeneutic revival aimed at attributing new meaning to ancient symbols. In the same way as when legal action is taken, its outcome must be open. When a *gaçaca* is seized, one should not be able to have advance knowledge of the outcome; the prosecution ought to be free to turn against the powers in place. Without this, tradition runs the risk of becoming a parody. The relationship between political power and this traditional recycling, with the aim of conflict resolution, raises identical issues to those concerning the separation of powers – and, more precisely, of justice and political power – in a parliamentary democracy. Tensions between Paul Kagame and the *gaçaca* are exemplary.

In short, the irruption of tradition in order to contextualize international criminal justice must not be reduced to a straightforward adaptation or, indeed, even to a new form of colonialism.

18 'The *bushingantahe* of Burundi, that we are attempting to revitalise to raise symbolic capital in order to provide weapons for peace, testify anew to the current craze for neo-traditional solutions for crisis resolution. However, it is rather difficult to get this eminently local institution to react to an injunction from above, or even from abroad. All the more so, since the institution does not integrate the *Twa* who are the true pariahs of Burundi society. The *Bushingantahe* do not cope very well with changes of scale; in short, "questions remain about the recovery of popular legitimacies and the capacity of an autonomous and local mediation system to adapt to the formalised standards of a modern national or international legal regime."' (C. Deslaurier, 'Le "Bushingantahe" Peut-Il Réconcilier le Burundi?', 92 *Politique Africaine*, December 2003, at 93). In Sierra Leone, the possible 'use' of the traditional controlling powers of the *Kamajors* to promote reconciliation is currently under study. However, this is also problematic, since, by definition, they cannot be controlled. See A.S. Rodella, *supra* note 10, at 73).

19 C. Bell, 'Normative Shift', *The National Interest*, Winter 2002–2003, at 44.

C. To What Extent Can There Be a Plurality of Ideas of Justice?

The dialectics of the specific and the universal cannot be confined to the forms of justice: diversification of the forms of justice does not have an effect on the idea of justice but on its powers. Penal sanctions may not be the safest route. The *leitmotiv* of justice, for example, that has become a sort of bible, consists of saying: ‘punishment has to be meted out to prevent violence from recurring.’ A society like the one in Sierra Leone would be more inclined to opt for a radically opposite conclusion: ‘we have to deal with them (i.e., militias who have perpetrated atrocities) so that they do not start again.’ This second proposal not only has a real meaning – it may even be more realistic than the previous one.

What these non-criminal experiences of international justice teach us is that the articulation and modalities of justice can easily be substantially modified without, however, changing the nature of justice. Cosmopolitanism calls for the de-positivization of the forms of justice, as well as of the idea of justice itself. The idea of justice can take on very different meanings, depending on whether we are dealing with African or European society. How far can we be – and are we – prepared to accept these different meanings? A solution would be to disarm and give a plot of land to ex-militias, despite the fact that they are responsible for serious human-rights violations, as a way of pacifying on a long-term basis a society damaged by violence. Could this solution be accepted under the complementarity principle of the ICC? One would hope that it could, under certain conditions, and, in particular, if it is not perceived as a manipulative way of perpetuating injustice.

Accepting this diversity seriously challenges the possibility of intercultural dialogue. The answer lies not in the chosen solution, but in the explanations that are given for it. One will only be able to talk about dialogue if all parties have an equal right to put forward proposals and an equal chance to convince the other. In other words, it is only when the West allows itself to be transformed by the other, when it begins to learn from societies that are different, that true universalism will begin, instead of a neo-colonialism under the guise of morality.

3. Towards a Different Nexus between Justice and Politics

One of the main problems for international criminal justice is its position vis-à-vis politics. Its own premise, which privileges a legal approach and sometimes borders on a moralizing over-simplification of the complexity of reality, risks excluding politics. This is why it is essential to rethink the relationship between justice and politics.

A. Ethical Oversimplification

The legal approach may be summary, or even simplistic. The consequent advantage is that it can be easily assimilated. But this is also what limits it: the various African conflicts may appear straightforward from a distance, but as soon as one gets closer, they seem more complicated. The concept of international criminal justice runs the

risk of falling into Manichaeic approaches. The discourses of justice and reconciliation may bring about this result through good will and universality. The words of Prosecutor David Crane seem to be particularly indicative of this approach: 'I have never seen such a clear-cut case, a situation of Good against Evil [...] Since the beginning, the entire war revolved around diamonds.'²⁰ Should we see in it an American cultural feature (the 'Axis of Evil', so dear to US President Bush)? David Crane comes from the American secret services . . . In truth, trial process facilitates this type of short-term analysis; one of its merits, among others, is that the criminal-trial process also conceals the implication of international powers. Reality is more complex, because contemporary conflicts are so deformed, with no battlefields or armies: references become fuzzy, as can be seen with the *sobel*s (a contraction of 'soldiers' and 'rebels') who protect the populations during the day and attack them at night – a little like the French Papon, who claimed to be part of the resistance while simultaneously deporting Jews.

Poles apart from Crane's (feigned?) naivety, these crimes have to be politically interpreted, by distancing oneself from an exotic vision of Africa that implicitly denies it the right to do politics and to be part of history in the same way as us. Thus, it is not an insult to the Rwandan genocide to see it, not as a tribal war, but, as 'an extremely modern phenomenon, a tropical fascism of a completely different nature from that which Rwanda had experienced up until then (in 1959, then in 1973, Rwanda experienced anti-Tutsi massacres)'.²¹ If we do not analyse the causes of these humanitarian catastrophes, and remove those causes, these catastrophes may always recur.

B. Orchestrating Memory Conflicts and the Separation of State and Society

The notion of international criminal justice, in the light of the cosmopolitical model, refers back to a division between politics conceived as power and what we could call a legal level – that of recognition, of peace, which is precisely the one that derives from the irreducible law of nations. The concept of international criminal justice is in opposition to power as traditionally conceived, but it is simply an opposite pole and not a potential substitute. The concept works not therefore to supplant governments, but to limit them. This is where the misunderstanding arises when one assesses the impact of international criminal justice on peace: 'Peace is not a pragmatic objective but is a practical objective that calls for a transformation of the very way in which we think about politics.'²²

The incompleteness of the idea of justice, which artificially disregards the violence of international relations as well as of domestic situations of conflict, is anti-political. Paradoxically, justice cannot afford to do without reflections on violence, not only on

20 David Crane, quoted in the *Washington Post*, 15 April 2003.

21 J.-P. Chrétien, in *Libération*, 31 January–1 February 2004.

22 M. Castillo, in Emmanuel Kant (ed.), *Histoire et Politique, Textes et Commentaires* (Paris: Vrin, 1999) at 57.

the causes of violence but also on the manifestation of violence through the medium of politics. Perhaps, putting justice to the fore in democracies corresponds to a weakening of the situations of conflict.

4. Conclusion

If there is indeed a trait that separates Westerners from the rest of the world, then it is their relationship with time. Through international criminal justice, one sometimes has the impression that Westerners require that others do in a few years that which has taken them centuries to achieve. This is as true of the construction of democracy as it is of justice. How much time has it taken us, the French, to admit the collective shame of Vichy? How long to accept that we should talk about torture carried out during the Algerian war? Notice that, in both cases, the time for remembering arrived when direct witnesses of these ordeals came to the end of their lives, when it was time for taking stock

Justice has to find its moment, its *kairos*. To whom falls the responsibility of managing this time? Who should announce that the time for justice has come? It is rather difficult to take an arbitrary decision, since it depends on so many complex factors: of course, weapons must have been laid down, but that is not enough. Democracy has to be sufficiently robust. And we must desire robust democracy.