

Striving Towards a Just and Sustainable Peace: The Role of Reconciliation

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1. Introduction

The past 15 years have seen little refuge from the protracted conflicts that have characterized much of the twentieth century. In the aftermath of these conflicts, governments, civil society and other social actors concerned with human development have sought to determine how a country salvages what remains in the wake of destruction, takes steps to reconstruct society and strives towards a just and sustainable peace. In this respect, ‘reconciliation’ is an idea that has gained traction in academia as well as amongst policy makers and practitioners.¹ While the concept of reconciliation has a rich history, rooted in religion and theology, it has also been explored in philosophical discourse, most notably by Hegel, and in international law. With the establishment of international tribunals and national truth commissions in the 1990s, the concept became a fixture of international law and has appeared in resolutions, judgments and various domestic and international laws since that time. Yet while the term has steadily gained popularity, no binding legal document at the international level seems to have defined it. This paper explores the meaning of the term – both within and beyond a legal framework – to better understand the need for further research and analysis on the topic in the context of international law.

2. Conceptions of Reconciliation

Reconciliation finds its roots in the non-political domain, in particular the realm of religion and interpersonal relationships. Beginning with Latin, *concilio* refers to the “bring[ing] together [of] several objects into one whole, to unite [or] connect”. Similarly, *conciliatus* refers to a union of atoms or a connection of bodies.² It seems to describe

a process through which disparate parts come together to form a more complete and united whole.

The notion of reconciliation has its pedigree in religion, emerging with clarity, at least initially, in Catholicism. ‘Penance and reconciliation’ – one of the Seven Sacraments – is described as reconciliation with God and the “restoration of the dignity and blessings of life”, the greatest of which is friendship with God. This reconciliation with God was made possible through Christ after a sinful break by humanity. Reconciliation with the Church is another way in which an individual can confess sins, repair relations with the Church and as a corollary restore communion with the Creator.³ According to the Vatican, all other forms of reconciliation emanate from reconciliation with God, including reconciliation with one’s “brethren whom he has in some way offended and wounded”.⁴ Similarly, in the Islamic tradition, the influence of justice permeates all aspects of humanity’s existence and “depicts the right relationships that God calls humans to practice in every dimension of life”.⁵ The word most frequently used in describing reconciliation of such relationships, then, is *ṣulḥ*, which translates to ‘settlement’ or ‘conciliation’ but connotes the restoration of proper relations between parties that have been estranged from each other. *Islāḥ*, the active form of the word *ṣulḥ*, is also closely associated with the notion of reconciliation as it means “to make good, proper, right, to reconcile or settle”.⁶

Religious conceptions of reconciliation reveal a transcendental connotation, one that implies more than returning property, providing compensation for losses, or signing agreements to coexist. Although rooted in various religious traditions and languages, these conceptions contribute – al-

¹ See FICHL Policy Brief Series Nos. 30–36 and 40–42.

² Charlton T. Lewis and Charles Short, *A Latin Dictionary*, available through Perseus Digital Library, Tufts University (<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dconcilio>). Unless otherwise indicated, all URLs referred to in this brief were last accessed on 23 June 2016. No date is indicated for PURLs in the ICC Legal Tools Database as they are permanent.

³ Part II, Section II, “Catechism of the Catholic Church” in *Libreria Editrice Vaticana*, available at http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c2a4.htm.

⁴ *Ibid.*

⁵ Daniel Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation*, Oxford University Press, 2012, p. 155.

⁶ *Ibid.*, pp. 154–155.

beit at an abstract level – to a broader understanding of reconciliation, one that emphasizes the establishment of harmony, the restoration of relationships, or a return to a more complete state.

The notion of reconciliation came into philosophy quite explicitly with Hegel. Hegel seeks to reconcile the individual to the modern social world. He describes his contemporaries as feeling ‘split’ from the world, which the individual perceives as “hostile, alien, and incomprehensible”.⁷ He argues that this perceived ‘split’ is false and that the different aspects of the modern social world in actuality form “a single coherent, intelligible system that promote[s] both individuality and community”.⁸ However, in order for people to see this and to feel ‘at home’ in this modern world, they need a philosophical account of the world to help them understand it and in turn, allow them to be reconciled with it.⁹

Hardimon, a philosopher who has written extensively on Hegel’s social philosophy, describes Hegel’s comprehensive view of reconciliation as both a “process of overcoming alienation from the social world and the state of being at home in the social world that is its result”.¹⁰ Numerous thinkers have since written about the concept of reconciliation, questioning certain characteristics and defining it in different ways.¹¹ Some thinkers, in interpreting his work, have favoured the latter half of his description, where reconciliation is seen as an *outcome* or end-state. In this light, a society is reconciled when it has reached consensus on a historical narrative, recognized the wrongs that were committed and established more or less peaceful relationships amongst neighbours.¹² Meanwhile, other thinkers have supported the description of reconciliation as a *process*. Lederach, a thinker who draws on his experience with mediation and peacebuilding, claims that “we are not merely interested in ‘ending’ something that is not desired. We are oriented toward the building of relationships that in their totality form new patterns, processes, and structures”.¹³

Another aspect of reconciliation that has been given considerable attention is the degree to which relationships

are at the heart of the concept. This appears to be a point of agreement in the discourse on reconciliation. At a foundational level these thinkers agree that “reconciliation is first and last about people and their relationships”.¹⁴ However, there are varied conceptions of what it means for relationships between adversaries to be reconciled. At one end of the spectrum, re-establishing relationships implies co-existing with those previously considered enemies.¹⁵ Co-existence does not carry with it any of the religious undertones of reconciliation. Some argue that this is a more realistic goal in countries that are trying to come to terms with mass atrocities, genocide or other highly divisive conflicts. At the other end of the spectrum, reconciliation implies the desire to see relationships transformed from “resentment and conflict to friendship and harmony”.¹⁶ Philpott, who writes from the perspective of a restorative justice framework, describes this transformation as the “comprehensive restoration of right relationship”.¹⁷

In the context of post-conflict societies, this emphasis on healing fractured relationships has been pitted against the need for punitive justice. In these cases, mending relationships has implied transcending the differences that have divided a population in the hope of achieving reconciliation. However, within such processes, those deemed ‘perpetrators’ have often been granted amnesties – arguably contributing to a culture of impunity – which undermines the rule of law and weakens an already fragile peace process. Many victim’s rights groups and proponents of punitive justice deride truth commissions and other efforts related to reconciliation that do not include trials or prosecutions in some form. Yet Philpott insists that his conception does not exclude punishment but rather sees it as a fundamental part of reconciliation. He describes the basic standards of justice that underpin his ethic of reconciliation while also outlining six practices of political reconciliation: the building of socially just institutions, acknowledgement, reparations, punishment, apology and forgiveness.¹⁸

Many thinkers have attempted to clarify the meaning of reconciliation in their respective fields. In the political context, thinkers like Philpott have sought to apply this abstract notion in a more concrete way to the domain of law and politics. Similarly, policy makers and practitioners have made parallel efforts to apply this broad notion of reconciliation within the context of international law.

⁷ Michael O. Hardimon, “The Project of Reconciliation: Hegel’s Social Philosophy”, in *Philosophy and Public Affairs*, 1992, vol. 21, no. 2, p. 168, citing G.W.F. Hegel, *Grundlinien der Philosophie des Rechts (Elements of the Philosophy of Right)*, Nicolaischen Buchhandlung, Berlin, 1821, at Vorrede (Preface), para. 15.

⁸ *Ibid.*, citing Hegel, paras. 157, 260.

⁹ For Hegel’s work on reconciliation (which is much broader than the scope of this brief), see Hegel, translated by S.W. Dyde, *Philosophy of Right*, George Bell & Sons, London, 1895, paras. 142–360.

¹⁰ Hardimon, 1992, p. 168, see *supra* note 7.

¹¹ *Ibid.*, pp. 180–181.

¹² David Bloomfield, “On Good Terms: Clarifying Reconciliation”, Berghof Research Center for Constructive Conflict Management, 2006, p. 6.

¹³ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, USIP, Washington, DC, 1997, p. 85.

¹⁴ John Paul Lederach, “Civil Society and Reconciliation”, in Chester A Crocker, Fen Osler Hampson and Pamela Aall (eds.), *Turbulent Peace: The Challenges of Managing International Conflict*, USIP, Washington, DC, 2001, p. 842.

¹⁵ Elin Skaar, “Reconciliation in a Transitional Justice Perspective”, in *Transitional Justice Review*, 2013, vol. 1, no. 1, p. 12.

¹⁶ Hizkias Assefa, “The Meaning of Reconciliation”, in Paul van Tongeren *et al.* (eds.), *People Building Peace*, European Platform for Conflict Prevention and Transformation, Utrecht, 1999, p. 38.

¹⁷ Philpott, 2012, p. 53, see *supra* note 5.

¹⁸ *Ibid.*, p. 171.

3. The Concept of Reconciliation in International Law

In the context of international law, reconciliation gained in popularity with South Africa's Truth and Reconciliation Commission and the *ad hoc* tribunals established in response to the conflicts in Rwanda and the former Yugoslavia. Although the concept of reconciliation is frequently referenced in domestic and international law, the idea has not been defined by any binding legal document at the international level. For example, the *Promotion of National Unity and Reconciliation Act 34 of 1995*, which established the Truth and Reconciliation Commission in South Africa, lays out its objectives to "promote national unity and reconciliation", essentially describing an ideal state in society without necessarily providing clarity on what is to be achieved.¹⁹ Similarly, the United Nations Security Council resolution 840 on the transitional government in Cambodia "calls upon all parties to stand by their obligation to respect fully the results of the election and to cooperate in securing a peaceful transition". The resolution then calls on all parties to welcome then-Prince Norodom Sihanouk's efforts "to achieve national reconciliation".²⁰ Here, the term is used to describe efforts that are being made in society, without providing any definition in law. In most cases, where the concept is mentioned, it is with the aim of describing a situation taking place in a given context or promoting a condition in society that transitional justice efforts aim to achieve. One challenge that this broad usage has created is a certain degree of ambiguity which enables various parties to use the concept in whatever way meets their own interests.²¹

While reconciliation has yet to be defined as a legal concept in international law, there are other principles that share legally-protected interests with reconciliation. Although this paper does not allow for a thorough review of all such principles and their relationship to reconciliation, those of international peace and security and *restitutio in integrum* will be mentioned here by way of example. Both of these principles help to clarify aspects of a holistic conception of reconciliation, such as its concern with the prevention of conflict, the protection of rights, and the award of reparations. However, these principles also demonstrate how comprehensive reconciliation is and how much more effective humanity's efforts to achieve it could be if the concept was given normative value.

3.1. International Peace and Security

The principle of international peace and security shares with reconciliation a profound concern for the prevention

of conflict. This principle emerged after the First World War when the League of Nations was formed. One of its primary aims was "to promote international co-operation and to achieve international peace and security".²² When only two decades later even more egregious atrocities were perpetrated, engulfing much of the world in the mist of another war, the question of peace and security took centre stage in international law and politics. The devastation that occurred in two consecutive world wars weighed heavily on humanity's conscience. The collective resolve to prevent similar conflicts brought about the formation of the United Nations and the aim of maintaining international peace and security was enshrined in the preamble of its Charter. The Security Council became the organ of the UN responsible for maintaining international peace and security and while its ability to do so has been limited by political manoeuvring, it is meant to play a vital role in determining what constitutes an act of aggression or a threat to peace and how collective action is taken to counteract such threats.

Central to the principle of international peace and security are the prevention of conflict and violations of international human rights law and the protection of the rights of different groups to co-exist. Although reconciliation encompasses these interests, it seems to signify a more robust vision of what a society should strive towards in the aftermath of war. Reconciliation implies the promotion of a more cohesive relationship between segments of the population, most of whom have been adversaries during a period of conflict. In this sense, while the principle of international peace and security is of critical importance, it does not embody the notion of 'restoration of right relationship' described above nor does it connote comprehensiveness, as is the case with reconciliation.

3.2. *Restitutio in Integrum*

While remedies for victims of illegal misconduct have existed in customary international law for centuries, the *Chorzów Factory* case decided by the Permanent Court of International Justice in 1928 firmly entrenched the principle of reparations in international jurisprudence. The case stipulated that, "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed".²³

Restitutio in integrum or 'restoration to the original condition' has continued to be a fundamental principle, acknowledged in a number of international law instruments. The Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, for example, give priority to restitution as a

¹⁹ Chapter 2, Article 3(1), *Promotion of National Unity and Reconciliation Act, 34 of 1995* (<http://www.legal-tools.org/doc/42cdab/>).

²⁰ UN Security Council resolution 840 (1993), 15 June 1993, S/RES/840 (1993) (<http://www.legal-tools.org/doc/ac40e7/>).

²¹ Fernando Atria, "Reconciliation and Reconstitution", in Scott Veitch (ed.), *Law and the Politics of Reconciliation*, Routledge, New York, 2007, p. 34.

²² Preamble of the Covenant of the League of Nations (<https://www.legal-tools.org/en/doc/106a5f/>).

²³ Permanent Court of International Justice, *Case concerning the Factory at Chorzów*, Judgment No. 13 (Merits), p. 47 (<http://www.legal-tools.org/doc/b2ff98/>).

primary form of reparations, emphasizing the importance of “re-establish[ing] the situation which existed before the wrongful act was committed”.²⁴ Should it be impossible to reconstitute the loss or if doing so is beyond the capacity of the wrong-doing state, compensation or at the very least ‘satisfaction’ – which usually takes the form of an apology, formal acknowledgement, declaratory statements, or construction of memorials – serve as alternatives.²⁵ Reparations are a critical aspect of restorative justice and play an important role in rectifying certain wrongs committed during a period of conflict, interests which seem to be shared by reconciliation. However, while reparations likely contribute to repairing relationships between individuals or groups in a society, they alone do not guarantee the kind of stability that most societies are hoping to achieve.

4. A Call for More Research and Analysis

For the discourse on reconciliation to have an effective role in post-conflict situations, it seems necessary to develop a stronger common understanding of the characteristics of reconciliation. Increasingly clarifying its normative value may also allow us to find the gaps and identify the limits of the term. Despite the significant contributions that have been made by numerous thinkers in the field who have attempted to clarify what reconciliation means, and the accumulating body of law, policy and jurisprudence that lend credence to the concept, a degree of ambiguity remains. This has shown itself to be a stumbling block in the path of building a common vision of a just and harmonious society post-conflict. In response to this void, some scholars have sought to refine the definition of reconciliation in an effort to bring unity of thought. Some, like Philpott, have attempted to reframe the concept. In addition to these efforts, it may be timely to consider fresh concepts that can contribute to a discourse on peace and influence the effectiveness of action taken by those who are seeking to construct just and peaceful societies.

Could it be that reconciliation is an extremely important value in the immediate aftermath of conflict but becomes less relevant as time passes in a society? Putting an end to violent conflict is no small feat and may require a focus on reconciliation or perhaps even its precursor, co-existence,

²⁴ Article 35, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (<http://www.legal-tools.org/doc/8f3ca0/>).

²⁵ Antoine Buyse, “Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law”, Max Planck Institute, 2008, p. 131.

for a period of time. However, as a society becomes less preoccupied with restoring relationships destroyed by conflict, perhaps a concept that reflects a higher form of social cohesion becomes more relevant. The restorative framework within which reconciliation sits is entirely relevant and pertinent to societies in the early stages of transition from conflict. Nonetheless, the emphasis on returning to a pre-existing state or condition in society must be tempered with an accurate reading of the injustices and structural violence that existed prior to a given conflict. In this light, one might imagine the immediate relevance of reconciliation after a period of protracted conflict while also finding value in a concept like ‘unity’ which may become increasingly relevant as a society moves away from the immediate post-conflict era.²⁶

5. Conclusion

The brief discussion above demonstrates that ‘reconciliation’ enjoys legitimacy in both the academic literature and the legal world, but has yet to be defined as a concept of international law. Nonetheless, certain cognate legal concepts capture some of the interests protected by the notion of reconciliation and validate its expanding roots in the legal landscape. Alongside further research to clarify the concept, it seems that a fruitful area of investigation might be related to concepts that seek even more profound levels of social cohesion, such as the concept of ‘unity’ or other such concepts that become increasingly relevant to societies that are moving away from the immediate aftermath of war.

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²⁶ CILRAP, *Reconciliation v. Accountability: Balancing Interests of Peace and Justice*, conference concept note 150529 (https://www.ficHL.org/fileadmin/ficHL/activities/150529_Peace_Palace_programme__as_of_150424_.pdf).