

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION
AALCO Legal Advisers Meeting

Statement by Ms. Patricia O'Brien
Under-Secretary-General for Legal Affairs, The Legal Counsel

24 October 2008, 3pm, Trusteeship Council Chamber, New York

Mr. President of the Asian-African Legal Consultative Organization,
Mr. Secretary-General of the Asian-African Legal Consultative
Organization,
Madam President of the International Court of Justice,
Mr. Chairman of the Sixth Committee,
Excellencies,
Distinguished representatives,

I would like to commence my short speech by acknowledging the degree to which active observers in the General Assembly, such as the Asian-African Legal Consultative Organization, contribute greatly to the work of the United Nations.

I am, therefore, very pleased to see the legal advisers of AALCO coming together here in the Trusteeship Council Chamber for their annual meeting at the United Nations.

And I am also pleased to address you for the first time as Legal Counsel of the United Nations.

In keeping with well-established tradition, allow me to say a few words from the perspective of the UN Office of Legal Affairs on the main topic that you have identified for your meeting today: recent developments with regard to the International Criminal Court.

As we are well aware, the creation of the International Criminal Court represents one of the major achievements in international law during the past century. Since the entry into force of the Rome Statute in July 2002, the Court has completed an important transition from the set-up phase to the commencement of its judicial functions to put an end to impunity for the perpetrators of the most heinous crimes of concern to the international community as a whole.

We believe that among its achievements, the activities of the Court and its Prosecutor have had a discernible deterring effect on potential perpetrators of international crimes.

The UN is proud of its relationship with the ICC. As the Secretary-General recalled recently on the 10th anniversary of the adoption of the Rome Statute, the Organization provided crucial assistance and support to UN Member States who created the Court. Even since, UN-ICC cooperation has expanded steadily to the point that by now, our two independent institutions fully complement each other's work.

Today the UN's work to promote peace, development and human rights is heavily dependent on the ICC's efforts to advance justice and establish the rule of law. If you will allow me this opportunity to repeat the Secretary-General's exhortation to Member States that we work together to further improve cooperation between the Court and the UN in ways that take into account the legitimate interests of both partners. The UN is prepared to take all necessary action, with due respect to the applicable rules, to facilitate the Court's noble and important mission.

The Court is an independent international judicial institution. The United Nations, and in particular the Office of Legal Affairs, played a major role in assisting States in creating this institution. With full respect for its independent character, the United Nations continues to support the International Criminal Court.

From the outset of our cooperation with the ICC, the Office of Legal Affairs has been designated by the Secretary-General as "point of entry" for all UN-ICC related matters.

In its struggle to fight impunity, the ICC cannot succeed on its own. As the President of the Court, Philippe Kirsch puts it, "The Court is independent but interdependent". Unlike domestic mechanisms, the ICC does not have any enforcement powers. It can neither enforce its own arrest warrants nor its own judgements. It depends on others to carry out its mandate successfully. The primary support and cooperation for the Court's activities must come from States. As a secondary resort, the Court can also turn to international and other organizations. The United Nations does its share in

assisting the Court through providing information and logistics in conformity with the UN Charter and its mandates on the basis of a special agreement between the UN and the Court. This agreement is of course the Relationship Agreement which entered into force on 4 October 2004 and which forms the legal basis for cooperation with and assistance to the Court.

It is now clear that the single most important determinant of success for any international tribunal is cooperation. This includes cooperation from States, cooperation from the UN and other international organizations, cooperation from civil society and the NGO community, and cooperation from victims, witnesses and other individuals. Cooperation that results in financial support and political backing, and which flows from expressions of support in public as well as behind closed doors. It is cooperation that fundamentally determines the effectiveness of the ICC. The UN continues to cooperate with the ICC under our Relationship Agreement. The UN assists the Court in many ways. It provides documents and information, it supplies logistical and other technical support to Court filed operations, and it even accommodates the Court in its security arrangements. Of course, the arrest and surrender of indicted individuals can only be undertaken by States, even where peacekeeping operations have been mandated to assist with the task.

That is why the cooperation of States is essential to the work of the Court. Without it, the ICC cannot function. The Court needs the support and assistance of all States Parties for the important work that is underway.

And we in the UN are fully conscious that cooperation with the UN continues to be essential to the Court both institutionally and in the different situations and cases.

In its still very young existence, the International Criminal Court has already made some impressive gains.

The Prosecutor of the Court is currently investigating four situations: in the Democratic Republic of the Congo, where during one of the bloodiest conflicts in Africa, thousands of civilians have fallen victim to mass atrocities and countless children have been abused; in Darfur, where unspeakable crimes on a massive scale are still being committed; in Northern Uganda, where the Lord's Resistance Army (LRA) abducted thousands of children turning them into child soldiers, servants and sex slaves; and in the Central African Republic, where there are in particular many allegations of rape and other acts of sexual violence against women.

The United Nations supports the activities of the Court, and those of the Prosecutor in particular, in all of these situations.

Some of these situations are still unstable, and peace has not yet been achieved. Under such circumstances, questions about the relationship between peace and justice arise. The tension arising in the pursuit of each is unavoidable.

As the Secretary-General has put it, there are no easy answers to this morally and legally charged balancing act. However, the overarching principle is clear: there can be no sustainable peace without justice. Peace and justice, accountability and reconciliation are not mutually exclusive. To the contrary, they go hand in hand and as more recently described, they must move in parallel.

While we all uphold these principles, the challenge is to find the right balance for each instance when the issue arises. Justice and peace must be regarded as complimentary requirements. The problem should not be one of choosing between peace and justice but of the best way to interlink one with the other, in the light of specific circumstances without ever sacrificing the duty to pursue justice.

And so the work of the ICC goes hand in hand with that of the United Nations. The United Nations' struggle for peace cannot succeed without the International Criminal Court's efforts for justice.

In closing, let me reassure you that the International Criminal Court can continue to count on the support of the United Nations in the future, just as it could count on our support in the past.

Thank you.