

Russian Regional Branch of the International Law Association

55th Annual Meeting

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

**Wednesday, 27 June 2012, 10:00am
Moscow, Russian Federation**

Mr. Gevorgian,
Distinguished colleagues,
Ladies and Gentlemen,

[Introduction]

It is an honour to be here today to address you and to discuss with you "Current issues of modern international law" as you have entitled the 55th annual meeting of the Russian Branch of the International Law Association.

I am truly delighted to be back in Russia. Thank you very much for inviting me to this important meeting.

What brings us together here in Moscow this week is international law, a discipline and a topic that always played an immensely significant role in Russia.

Since Russia enacted its 1993 Constitution, international law scholars – and I agree with them - have heralded Article 15 (4) of the Constitution as a decisive break with the Soviet Union's cautious approach to the incorporation of international law into domestic law. The importance of international law becomes obvious when one reads this provision, and I quote: "Generally accepted principles and rules of international law and international treaties of the Russian Federation shall be an integral part of its legal system. If an international treaty of the Russian Federation establishes rules, other than provided for by the law, the rules of the international treaty

shall be applied.” I was interested to hear Mr. Stephashin refer to this principle in his opening remarks.

Through its outstanding legal scholars, Russia was also able to contribute significantly to the development of international law. In this connection, let me just mention Friedrich Martens, Russia’s representative to the Hague Peace Conference, and rightly referred to as one of the “fathers of international law”.

The respect and a passion for international law is what unites Russia and the United Nations. Allow me to elaborate a bit further on the centrality of international law at the United Nations.

[The role of OLA - Vision]

It is almost four years since I was appointed as Legal Counsel. Before I took up the post, my main experience of the UN was as a foreign ministry legal adviser. So, in my new role, I was curious as to how centrally international law would feature among UN priorities during my tenure.

Before I give you a sense of the centrality which I found, allow me to recall the preamble of the Charter where the Peoples of the United Nations expressed their determination

“to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.

The position of Legal Counsel of the UN is a unique and fascinating job. In addition to leading a large UN office which responds on a daily basis to requests for legal assistance concerning numerous aspects of the UN’s activities, it is also my job to promote the values and the application of the rules of the Charter and international law.

Over the years, the UN has seen periods of great advancement in international law and jurisprudence, just as there have been times when our

function as guardian of the global legal architecture has seemed more peripheral. Since joining the Organisation, it has become clear to me that international law - and the role of the UN as its champion - is central to the work of the UN and to the Secretary-General and his team.

We - as lawyers - are at the Secretary-General's table on many issues. I think it is only fair to say that it is the Secretary-General himself with his wish to see international law at the centre of UN work – who provides us with our seat at the table.

So - what is the vision of my office? One answer is the focus on promoting respect for the rule of law by the UN itself as an actor. That we not only “talk the talk”, but also “walk the walk” when carrying out our mandates.

“For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”

As the Legal Counsel, my task is to support the Secretary-General's commitment to the strengthening of the rule of law, the pursuit of justice and the determination to end impunity for war crimes, crimes against humanity, genocide and other serious violations of international human rights law. This topic, in one way or another, permeates my activities on a daily basis.

My office plays a key role in promoting the rule of law at the national and international levels and this is at the heart of the UN's mission. Establishing respect for the rule of law is fundamental and essential for a number of reasons, including firstly: prevention of conflict; secondly, achieving a durable peace in the aftermath of conflict; thirdly, the effective protection of human rights; and also, of course, sustainable economic progress and development.

It is my mission to help the UN to act in accordance with the rule of law. My Office plays a role – to help with the concrete and practical application and implementation of the rule of law. It is my Office's job to ensure that UN departments and offices develop and implement policies in accordance with the law.

At our session later today, I will speak about the "responsibility to protect". However, allow me to raise another substantive issue with you at this point which I consider as very important: international criminal justice and the fight against impunity.

[International criminal justice and the fight against impunity]

Under the leadership of the Secretary-General, the UN has achieved significant progress in the fight against impunity in respect of international crimes. Secretary-General BAN Ki-moon has consistently called for the enhancement of accountability for those who commit international crimes, including for serious violations of human rights and international humanitarian law.

In this respect, I would like to refer to the work of the various international justice mechanisms, which we assist and support. The 1990s and the early 2000s were historic periods in international criminal justice, when new international criminal tribunals were established to ensure accountability for genocide, war crimes and crimes against humanity. The Tribunals have reaffirmed, and continue to reaffirm, the central principle established long ago in Nuremberg: that those who commit, or authorize the commission of, war crimes and other serious violations of international humanitarian law are individually accountable for their crimes and will be brought to justice, in accordance with the due process of law.

My Office has been closely involved in the establishment and operation of the international criminal tribunals, and although they have only been able to prosecute a relatively small number of defendants, I believe they have already achieved a great deal. A number of those who, from high positions,

allegedly planned and directed the most serious crimes have been brought to justice or are currently facing trial. Heads of State have not been exempted.

[SCSL - Charles Taylor judgment]

The issue of a former Head of State on trial leads me to last month's trial judgment by the Special Court for Sierra Leone in the case against Charles Taylor, the former President of Liberia. This judgment is a significant milestone for international criminal justice, as it concerns the conviction of a former Head of State by an international criminal tribunal for planning, aiding and abetting war crimes and crimes against humanity. It sends a strong signal to all leaders that they are and will be held accountable for their actions.

There are many instructive lessons to be drawn for this judgment. Allow me to mention just three:

- The old era of impunity is over. In its place, slowly but surely, we are witnessing the birth of a new Age of Accountability;
- In this new age of accountability nobody is above the law, including in particular Heads of State. Every leader will eventually be held accountable for his or her actions;
- And: there is no peace without justice. Peace and justice must go hand in hand and elements of justice must be factored into every post-conflict strategy in order for peace to be sustainable.

In any event, the Taylor conviction constitutes a major victory major victory in the fight against impunity and is a significant milestone for international criminal justice.

However, the Special Court for Sierra Leone is not the only "ad hoc" tribunal currently in operation. Let me briefly mention the others as well.

[ICTY and ICTR]

Some 18 years after their establishment, the ICTY and the ICTR are completing their mandates. In both cases, it can fairly be said that the work of both tribunals has contributed to the process of national reconciliation and the maintenance of peace and security. The legacy of the ICTY and ICTR also includes legal and judicial capacity building. The Tribunals have significantly influenced the way criminal justice is exercised in the affected countries and regions.

In December 2010, the Security Council established the “International Residual Mechanism for Criminal Tribunals”, which will continue the jurisdiction and essential “residual” functions of both tribunals, including: the trial of fugitives from the tribunals; the ongoing protection of witnesses; the monitoring of the enforcement of prison sentences and management of the Tribunals’ archives. And yesterday, on 1 July 2012 the Residual Mechanism commenced functioning.

The establishment of the Residual Mechanism at this stage sends a clear message to the 9 ICTR fugitive indictees that impunity will not be tolerated: they cannot “run down the clock” and outlast the international community’s will to ensure accountability.

[ECCC]

The Extraordinary Chambers in the Courts of Cambodia (ECCC) are part of the national judicial system of Cambodia, and accordingly work within, and as part of, Cambodia’s national legal system. At the same time, however, the ECCC is required under the Agreement between the UN and the Government of Cambodia to function in accordance with international standards of justice, fairness and due process of law. This process of combining Cambodian law and procedure with international standards has been challenging, but has also had successes.

In July 2011, the Court rendered its first verdict in the case against KAING Guek Eav, alias Duch, and found him guilty of crimes against

humanity and grave breaches of the Geneva Conventions of 1949. He was sentenced to 35 years of imprisonment, shortened to 19 years to take into account time served in detention.

The conclusion of this first trial was an important step towards ending impunity for the horrific crimes committed during the Khmer Rouge regime. It also paved the way for the second case - currently ongoing - which concerns the most senior leaders of Democratic Kampuchea who are still living.

While there are many challenges faced by the ECCC, we should not lose sight of the laudable successes of the Court. Early this year, it issued its first appeal judgment, against Duch, who was in charge of the notorious S-21 prison where thousands of innocent people were systematically tortured and killed.

Also, the ECCC is conducting the trial of the most senior surviving members of the Khmer Rouge regime. Many commentators consider this as the most significant international criminal trial in the world at the moment.

[Special Tribunal for Lebanon]

There has also been some significant development at the newest UN-assisted tribunal, the Special Tribunal for Lebanon. The mandate of the Special Tribunal is to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Prime Minister Rafiq Hariri and in the death or injury of other persons.

The mandate of the Special Tribunal for Lebanon was due to expire on 29 February 2012. Since the work of the Tribunal is not complete, the Secretary-General decided in February to extend its mandate for an additional period of three years.

This will enable the Tribunal to conduct proceedings against the four persons who it indicted. The proceedings will in all likelihood be conducted in

absentia, as the four accused persons have not been arrested and handed over.

[ICC]

Today it is the Rome Statute - which gave rise to the International Criminal Court - that is at the centre of our system of international criminal justice.

The ICC's 10th anniversary is a symbolic milestone that will be celebrated throughout the year by those involved in the fight against impunity for serious crimes of international concern. It will provide an opportunity to review the achievements made in the field of international criminal justice in the past 10 years, and the Court and its supporters hope that it will also act as a reminder of the urgency for all States committed to justice to ensure continued support for the Court.

The Court issued its first judgment on 14 March 2012 - a significant milestone. The Court convicted Lubanga of the war crimes of conscripting children under the age of 15 years into armed groups, enlisting children into armed groups, and using children to participate actively in an armed conflict that took place in the Eastern region of the DRC. His sentencing hearing opened in mid-June.

I know there has been some criticism of how long it took for the Court to complete its first trial — over five years. That would be to overlook the issues that any new jurisdiction faces, where legal paths are as yet un-trod and there are not yet precedents to guide. It is to be expected that, as questions of first impression are answered and precedents established, the work of the Court will accelerate — all, of course, while guaranteeing due process of law to those brought before it.

Currently, the ICC is exercising jurisdiction in respect of the following seven situations: DRC, Central African Republic, Northern Uganda, Darfur, Libya, Kenya and Côte d'Ivoire.

As the centrepiece of the system of international criminal justice, the International Criminal Court is at the heart of efforts of the international community to ensure accountability and end impunity while also seeking to strengthen the rule of law. If we want to be serious about combating impunity and nurturing and developing a culture of accountability, we must support its work. This Court provides the opportunity and the vehicle for our generation to significantly advance the cause of justice and, in so doing, to reduce and prevent unspeakable suffering.

[Conclusion]

After this excursion into international criminal justice, I would like to take you back to my point of departure: the significance of international law. International law is central to the work of the United Nations and to the Secretary-General. During my tenure as Legal Counsel so far I had many files on my desk where Russia's support was indispensable or where we needed to consult with Russia. Not all of these files were easy ones.

However, in Russia and its Permanent Mission in New York the Office of Legal Affairs always had a partner with an excellent understanding of and deep respect for international law. And regardless how difficult the matter sometimes might have been politically, dealing with a counterpart who shares a profound belief in international law is always productive.

This brings me to the end of my introductory remarks today. Thank you very much for your kind attention and I look forward to the R2P session.