

**The Nuremberg Academy: First Steps  
Building a Summer Programme in International Criminal Law**

**Gala Dinner Keynote Address by Ms. Patricia O'Brien,  
Under-Secretary-General for Legal Affairs,  
The Legal Counsel  
Sunday, 28 July 2013, 7.30pm,  
Hirsvogelsaal, Nuremberg, Germany**

Distinguished participants,  
Colleagues and Friends,  
Ladies and Gentlemen,

Thank you very much for inviting me to this symposium and to deliver the keynote address at tonight's Gala Dinner. Thank you, Harold, for the very kind words of introduction. I am delighted to be here in Nuremberg and to see so many friends and colleagues – somehow it feels a bit like New York or The Hague.

I am delighted to see Parliamentary State Secretary Christian Schmidt of the German Ministry of Defence who was the first one who told me about the "International Academy Nuremberg Principles" or "Nuremberg Academy" when we met in New York in March 2012. And I remember that I immediately thought to myself: "What a great idea to found an academic institution to defend the Nuremberg Principles in the city of the historic Nuremberg trials."

In its resolution 95(I) of 11 December 1946, the General Assembly affirmed the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgement of the Tribunal. The Nuremberg Principles have considerably influenced the development of international criminal law. All of the principles – in a slightly different and generally more elaborated manner - are today enshrined in the Statutes of the UN-established or UN-backed international or hybrid criminal tribunals. Most importantly, they are enshrined in the Rome Statute of the International Criminal Court. They are today widely considered to represent customary international

law. In addition, these principles have been spelled out over the years. Against this background defending and further developing the Nuremberg Principles is such a noble cause, a cause to which many of you have dedicated their professional lives. And I am no exception.

When you are working in the field of international criminal justice, as so many of you do, you don't just do a job. You heed a calling. You are on a mission. You become a fighter in the struggle to end impunity for international crimes, crimes so horrific that they shock the conscience of mankind, crimes so horrific that they cause unspeakable suffering among the victims. How can you not be moved when you are in Nuremberg, the place where the foundation of international criminal justice was established.

Let me take this opportunity to wish the young "Nuremberg Academy" the success that it deserves. It is exciting to be "present at the creation" to say in the words of Dean Acheson. The Office of Legal Affairs of the United Nations will support the Nuremberg Academy and the summer programme which is the focus of this symposium to the extent of our abilities.

Allow me tonight to share with you some reflexions on international criminal justice from my five years as the Legal Counsel of the United Nations which will end in September this year.

### **[The Role as Legal Counsel]**

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 live in an era in which international law is no longer only the business of international courts and institutions. We can all see that international law issues are increasingly being considered by national

and regional courts – sometimes in sustained, systemic ways; on other occasions in *ad hoc* or more random ways. I am firmly of the view that we should not underestimate the importance of this evolution.

### **[Vision]**

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, permeated 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, achievement of a durable peace in the aftermath of conflict; thirdly, the effective protection of human rights; and also, of course, sustainable economic progress and development.

### **[The UN's work to end impunity for international crimes]**

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 first tribunals were the ICTY and the ICTR, established to address accountability for the terrible atrocities of the Former Yugoslavia and Rwanda respectively. These were followed

by the SCSL and the ECCC. The international criminal 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.

This leads me to the centrepiece of our system of international criminal justice – the International Criminal Court. The UN supports the ICC. And we take that responsibility seriously. However, I take every opportunity to emphasise the role of the States. The principle of complementarity is essentially the duty of States first and foremost to prosecute international crimes. Only where national judicial systems are unable or unwilling to investigate or prosecute should international courts be involved. This principle is of crucial importance for the future of international criminal justice and the quest to end impunity for grave violations of international humanitarian law and human rights law. It is clear that the primary role of national jurisdictions and the principle of complementarity has become the bedrock of international criminal justice. International mechanisms are **not** substitutes for national mechanisms. In the final analysis, **justice is a nation's choice.** Supporting the principle of complementarity through fortifying national judicial systems is a priority in our common fight against impunity for the coming years. But, as we know, where States are unable or unwilling to ensure justice for international crimes, it falls unto international justice to fill the gap.

The International Criminal Court is at the centre of efforts of the international community to ensure accountability and end impunity while also seeking to strengthen the rule of law. 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. When the ad hoc tribunals have finished their mandates, the ICC will remain as the world's only permanent court which administers international criminal justice.

**There are many instructive lessons** to be drawn from the UN's work to end impunity for international crimes. Allow me to summarize them as follows:

- 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. Leaders will eventually be held accountable for their actions;
- Sovereignty as a barricade against international justice is gone;
- 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.

I think we can be proud of what we have achieved over the course of the last 20 years. International criminal justice is now firmly established as an important part of international law. We are well on our way to establishing a truly global system of international criminal justice, with the International Criminal Court as its centrepiece. For me, as for many others, this is one of the greatest achievements in international law in the last fifty years. The establishment of an age of accountability also represents a major moral, sociological and cultural achievement.

So much for the good news. Now let me mention some of the challenges we are facing in our common endeavour to root out impunity for international crimes.

Supporting international criminal justice and the ICC is not an easy task. It requires eternal vigilance and constant determination. We must be prepared for setbacks. There have already been many; and there will certainly be many more. After all, we are confronting powerful, elemental forces and we are defying powerful, influential men. Still we must follow this path because it is the right one. There is no alternative. The ICC is not only our best hope for ensuring that those who commit crimes that shock the conscience of humankind are prosecuted and that justice is done: it is also our only hope. The only

alternative to the ICC is sliding back into the darkness of unbridled impunity for the worst crimes known to mankind.

Supporting international criminal justice happens in small steps. Let me just give you a recent example: I am particularly proud that we have managed to formally communicate the Secretary-General's policy on "essential contacts" to the Presidents of the Security Council and of the General Assembly. The identical letters have been issued as official documents of the Council and the Assembly. I very much hope that this is helpful for your work. We are also developing a practice according to which we inform the Prosecutor beforehand about any contacts that may need to take place between senior UN Officials and individuals who are the subject of ICC arrest warrants. It is a small step, but an important one.

There are many more steps that we must take and the challenges sometimes seem overwhelming. We must face reality. Let me mention just a few of the challenges that we are up against.

We must improve the efficiency and overall performance of the ICC. Over ten years into its existence the ICC is still struggling to establish itself as a part of the architecture of international relations. There are still those who question its role and deny its legitimacy.

In those ten years, the Court only managed to complete two trials: one conviction and one acquittal. There are of course reasons for this. Any new institution as complex as an international criminal court is going to take time to develop its infrastructure, its practices, its jurisprudence, its know-how. Nevertheless, it is not exactly an impressive record. And one that is not exactly calculated to convince the sceptics and the critics. More than ever before, the eyes of the world are on the men and women who serve as judges of the ICC. It is their responsibility to deliver solid and convincing judgements that speak to our instincts of common sense and justice, and to do so without undue delay.

In the recent past, there have also been some painful setbacks for the Office of the Prosecutor. Let's not ignore this, but rather re-

double our support for the Prosecutor and help her to ensure that she has the human and financial resources that she needs in order to carry out her ever-increasing tasks.

The Court's relationship with the African Union remains difficult.

The Kenya cases will be a defining moment for the ICC. We must not allow the situation in Kenya to weaken the Court or to render it irrelevant.

But I don't want to end on a pessimistic note. Our cause is a right and true one and we know that truth and justice will ultimately prevail. I encourage you to pursue the path of supporting international criminal justice and the ICC: as judges, as academics, as international and national civil servants, as representatives of the media, and as representatives of civil society - the world's conscience.

This is how I will leave the Office of Legal Affairs - with a reminder never to surrender to political pressure. To strive for what is right, and not for what might seem convenient at the moment.

It is my firm belief that fighting for international criminal justice and for the ICC is a noble cause. It is the right thing to do and history will prove us right. There is no turning back.

Thank you and "Guten Appetit".