

60th Anniversary of the UDHR
Panel IV: Realizing the promise of the UDHR
14 November 2008, 4.30-6.00pm,
City Bar of New York, 42 West 44th Street

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

Dear colleagues and friends,

Introduction

I am honoured to be with you today and to contribute in this small way to the celebration of the 60th anniversary of the Universal Declaration of Human Rights. The diversity of this gathering of lawyers is evidence of the commitment of the global legal community to the promotion of human rights. It is fitting that we are meeting in the United States, under the auspices of the American Bar Association, given the role that this country has played, through the work of Eleanor Roosevelt and others, in the adoption of the Declaration.

I propose to focus my contribution on the role of the UN in the quest to realise the promise of the Universal Declaration.

As you are all aware, the Declaration is not a legal instrument. Indeed, some of its provisions are not recognized as legally binding rules, while others, in the fullness of time, could be considered to constitute general principles of law. But the Declaration's most important and lasting significance is likely to be as a guide, adopted by the General Assembly, to interpret provisions of the Charter of the United Nations. Its indirect legal effects cannot be underestimated.

The work of the United Nations is, of course, guided by, and grounded in international law more broadly, and in particular human rights. The preamble to the Charter of the United Nations makes reference to the

signatories' "faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women...".

Since the adoption of the Declaration, the United Nations has developed a system of Charter based bodies, treaty based bodies and offices that address the wide range of elements of the human rights regime. First among them, of course, is the Office of the High Commissioner for Human Rights, with which we in the Office of Legal Affairs work very closely.

Our collaboration includes working together on accountability mechanisms aimed at achieving justice and reconciliation. My Office takes the lead on judicial approaches and the High Commissioner coordinates the UN effort on truth and reconciliation commissions. In addition, we are partners in the growing range of UN activities related to assisting States to broaden and promote the rule of law, nationally and internationally.

This illustrates that there are, of course, many ways in which the international community addresses the promotion of human rights. Education, monitoring and reporting are important tools used to achieve respect for the principles enshrined in the Declaration and the legal framework set out in human rights conventions. When serious abuses have occurred, the pursuit of justice can provide some degree of redress for victims and encourage, through example, respect for the rule of law.

The effort to pursue justice has necessitated our engagement in important connected issues regarding the relationship between the Organization's goals of achieving justice and peace.

As Secretary-General Ban said last December in his address to the Assembly of States Parties to the Rome Statute of the International Criminal Court on the relationship between peace and justice: "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."

My Office, the Office of Legal Affairs, is the central legal service of the United Nations system. While it does not have a mandate specific to the promotion of human rights, the Office of Legal Affairs, or OLA, plays an active role in supporting the pursuit of international criminal justice. I am

hoping that it may be of interest to you to outline, in brief, the wide range of international bodies established under the auspices of, or in cooperation with, the UN, and which address the quest to end impunity for crimes against humanity, war crimes and genocide.

Our Office was instrumental in the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and we continue to work on a daily basis with those tribunals and other mechanisms to prosecute those responsible for those crimes.

I would like to give you a brief update on the current status of this aspect of our work.

The **International Criminal Tribunals for the former Yugoslavia and for Rwanda**, both United Nations subsidiary bodies established by Security Council resolutions, have led the way in the enforcement of international criminal law.

Now, more than a decade after their establishment, through hard experience, these Tribunals have developed a wealth of substantive and procedural jurisprudence, and have served as a catalyst for national prosecutions and provided a valuable guide in the development of other models of international justice.

Currently, both Tribunals are working towards the conclusion of their mandates. While the completion strategies of these Tribunals are underway, this is not to say that the important work of bringing to justice those accused of the most significant criminal acts will end. We are helping them to develop, in consultation with the Security Council, residual judicial mechanisms to protect the integrity and legacy of their work by ensuring that those actors can be tried when such trials are possible.

Even after they close their doors, both Tribunals will also continue to have an impact through ongoing prosecutions by the relevant national authorities of those responsible for the commission of serious crimes during their respective armed conflicts.

The **Special Court for Sierra Leone**, established by agreement by the United Nations with the Sierra Leone Government, provides a different model of international criminal justice. Its approach, developed through

negotiations between the Office of Legal Affairs and Sierra Leone, was informed by the experience of the Yugoslav and Rwanda Tribunals.

One of its innovations was to focus the prosecution on a small number of accused deemed the most responsible, while the Sierra Leonean authorities were responsible for justice and reconciliation for the large number of individuals who participated in abuses. In addition, judges appointed by the Secretary-General sit on panels with judges appointed by the Government of Sierra Leone. The Special Court, unlike its predecessor Tribunals, primarily sits in Sierra Leone, bringing the provision of justice closer to the victims of the crimes.

As a result of this approach, the Special Court has been an instrument of peace and political stability in the region.

The apprehension and transfer into the custody of the Special Court of Charles Taylor, the former President of Liberia, is an achievement of great significance. The amended 11-count indictment accuses Charles Taylor of being at the heart of a “joint criminal enterprise” resulting in the commission of war crimes, crimes against humanity, and other serious violations of international humanitarian law. The trial is due to re-commence in The Hague, as mutually agreed for security reasons by the UN and the Government of Sierra Leone, in January 2008.

The establishment of the **Extraordinary Chambers in the Courts of Cambodia**, again based on agreement between the United Nations and the Cambodian Government, demonstrates the various means employed by the international community to bring an end to impunity – in this case, for crimes committed during the rule by the Khmer Rouge.

It is anticipated that trials will begin in the near future. And, let me add, from our point of view, the sooner they do – the better.

The **Special Tribunal for Lebanon** is in the process of being established. It is mandated to bring to justice the perpetrators of the 2005 terrorist attack that killed former Lebanese Prime Minister Rafiq Hariri and twenty-two other victims. Its jurisdiction could include other attacks that the Tribunal finds to be connected to the attack against Mr. Hariri.

The Tribunal, which shares many similarities with the Special Court for Sierra Leone, came into being as a result of a request addressed to the Secretary-General by the Prime Minister of Lebanon, in December 2005. It was established by Security Council resolution 1757 (2007), which caused an agreement between the United Nations and the Government of Lebanon to enter into force.

The Tribunal is unique, in that it applies Lebanese law as well as a *sui generis* combination of procedure from the common and civil law traditions. The statute of the Tribunal incorporates aspects of the civil law tradition, out of respect for Lebanon's legal heritage. The majority of judges will be non-Lebanese, drawn from around the world, who will serve on panels with Lebanese judges.

The creation of the **International Criminal Court** represents, of course, 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 deterrent 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.

The Prosecutor of the Court is currently investigating four situations:

1. 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;

2. in Darfur, where unspeakable crimes on a massive scale are still being committed;
3. in Northern Uganda, where the Lord's Resistance Army (LRA) abducted thousands of children turning them into child soldiers, servants and sex slaves; and
4. 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.

I am pleased to have had the opportunity to present to you some of the work of the United Nations in the area of human rights. All of us in the Secretariat work under the awning of the Declaration. We seek to carry out our work in the pursuit of justice and the ending of impunity with an awareness of the fundamental importance of this document and of its principles. The memory of the terrible abuses that lead both to the creation of our Organization and the adoption of the Universal Declaration continues to inform our work in all its different and wide ranging activities.

Thank you.
