



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**International Opening of the
International Nuremberg Principles Academy
Accountability – 70 years after the Nuremberg Trials**

Keynote Address

By

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“An Age of Accountability”

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Sehr geehrter Herr Staatsminister Bausback,
Sehr geehrter Herr Oberbürgermeister Maly,
Exzellenzen,
Meine Damen und Herren,

Erlauben Sie mir, dass ich mich zunächst herzlich für die freundliche Einladung bedanke, hier anlässlich der offiziellen Eröffnung der Internationalen Akademie Nürnberger Prinzipien für die Vereinten Nationen sprechen zu dürfen.

Ich freue mich sehr, hier heute mit Ihnen in Nürnberg sein zu können.
Grüss Gott !

[Allow me, first of all, to thank you for inviting me to speak here on behalf of the United Nations on the occasion of the official opening of the International Nuremberg Principles Academy. I am very pleased to be here with you today in Nuremberg. Good afternoon!]

In his opening address at the Rome Statute Review Conference in Kampala in May 2010, the Secretary-General spoke of the birth of an “age of accountability”. He suggested that this age began with the International Tribunals for the former Yugoslavia and Rwanda and he referred to the International Criminal Court as the “keystone of our

growing system of global justice”.

I would like to take stock today of this idea of an age of accountability, five years after the Secretary-General gave his landmark speech. In doing so, I hope to respond to the following questions: what is this “Age of Accountability” and why does the Secretary-General believe it is so important? I will then look to the future by asking “Where do we go from here?”

[A) The “What?” — A new age . . . an Age of Accountability]

So, what, then, is this “Age of Accountability”?

Accountability is commonly defined in terms of an obligation to accept responsibility or to [account](#) for one’s actions.

The existence of an obligation necessarily entails the existence of a corresponding right. When it comes to the commission of crimes, accountability is linked to three essential rights: the right to truth, the right to justice and the right to an effective remedy.

I am guided in this regard by the principles to combat impunity that were presented to the UN Commission on Human Rights in 1995 by the French jurist *Louis Joinet* and which were later updated by the US professor *Diane Orentlicher*. Twenty years on, this set of principles remains a ground-breaking document, which continues to inspire.

Joinet and *Orentlicher* aptly defined impunity as “the impossibility, de jure or de facto, of bringing the perpetrators of violations of human rights to account.” The principles that they articulated focused the fight against impunity on a number of non-derogable individual and collective fundamental rights. Among those rights are, first, the right to know — the right to know all about heinous crimes and the circumstances of their commission — and, secondly, the right to justice — the right to see the perpetrators brought to justice.

These fundamental rights exist for the benefit of those affected by the crimes. Indeed, if justice should prevail, it is first and foremost for the victims, as much as for their relatives and the societies of which they are part.

Examining these principles in the context of commission of

international crimes, I believe the right to the truth and the right to justice are also those of the international community as a whole.

The idea that the international community should be involved in truth-seeking initiatives, following the commission of serious crimes on the territory of a sovereign State, and in rendering justice against the perpetrators, is intrinsically linked to the universally-held belief that certain crimes, including the crimes of genocide, war crimes and crimes against humanity, undermine not only the fabric of the particular society in which those crimes are committed, but also the fabric of the international community as a whole. They destabilise States, entire regions, and are an inherent threat to international peace and security. In short, they threaten humanity as a whole.

This brings me to the recognition of a collective right to the truth — a right that has led the international community in general and the UN in particular to create numerous commissions of inquiry to investigate situations where there was reason to believe that crimes of international concern had been committed.

The precise purposes of such commissions has varied, but they have all aimed at establishing a record of such crimes, as well as at making recommendations for securing accountability and, where possible, bringing about reconciliation.

Each of these international commissions of inquiry has made its own particular contribution to bringing into being an age of accountability, defined as the exercise by the international community of the right to the truth where international crimes are committed. And, by gathering evidence into the commission of mass crimes, some of these commissions have led to the creation of the first international or mixed tribunals since Nuremberg and Tokyo, notably, for the former Yugoslavia, Rwanda and Lebanon.

The prerogative to investigate criminal activity, which was traditionally reserved to sovereign States, is now increasingly supplemented by the role assumed by the international community to investigate, to record and to make known. Where outrages are committed and national institutions will not or cannot act, the international community is increasingly showing its determination not to allow crimes

to be ignored or forgotten, or the truth to remain hidden.

I will turn next to the right of justice.

I am sure that we would all very much wish to recognise the Nuremberg and Tokyo Tribunals as marking the dawn of an age of accountability, an age in which those who perpetrate the most serious crimes of international concern are prosecuted. Yet, nearly half a century passed between the establishment of those institutions and the wave of modern international criminal courts and tribunals.

During that time, the International Military Tribunals were widely regarded as oddities, “flashes in the pan”, aberrations that owed their very existence to circumstances that would likely, and hopefully, never be repeated. And the pioneering work of the United Nations War Crimes Commission that preceded them lay largely forgotten.

That said, we would not be where we are today without their ground-breaking work. Once the struggle for the creation of an international criminal court began afresh in 1989, they stood as proof, despite the sceptics and naysayers, that it could be done: that an international court could be created that would bring the perpetrators of international crimes to justice.

The story of the development of the modern international and hybrid criminal courts and tribunals, culminating in the establishment of the International Criminal Court, is one that is well known to everybody here — the creation by the UN Security Council of the ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda; the establishment of hybrid courts by agreement between the United Nations and the Governments concerned — the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the Extraordinary Chambers in the Courts of Cambodia; and of course the negotiation under UN auspices of the Rome Statute and the establishment of a permanent International Criminal Court.

I will take just a moment, though, to note regional and national initiatives that the work of the United Nations has also inspired: the War Crimes Chamber in the State Court of Bosnia-Herzegovina; the Extraordinary African Chambers in Senegal, to try the former President

of Chad, Hissène Habré; the adoption by the members of the African Union in 2014 of the Malabo Protocol, aimed at giving the African Court of Justice and Human and People’s Rights jurisdiction over Rome-Statute crimes and other offences regarded as pertinent to the continent; and the recent adoption, by the Transitional Parliament in the Central African Republic, of a law creating, with international support, a special criminal court for the prosecution of those responsible for war crimes and crimes against humanity committed in that country since 2003.

This surge in mechanisms — international, national and hybrid — for bringing the perpetrators of international crimes to justice has helped bring about a “sea change” in international affairs.

The terms of our discourse have altered — as can be seen from the calls which have now become a standard part of resolutions of the UN Security Council for the perpetrators of atrocities to be held accountable.

Our reactions to atrocity have been transformed — we look for those responsible to be brought to trial and, where local mechanisms offer little or no hope, we look for international solutions, be it the courts of other countries, the International Criminal Court or, where this avenue appears blocked, some other international or internationalized tribunal.

Even the language and conduct of those who oppose or defy attempts to bring perpetrators to trial are different — they deny that crimes were committed or that they committed them, they launch local investigations into suspected crimes and publish their results, they look to create alternative justice mechanisms in an effort to displace the jurisdiction of the International Criminal Court.

An age of accountability is here.

[B) The “Why?” — Why is an Age of Accountability Important?]

It is sometimes easy to forget, though, why we call for accountability.

There are some who would have us “put the past behind us” once conflicts end; some who would say that investigating crimes, identifying the perpetrators, prosecuting them stirs up tensions and imperils a hard-won peace; those who would say that calls for justice, even the possibility of subsequent prosecutions, make it harder to negotiate peace in the first

place and so prolong the agonies of war and conflict.

Yet history has taught us that a world without accountability is one in which impunity becomes entrenched, weakening societies and institutions, hampering development and contributing to diminished enjoyment of human rights and fundamental freedoms. The consequences for our human family are very real, and can be devastating in the context of particular States and societies.

Given these realities, it is indispensable that we go to the very foundation of our global organisation, the United Nations.

In reviewing the Purposes of the United Nations, as set out in Article 1 of its Charter, we are reminded that the maintenance of international peace and security calls for effective collective measures for the prevention and removal of threats to that peace; that friendly relations among nations must be developed to strengthen peace; that there should be international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all.

The Purposes of the United Nations, its three main pillars, are the foundation for the Secretary-General's commitment to an age of accountability.

With respect to the maintenance of international peace and security, the Security Council has reiterated on numerous occasions the importance that it places on accountability as a means to achieve its goals in that field. In its resolution 827 establishing the International Tribunal for the former Yugoslavia, the Council decided that the situation in the territory of the former Yugoslavia constituted a threat to international peace and security and decided to "take effective measures to bring to justice persons responsible for violations of international humanitarian law".

Similarly, in its resolution 955 establishing the International Criminal Tribunal for Rwanda, the Council decided that "the prosecution of persons responsible for serious violations of international humanitarian law would [...] contribute to the process of national reconciliation and to the restoration and maintenance of peace". In more recent years, the Council's referrals of the situations in Darfur and in Libya to the Prosecutor of the International Criminal Court have also rested on an explicit link to threats to international peace and security.

I think we can therefore say that it is clearly established that there is a direct connection between accountability and achieving sustainable peace.

Turning to development — the second of the pillars of the United Nations—the fact that a well-functioning legal system and respect for the rule of law strengthens developmental progress and helps lock in gains is well established. Confidence in the equal application of the law, impartially and fairly applied, strengthens economic confidence, attracts investment, provides for efficient resolution of disputes and contributes to a virtuous circle of developmental advances.

To state this truth is to make clear how damaging a lack of accountability can be to development. Impunity is the very antithesis of the rule of law. The normative effect of law across societies quickly weakens when flagrant or paradigmatic instances of unlawful conduct remain unaddressed.

If confidence in the rule of law is to be upheld, those who commit the most flagrant violations of the law — above all, the economically and politically powerful — must be prosecuted and punished. Accountability is therefore essential to the rule of law and, with that, to development.

Turning to the third of the Organization's core Purposes — the protection and promotion of respect for human rights — the relevance of accountability is self-evident. Indeed, it forms part of the very foundation of international human rights law. Human rights treaties elaborated over the past 70 years all lay down, as a fundamental principle, the obligation of States Parties to provide an effective remedy for violations of the rights that those treaties aim to protect. The provision of such a remedy is the means by which accountability for violations of those rights can be ensured. And in the case of the most fundamental rights — to life and to physical integrity — the human rights jurisprudence is crystal clear: that an effective remedy requires investigation and, where appropriate, criminal prosecution.

The need for such an approach stands to reason. If we are to promote human rights, then we must ensure that there is accountability for gross violations of human rights. We cannot begin to conceive of a world where human rights are respected universally, if we do not act

consistently when such fundamental rights as the rights to life, liberty and security of the person and to freedom from torture and cruel, inhuman or degrading treatment or punishment are violated.

In sum, then, ensuring accountability for the most serious crimes of international concern is essential if we are to realize the core Purposes of the United Nations.

[C: The “Whither?” — next steps]

So, what do we do next?

I am sure that all of us here today agree in rejecting the arid distinctions of the “peace versus justice” debate. We cannot and should not, in this 21st century, continue to pitch these two objectives against each other. They are not, and should not be seen as, mutually exclusive. We must, instead, recognise that they are interrelated and interdependent.

Each is absolutely indispensable, if we are truly committed to ending current conflicts and preventing future ones.

There are of course those who maintain that justice sometimes gets in the way of peace, and that peace must always be the primary and essential imperative.

I believe that they are mistaken, that peace deals that do not allow for the punishment of the perpetrators of the most serious crimes of international concern are fragile, that they do not establish a true peace. Rather, they create situations where stable development is hindered, human rights are not firmly entrenched and, ultimately rather than ending conflict, divisions remain and fester. I am sure that many, if not all of you, agree.

However, I respect those who sincerely hold the view that justice can be an obstacle to peace and I think we must resist the temptation to ignore their claims. I think we would be in a better position to respond to their arguments if we had solid empirical evidence to prove our case. I would encourage this Academy to undertake research on this very question.

If we accept that accountability is necessary, so too must we recognise the need to strengthen the centrepiece of our system of international criminal justice — the International Criminal Court.

Universal ratification of the Rome Statute is undoubtedly the most effective way of strengthening the Court. 160 States took part in the negotiations in Rome in 1998. But only 123 States have so far ratified the Court's founding treaty, and only one since I became Legal Counsel nearly two years ago.

We must do better. If we are truly committed to a world in which we condemn with one voice genocide, war crimes and crimes against humanity, there can be no viable alternative to joining the International Criminal Court. No amount of vocal or material support will be enough if we exclude ourselves from the Court's jurisdiction. The Secretary-General will continue to call for the universal ratification of the Rome Statute by all Members of the United Nations without exception.

That said, the ICC will always be complementary to domestic courts. This is evident in the Prosecutor's assertion that when accused are no longer brought before the judges in The Hague, she will have succeeded in her task: in other words, when perpetrators of all levels — senior, mid-level and low — are dealt with, within their countries, in their national courts, in full view of those who were most affected by their crimes. I am sure you will agree that that would represent a tremendous achievement for the international community. We are of course some way away from that day. We should nevertheless applaud the strides that have been made on the road to a true and universally-embraced age of accountability.

A key achievement in that regard is the notion of complementarity, as provided for in the Rome Statute, in particular positive complementarity.

Positive complementarity represents engagement that goes beyond mere dialogue with national governments or judiciaries regarding their ability or willingness to investigate and prosecute serious crimes of international concern. I would go as far as to say it represents one of the Prosecutor's greatest achievements. There is evidence that the threat of investigations by the Prosecutor has led to prosecutions in many countries where she has conducted preliminary examinations, including Colombia

and Guinea. In the Democratic Republic of Congo, too, domestic courts have become increasingly active in prosecuting international crimes.

Beyond the pressure that results from the Court's ever-present shadow, positive complementarity also has the potential to transform the ability of national authorities to investigate, prosecute and try international crimes when it takes the form of technical assistance, the sharing of knowledge, know-how and best practices, the training and mentoring of key personnel, the provision of equipment and the construction of facilities.

A creative and bold application of complementarity has the potential to ensure that our first port of call for the prosecution of the most serious crimes of international concern is, as it should be, duly-enabled national courts.

A system of accountability that is truly owned by national governments is our best means of ensuring that what the Secretary-General described as an age of accountability is not just a temporary achievement and that impunity for the most serious crimes of international concern finally does become a thing of the past.

Vielen Dank für Ihre Aufmerksamkeit.

[Thank you very much for your attention.]