



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**Symposium on the Contribution of Post-Genocide Justice to the
Reconciliation in Rwanda**

Remarks

by

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3 June 2014

Your Excellencies Ms. Jeanne d'Arc Byaje and Mr. Olivier Nduhungirehe,
Deputy Permanent Representatives, Permanent Mission of the Republic of
Rwanda to the UN,

Your Excellency, Mr. Vandi Chidi Minah, Permanent Representative of the
Permanent Mission of Sierra Leone to the UN,

Mr. Hassan Boubacar Jallow, Prosecutor of the ICTR,

Ms. Murekatete,

Excellencies,

Ladies and Gentlemen,

I am pleased to participate in today's symposium. It affords us the opportunity
to reflect collectively upon the contribution of justice to reconciliation in
Rwanda after the genocide. I would like to warmly thank the Permanent
Mission of Rwanda for extending this invitation to me.

Two months ago I travelled with the Secretary-General to Kigali to attend the
official commemoration of the Rwandan genocide. The events which I attended
to mark the twentieth anniversary of the genocide during which at least 800,000
Tutsis and politically moderate Hutus were killed were most moving and deeply
sorrowful.

During this commemorative period, it is important both to mark the enormous
loss and suffering of the victims of the genocide. We also must reflect upon the

ways in which the people of Rwanda – and the international community – have in the past twenty years responded to the atrocities perpetrated in 1994.

The establishment of the International Criminal Tribunal for Rwanda (the “ICTR”) in November 1994 reflected the determination of the international community that those responsible for the genocide must be held accountable. The past two decades since the establishment of the ICTR and the International Criminal Tribunal for the former Yugoslavia (the “ICTY”) have seen international justice make great strides. It has gone from a lofty ideal – but one with little practical impact since Nuremberg – to a truly operational framework.

The achievements of the international criminal tribunals have been remarkable. They have both secured individual accountability – including for the highest levels of state and government – and in brought about a shift in expectations when atrocities have been perpetrated. Those who occupy the seats of political and military power can no longer consider themselves above the law.

Today, speaking from the United Nations’ perspective, is an apposite moment to reflect upon the achievements of the ICTR in particular.

The jurisprudence of the ICTR has contributed in many important respects to the development of international criminal law. One area of law in which its jurisprudence has been of enormous significance is in the area of accountability for crimes of sexual violence in armed conflict. Such crimes are often perpetrated against those most vulnerable in society. In its seminal judgment in the Akayesu case, the ICTR was the first international tribunal to find someone guilty of rape as a crime of genocide.

The ICTR has also developed significant case law in the area of responsibility for incitement to commit genocide. In all features of modern life the media plays a central role. The ICTR’s judgments holding accountable key figures controlling mass media at the time of the genocide are therefore of great importance.

The Security Council, having established both the ICTR and the ICTY, in due course gave guidance to both tribunals that their indictments should concentrate on the most senior leaders suspected of being most responsible for crimes within their jurisdictions.

The international criminal tribunals were not intended to be the fora before which all perpetrators of the crimes within their jurisdictions would be tried. As we know, very large numbers of people perpetrated the atrocities which led to

the genocide in Rwanda. This was also the case in the former Yugoslavia, and in other States where mass atrocities were committed.

International tribunals are not endowed with the financial and other resources, or the time, which would be necessary to bring to justice, in full, the very large numbers of persons bearing responsibility.

This is where national courts and domestic reconciliation mechanisms have a most vital, indeed essential, role.

The principle of complementarity, on which international criminal justice is founded, reaffirms that States are primarily responsible for prosecuting those who have perpetrated serious international crimes. An international court or tribunal has a role to play only where States are unable or unwilling to investigate and prosecute appropriately.

This principle has of course been enshrined today in the Statute of the ICC. In the Rwandan context, the issue of complementarity has also found specific expression through the referral of a series of cases from the ICTR to Rwanda for prosecution at the national level.

Excellencies,

Assessing this legacy from the perspective of reconciliation invites a number of dimensions, from political to sociological. In my Office, we consider this issue from the legal perspective. Most important is the United Nations' conviction that justice delivered according to law is an essential precondition to sustainable, lasting peace within - and between - communities. In addition, the compilation of a clear historical record, painstakingly assembled through the judicial process, contributes to the establishment of a historical record of truth. Such a record can shape a people's reflection on the commission of mass atrocities. The evidence advanced in public judicial proceedings can foster discussion at community and national level. It also opens up space for broader recognition of the extent and depth of victims' suffering.

At the same time, we must always bear in mind during this discussion that the necessarily limited mandate of the ICTR is to adjudicate upon the cases before it over which it has jurisdiction. Reconciliation in the fullest sense therefore necessarily goes far beyond the ability of a single tribunal to achieve.

As we are all aware, language and semantics play a vital role in domestic and international discourse. In politics, in diplomacy and of course in the law, it is

important to select one's words with care and precision. In the area of reconciliation, terms and labels can have particularly powerful meaning. As Legal Counsel, I must emphasise the truism that the word "genocide" has a specific, tightly-defined legal meaning. It has been called the "crime of crimes". Its prohibition is a norm of *ius cogens* status, and it is an obligation owed *erga omnes* – to all States.

For this reason, that the ICTR took judicial notice of the fact that genocide in Rwanda occurred is enormously significant. In legal proceedings, the taking of judicial notice means that the relevant facts are to be taken as established beyond any dispute and not requiring any further proof. Specifically, the Appeals Chamber of the ICTR has taken judicial notice of the fact that between 6 April 1994 and 17 July 1994 there was a genocide in Rwanda against the Tutsi group.

From a practical perspective within the workings of the tribunal, this enabled the Prosecutor to focus on proving the individual criminal responsibility of those brought before the tribunal. I should note at this point that a judicial determination, whether at trial or on appeal, that a particular individual's criminal responsibility in the context of the genocide does not meet the level of proof required for a conviction is in no way inconsistent with acknowledgment of the underlying historical fact of genocide having occurred.

It is essential that acquittals are not understood as denials of the commission of such crime. Rather, the important principle is to maintain respect for the judicial process in the context of assigning individual responsibility for them.

Excellencies,

In many contexts it is often said that acknowledgment that certain facts took place is a necessary prelude to moving forward. In April this year, the Security Council unanimously adopted resolution 2150 (2014) calling upon States to recommit to prevent and fight against genocide and other serious crimes under international law. The Council underscored "the importance of taking into account lessons learned from the 1994 genocide against the Tutsi in Rwanda, during which Hutu and others who opposed the genocide were also killed".

Reconciliation and justice must go hand in hand; these are entitlements of all victims of mass atrocities. The ICTR has brought to justice many of those who played a key part in the 1994 genocide. However, nine fugitives remain at large. I reiterate the repeated calls that these fugitives be located and brought to stand trial.

As the ICTR nears the completion of its mandate and its functions are transferred to the Residual Mechanism for International Criminal Tribunals, we move towards a new phase in international criminal justice. There are indeed lessons which we can learn from the experience of the past two decades in international criminal proceedings, including at the ICTR. The debate as to how the ICTR has contributed to reconciliation within Rwanda will continue long after its scheduled closure next year. But that its contribution in that regard has been both real and meaningful, of that there can be no doubt.

Thank you.