



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**Strengthening the Rule of Law for Sustaining Peace and Fostering Development
2017 Annual Meeting**

Session VI: Symposium on the Rule of Law and Sustaining Peace

Closing remarks

by

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Distinguished participants, ladies and gentlemen,

It is a true pleasure for me to be invited to this event. The UNDP's annual meeting on the rule of law for sustaining peace and fostering development is indeed a convenient platform for the UN community and the Member States to examine the current state of affairs in rule of law sphere and see our achievements and setbacks from a global perspective.

I would like to thank the organizers for an opportunity to reflect on today's discussions on the linkages between the rule of law and sustaining peace and to provide some observations from the perspective of my role as the United Nations Legal Counsel.



Distinguished participants,

As the Deputy Secretary-General noted yesterday in her address to this meeting, there is no single model for rule of law development, and the primary responsibility for it is in the hands of the national level players.

However, it is our responsibility at the international level to ensure that our national partners, including the decision-makers and all members of the national communities, have necessary tools and our comprehensive support to develop rule of law to prevent conflict and sustain lasting peace. One of the key elements of these efforts is administering justice while maintaining security, and promoting human rights. The focus on securing long term peace dividends, including in contexts where UN peace operations are deployed, has naturally become a cornerstone of UN strategies, worldwide, irrespective of the context of involvement (whether when dealing with conflict prevention, or “keeping the peace”, so to say, or consolidating peace).

Today I would like to focus on a very important aspect of “how” we try to achieve these goals at the international level in post conflict settings: through efforts to eradicate impunity and to ensure accountability for serious violations of international law, and domestic judicial capacity building. As you know, this topic is high on the agenda of the United Nations, including my Office.

As you are well aware, over the last 25 years, the principle of individual criminal responsibility, particularly with respect to acts of senior government officials, has gained significant traction in international law, and has grown to become a well-accepted concept in general.

Two of the pioneer institutions in contemporary international criminal justice, the International Criminal Tribunals for the former Yugoslavia and for Rwanda, have finished or almost finished their work. The International Criminal Court, which is the world’s first permanent international criminal court, celebrates its 15th year anniversary in July this year.

In addition, in the last two decades there has been a proliferation of new forms of United Nations-assisted tribunals, and of domestic tribunals with some level of international assistance. In the last year, particularly, there has been significant progress with respect to the establishment of a Hybrid Court for South Sudan, which my Office has been assisting with by providing technical assistance to the African Union Commission.



Further, we have also seen an increased interest in establishing non-judicial international accountability mechanisms. Particularly in contexts where it is difficult to foresee effective accountability, there is an increasing appetite for, at a minimum, gathering and securing evidence in the interim so that such evidence can be used in national, regional or international courts that may in the future have jurisdiction over these crimes.

In this regard, as you know, the General Assembly established, in December 2016, the new International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in Syria since March 2011. It has not yet been made operational but we expect this to happen in the next weeks. There have also been calls for similar mechanisms elsewhere, including in South Sudan and Iraq.

Domestic tribunals could be the beneficiaries of these investigative mechanisms. In this regard, there is an increasing interest in the role that domestic institutions can play in the field of international criminal justice.

With respect to the national prosecution of international crimes, we have recently seen States, in post-conflict situations, preferring to utilize domestic prosecutions for international crimes, though with the assistance of the international community with varying levels of participation.

Allow me to refer to two countries that I visited in the last weeks, which have gone through different, but in both cases innovative, paths of criminal accountability. The first one is the Special Criminal Court in the Central African Republic, which is strictly a national court, though with an international component as it includes foreign judges, a foreign prosecutor and a foreign deputy registrar. The UN has already provided concrete support, including by facilitating the identification of candidates with the relevant background for the international component. In the course of the UNDP event, we were honored to meet with its Special International Prosecutor and to discuss with all participants progress in the establishment of this court. I can only stress that my Office will continue to support this process, in consultation with all relevant UN and non-UN partners. One key aspect, I believe, is the support that civil society actors lend to these institutions, and the need to ensure that the high expectations of all concerned are met.

The other one is the Colombia Special Jurisdiction for Peace, which will be composed exclusively of Colombian judges, but allows for the participation of foreign amicus curiae lawyers. As for the Special Criminal Court in CAR, the selection of all the judges and other officials of the Colombia Special Jurisdiction is



undertaken by a Selection Committee consisted largely of international members, and the UN has a key role. Once again, this UNDP Annual Meeting has been an excellent occasion to discuss this unique precedent with some of its direct actors.

These have all been important developments to build an age of accountability for serious violations of international law. However, there are some questions that should be addressed to ensure that all the efforts of the international community, and in particular of the UN system, are not wasted. Let me simply refer to a couple of them.

The first one is the sensitive but extremely crucial issue of funding. I would first like to emphasize that States must be made aware of the fact that the establishment and operation of these structures is inevitably a long-term process and it is likely that these structures will have to exist beyond the collection of evidence or the delivery of judgments. When accountability mechanisms are voluntary-funded, the failure to account for these long timelines can lead to donor fatigue and difficulty in securing long-term funding.

The other question that I would like to address relates to the completion of the work of these accountability mechanisms. It is indeed important to plan for the future and to consider how the international community can ensure that the hard-fought justice is maintained; that the victims and witnesses continue to receive sufficient protection; and that the knowledge and lessons learned from the tribunals' operations is preserved.

Distinguished participants,

In the context of today's discussion, I would like to note that, while national ownership of the transitional justice process is encouraging and reflective of strong political will, it is also crucial to ensure that these States, which have just emerged from years of conflict, have the necessary capacity to ensure that criminal accountability is achieved in accordance with standards of international criminal justice.

To this end, the international community will have to make significant investments in domestic capacity building. The knowledge and lessons learned from past international criminal courts and tribunals is very useful in this regard.



However, the international community should be careful to avoid being inappropriately used by some States that seek international participation as a way of providing a cloak of legitimacy, and also perhaps to avoid the jurisdiction of the International Criminal Court.

Accordingly, I foresee a crucial but difficult role for the international community when international participation in domestic efforts is requested, but with significant restrictions being placed on the international community's involvement, for example, regarding the establishment and operationalization of domestic structures. While international support can be provided, it should be considered as an interactive effort, and not a blind rubber-stamping of the processes and their outcomes.

In conclusion of the discussion, I reiterate the importance of joined efforts among all pillars of the UN system and the Member States to enhance the rule of law in the context of sustaining peace and justice.

As the Deputy Secretary-General rightfully observed yesterday, we look to Member States and other stake-holders to help us to identify solutions to the main issues of the rule of law, including the effectiveness of accountability mechanisms that we discussed today. In this regard, I believe that we all had a good opportunity to engage in an open and all-inclusive dialogue with a wide range of partners on the platform of this important UNDP-led event. I urge you all to continue building on this joint effort to bring sustaining peace and rule of law to those in need.

Thank you.