

Official Opening of The Hague Branch of the International Residual Mechanism for Criminal Tribunals

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Mr. President,
Excellencies,
Ladies and Gentlemen,

[Introduction]

It is a great pleasure to be here to speak to you on the official opening of The Hague branch of the International Residual Mechanism for Criminal Tribunals (the "Residual Mechanism"). The opening of The Hague branch marks a crucial milestone in the transition from the International Tribunal for the former Yugoslavia ("ICTY") to the Residual Mechanism.

Once again, I would like to pay tribute to the Netherlands and to the City of The Hague for their significant contribution to international justice. By hosting so many international courts and tribunals and by facilitating their activities, the Netherlands has positioned itself at the forefront of States supporting the advancement of international justice, including today, at the opening of the newest addition to the landscape of international criminal justice.

I will take the opportunity today first to reflect upon some of the developments and achievements of the past two decades in international criminal justice, particularly those of the ICTY and the International Criminal Tribunal for Rwanda ("ICTR"). I will then highlight some of the most important features and functions of the Residual Mechanism, which serve to demonstrate the vital role which it will play.

At this juncture, and with the benefit of the ICTY's twenty years' experience in delivering international criminal justice, it is also appropriate to consider some of the challenges which the Residual Mechanism may face as it carries out its work. As the experience of the ICTY and the other international and UN-assisted criminal tribunals has demonstrated, some challenges will be specific to the institution, while others will stem from the nature of today's system of international criminal justice.

[Background to the establishment of the RM and achievements of ICTY and ICTR]

Today's international criminal justice landscape would be unrecognisable to a jurist of the early twentieth century. In the immediate aftermath of the horrors of the Second World War, the Allies brought to justice through the Nuremberg and Tokyo trials those who had committed atrocities. The international community sought, in the 1948 Genocide Convention, to ensure that the horrific events of the Holocaust were not repeated, and created in the Geneva Conventions of 1949, a legal framework to regulate the conduct of war.

In the years between the Second World War and the conflict in the former Yugoslavia, however, the Geneva Conventions and the Genocide Convention essentially lacked any practical enforcement. Those who acted in violation of their provisions were not brought to justice, at the domestic level or elsewhere – except in one or two rare war crimes cases. These exceptions were so unusual as to seem to “prove the rule” of impunity.

The establishment of the ICTY and the ICTR in the early 1990s therefore demonstrated a new-found and serious commitment on the part of the international community that those responsible for perpetrating the most serious crimes of international concern should be held accountable for their actions.

As the ICTY and ICTR draw close to completing their mandates and transitioning to the Residual Mechanism, we do well to reflect upon some of their most significant achievements.

First and foremost, many of those most responsible – including individuals who once operated at the highest echelons of political power and influence – have been held accountable for serious crimes under international humanitarian law perpetrated in the conflicts in the former Yugoslavia and in Rwanda. The proceedings of these tribunals have demonstrated to the international community that although justice may take time, no one is above the law.

Secondly, the establishment and operation of the ICTY and ICTR breathed new life into the system of international criminal justice. In the years following the establishment of those tribunals we witnessed the creation of the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon. The ICTY also acted as the catalyst for the negotiation and conclusion of the Rome Statute, establishing the ICC. Efforts to develop a code of international crimes and a permanent international criminal court had been ongoing for some decades: the ICTY's demonstration that an international criminal tribunal could work in practice enabled the ICC to come into being.

Thirdly, the ICTY and ICTR have made some monumental contributions to substantive and procedural international criminal and international humanitarian law. Their judgments have dealt with such important matters as the legal criteria for distinguishing between international and non-international armed conflicts, confirming that the application of many rules of international humanitarian law extends to internal armed conflict. They have clarified the elements of offences such as enslavement, rape and torture and greatly advanced jurisprudence in the field of gender crimes – an area largely undeveloped by the Nuremberg and Tokyo tribunals. In many areas of substantive international criminal law, they have built the foundation on which other tribunals have subsequently built.

The ICTY and ICTR have also played a crucial role in the development of international criminal procedural law, bringing together elements from civil and common law. In this field the tribunals essentially had to start from scratch, developing procedural law to address vital issues including the rights of defendants; rules of disclosure and admissibility of evidence; victim and witness testimony; and sentencing, plea agreements and assistance to national courts. This body of procedural law and practice forms part of the legacy of the ICTY and ICTR as they transition to the Residual Mechanism.

[The effects of international criminal justice over the past 20 years]

I also wish to take the opportunity today to highlight more broadly two of the most significant effects of the developments of the last two decades in international criminal law.

Firstly, we have seen a gradual “domestication” of the norms of international criminal law. The rich body of case law and accompanying verdicts and sentences handed down by the ICTY, ICTR and other international criminal courts and tribunals have made real protections which were, effectively, previously theoretical. These courts and tribunals are, however, courts of last resort and indeed in the Statute of the ICC we find enshrined the principle of complementarity and the primacy of domestic jurisdictions. States are expected to prosecute before their national courts those who have perpetrated atrocity crimes, and it is only where a State is unable or unwilling to prosecute that the ICC will step in.

The system of international criminal justice relies first and foremost, therefore, upon Member States taking responsibility for promoting and ensuring accountability at the domestic level. States must – and, increasingly do – play their part in seeking to ensure that their own courts and prosecutorial authorities are able to exercise jurisdiction over serious international crimes in a full and meaningful way.

Secondly, I think that we have seen a significant shift in the nature of the discussion which takes place within the international community in the face of situations in which grave international crimes are committed. Sadly, such situations persist in our world today, and atrocities continue to be perpetrated against civilian populations. However, although it may take time to bring perpetrators of international crimes before a court – be that at the domestic or the international level – in the statements of world leaders; in the work of journalists; and in expressions of public opinion, accountability is a pervasive theme. We hear expressions of outrage, not only at the perpetration of atrocities, but at the idea that those responsible could ever enjoy impunity.

I see this change in discourse as evidence of an irreversible shift towards accountability, and am in no doubt of the vital role which the ICTY and ICTR have played in bringing it about. The images of senior political leaders in the dock have had an enormous effect beyond the courtrooms in The Hague and Arusha. A message has been sent, and an expectation generated, that those who would perpetrate such crimes will face justice.

[Normative continuity and commitment to no impunity]

The Security Council, in the preamble to resolution 1966 (2010) establishing the Residual Mechanism, “reaffirmed its determination to combat impunity for those responsible for serious violations of international humanitarian law” and emphasised the necessity that all persons indicted by the ICTY and ICTR be brought to justice.

In establishing the Residual Mechanism, the Security Council made clear first, that the conclusion of the mandates of the ICTY and ICTR must not result in impunity, and secondly that a commitment to procedural fairness and the rights of accused and convicted persons must be maintained.

Both of these elements are bolstered by the fact that the Residual Mechanism is founded on normative continuity with the ICTY and ICTR. The Residual Mechanism continues the jurisdiction of both

tribunals, imperative both in the context of bringing the remaining ICTR fugitives to justice, and in providing an ongoing supervisory jurisdiction for those who have been convicted and sentenced by the tribunals.

[Some of the most important features of the RM]

This brings me to highlight some of the most important features of the Residual Mechanism.

My Office, in close collaboration with the ICTY and ICTR, prepared the Secretary-General's report that informed and assisted the Security Council's Informal Working Group on International Tribunals during their four-year deliberations on the establishment of the Residual Mechanism.

Although the administrative and operating structure of the Residual Mechanism differs from the existing tribunals, their strong influence can be seen in, for example, the Residual Mechanism's Statute and Rules of Procedure. It, however, is a much smaller and leaner body, which will expand as required, for example upon the arrest of one of the remaining ICTR high-level fugitives.

The Secretary-General's report identified a number of core functions which the Residual Mechanism would be required to perform, including the trial of fugitives and contempt cases; the protection of witnesses; the review of judgments; the referral of cases to national jurisdictions; the supervision of enforcement of sentences; the provision of assistance to national authorities; and the management of archives.

It is clear that some of these functions will generate work on an ad hoc basis – for example, if a fugitive is arrested – whereas others will require ongoing day-to-day work – for example the management of the archives.

The ongoing protection of witnesses is, I believe, one of the most important functions which the Residual Mechanism will perform. The

landmark decisions which have been delivered by the ICTY and ICTR, and the historical record which has been created by their proceedings, would not have been possible without the bravery of hundreds of victims and witnesses who have come forward to tell their stories. Their continued protection may at times rely upon the existence of a contempt jurisdiction before which proceedings can be brought.

[Possible challenges which the RM will face]

As we mark the opening of The Hague branch, we have the benefit of the experience of two decades' work of the ICTY and ICTR. This experience makes clear that the work of the Residual Mechanism will not be performed without challenges, and I think it is worth noting some of those challenges today.

I have already highlighted that the Residual Mechanism is a leaner structure than other tribunals, which will of course have considerable benefits in terms of efficiency and cost-saving. However, it remains to be seen how, in the event of the capture of a remaining high-level fugitive the capacity of the Residual Mechanism will expand in practice. I am confident that in such circumstances the staff of the Residual Mechanism, and those lawyers and judges who appear on the roster, will rise to the challenge and will facilitate smooth and expeditious proceedings in keeping with the highest standards of international justice.

The continued cooperation of Member States remains vital for the successful performance of many aspects of the work of the Residual Mechanism, ranging from the arrest and detention of remaining fugitives, to the ongoing protection and relocation of witnesses, whose essential role I have already highlighted. I trust that the international community will maintain its commitment to cooperating with the Residual Mechanism, as an integral element of the international criminal justice framework.

A commitment to accountability requires that efforts to locate the remaining ICTR fugitives and to bring them to justice continue. A commitment to justice requires that those who have been convicted by

the ICTY and the ICTR have access to proper judicial supervision of their sentences. And a commitment to the creation of a lasting historical record requires that the archives of the tribunals be properly preserved and maintained, and that appropriate access be facilitated.

[Challenges faced by international criminal justice]

The challenges which will be faced by the Residual Mechanism pertain not only to it as an institution, but also as a part of the architecture of international criminal justice. I have described some of the advancements which have been made in the past two decades – so many of which are attributable to the work of the ICTY and ICTR – but much remains to be done.

Having made a commitment that there will be no impunity for those who commit serious international crimes, the international community must ensure that the institutions charged with bringing perpetrators to justice have the resources – financial and otherwise – to do so.

The establishment of the ICC was a pivotal moment in international criminal justice, but it too has faced some considerable challenges. Although today 122 countries are States Parties to the Rome Statute and the Court enjoys the firm support of many countries which are not States Parties, and although the number of States Parties continues steadily to grow, universal ratification of the Rome Statute is still a long way off. Large parts of the world remain outside the Court's scope, and we remain some way from full compliance with their obligations by those States which are parties to the Rome Statute. The ICC relies upon Member States to provide it with evidence, to enforce warrants of arrest, to protect and relocate witnesses, and to enforce sentences. Unfortunately, for example, there have been instances in which Member States have not complied with the orders issued by the Court, and individuals who are the subject of arrest warrants have travelled with relative freedom in certain jurisdictions.

[Conclusion]

I would like to conclude by highlighting some of the lessons to be drawn from the UN's work to end impunity for international crimes.

- 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.

In each of these lessons we can identify the imprint of the work of the ICTY and the ICTR. The legacies of those tribunals are truly remarkable, and I am confident that they will be preserved and strengthened by the Residual Mechanism.

The strong element of continuity between the ICTY and ICTR and the Residual Mechanism sends an important message to the accused whose cases have not yet been completed, to the fugitives from the ICTR, and to would-be perpetrators of atrocities more broadly, that the international community remains committed to the pursuit of accountability and will not tolerate impunity. No-one can outlast international justice.

I wish the staff of The Hague branch of the Residual Mechanism every success as its operations commence. I am confident that the transition from the ICTY will be smooth, and that this newest institution in the field of international criminal justice will, with the

resolute support of the United Nations and the international community, succeed in its work.

Thank you, Mr. President.