



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

MESSAGE OF THE UNITED NATIONS LEGAL COUNSEL

TO

**THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION
ON THE FIGHT AGAINST IMPUNITY IN THE CURRENT CONTEXT**

New York, 2 November 2016

I am honoured to take part in this event. I thank the Asian-African Legal Consultative Organization for hosting this important event and for inviting me to speak.

I wish first to say a few words on the latest developments regarding the International Criminal Court.

The world has made enormous strides in building a global system of international criminal justice, with the International Criminal Court as its centrepiece. The ICC is central to the global fight against impunity.

The strong bond between the United Nations and the International Criminal Court gives me great pride.

We both endeavour to maintain international peace and security, to promote and encourage respect for human rights and fundamental freedoms, and to ensure that the rule of law prevails.

The ICC has secured ground-breaking convictions. In March, it delivered a verdict condemning the use of rape as a weapon of war. In September, it delivered its first conviction for the war crime of intentionally destroying religious and cultural monuments.

To date, the Court has opened nine preliminary examinations, commenced ten investigations and issued six verdicts. This is no small feat.

It is no surprise that these successes are accompanied by serious setbacks.

Prosecutions can take many years. They often challenge the influential and the powerful; and the influential and the powerful fight back.



Not all countries accept the ICC's jurisdiction. Even some of those that do, do not always support the Court as fully as they should.

To add to that, many are concerned that the Court has convicted only Africans despite evidence of Rome Statute crimes in other parts of the world.

And, in recent days, South Africa and Burundi formally commenced the process of withdrawal from the Court, while Gambia has announced its intention to follow suit.

As you are aware, the Secretary-General of the United Nations issued a statement expressing regret about these decisions and noting the impact they could have on the Court's operations and efforts to ensure accountability for international crimes.

The current Secretary-General has been a staunch supporter of the Court. I assure you that the ICC and the fight against impunity are a very important priority of the Secretary-General-designate, too.

In spite of these recent dark days, the United Nations looks forward to seeing the Court grow from strength to strength. The Secretary-General will continue to speak out in support of the ICC and to advocate universal ratification of the Rome Statute.

Some might ask: given the ICC's challenges, and with the closure of the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda, and the expected closure of the International Tribunal for the former Yugoslavia next year, where do we stand and what is the future for the fight against impunity?

The answer is simple. The work goes on, the cause endures, and the hope to end impunity still lives.

The Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon continue to carry out their important work.

The Residual Special Court for Sierra Leone is performing the essential residual functions of the Special Court.

Likewise, the International Residual Mechanism for Criminal Tribunals is doing the residual work of the ICTR and the ICTY. It has already conducted



and completed one appeal from the ICTR and is currently seized with two appeals and one retrial from the ICTY.

Thus the closure of the pioneering international criminal tribunals will not result in impunity for either the fugitives or for those persons whose cases have not reached finality.

On the contrary, it has allowed us to think anew about the functioning of international criminal tribunals in a context of limited financial resources and concerns about lengthy proceedings.

It has enabled us to design new institutions – the RSCSL and the Residual Mechanism – that are small and efficient and which, I can boldly say, represent a new model for international criminal tribunals.

It is vital for States to continue to support and fund these UN and UN-assisted tribunals.

In addition to the work being done by these courts and tribunals, there are regional and domestic efforts geared towards accountability.

The African Union has especially been prominent in this regard.

In 2014, the AU adopted the Malabo Protocol, aimed at giving the African Court on Human and People's Rights jurisdiction over Rome-Statute crimes and other offences pertinent to the continent.

The AU also worked closely with Senegal and others in the establishment and operation of the Extraordinary African Chambers which convicted the former President of Chad, Hissène Habré, this year.

The AU is also preparing to establish the Hybrid Court for South Sudan. My Office is providing technical assistance to the AU Commission in this regard, pursuant to a mandate from the Security Council.

For their part, the European Union and the Council of Europe were involved in the establishment of the Kosovo Specialist Chambers and Specialist Prosecutor's Office to prosecute international crimes committed during and in the aftermath of the conflict in Kosovo.

These international and regional efforts should not be perceived as a threat to national sovereignty, as is sometimes the case. They will always be complementary to domestic courts. States have the primary responsibility to



prosecute serious international crimes. Even when international and regional courts step in, national judiciaries remain the principal venue for prosecuting middle and lower-level perpetrators.

In this regard, there have been encouraging developments in several States.

For example, the Central African Republic is establishing a Special Criminal Court with assistance from the United Nations Multidimensional Integrated Stabilization Mission (MINUSCA).

In Sri Lanka, a Judicial Mechanism to investigate allegations of violations and abuses of human rights and international humanitarian law is being considered. The Mechanism may include the participation of foreign judges, lawyers, prosecutors and investigators.

And, in Colombia, the Peace Agreement envisaged the creation of a Special Jurisdiction for Peace, which would be composed of Colombian and foreign judges.

It is essential to support these domestic efforts. A system of accountability that is truly owned by States is our best means of ensuring that impunity for the most serious crimes of international concern finally does become a thing of the past.

Conclusion

In conclusion, people worldwide strive for the full realization of their human rights and fundamental freedoms, for justice and for rule of law. But for many decades, the international community struggled to build upon the legacy of the Nuremberg and Tokyo tribunals.

The tide turned in the early 1990s. Since then, the world has taken monumental steps in fighting impunity. Deterring future atrocities, delivering justice for victims, and defending the rules of war across the globe are far too important priorities to risk a retreat from the age of accountability that we have worked so hard to build and solidify.



I am confident that, spurred on by our achievements and conscious of the eyes of past and potential victims that are fixed firmly upon us, we will not relent in the fight against impunity.