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ICTR Legacy Symposium

Remarks

by

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The Lasting Impact of the ICTR on International Justice after the Closure of the ad hoc Tribunals

Excellencies,
Ladies and Gentlemen,

It is a pleasure to address you today to bring to a close the Symposium marking the twentieth anniversary of the establishment of the International Criminal Tribunal for Rwanda (ICTR).

It is fitting that in closing these events we look back to some of the principal contributions of the ICTR over the past two decades. Indeed, at this point, the ICTR's judicial work is almost complete, with but one remaining appeal case still awaiting decision. We thus have the advantage of surveying the legacy of an almost fully complete corpus of case law. However, I intend also to look forward to consider the momentous impact which the work of the ICTR will continue to have on the future of international criminal justice.

Over the past two days we have discussed a wide range of issues. From the discussion panels have emerged thoughtful reflections on the work of the ICTR, lessons learned from its operation, and views on how its work can and should shape the future of international criminal justice.

This past April, together with the Secretary-General, I attended the commemorative events in Rwanda to mark the twentieth anniversary of the 1994 Genocide against the Tutsi in Rwanda, during which Hutu and others who opposed the genocide were also killed. The international community must never forget those horrendous events. I echo the message of the Secretary-General that we must learn every lesson from the horrors of 1994 to ensure that genocide is never repeated.

[Establishment and some key achievements of the ICTR]

The establishment of the ICTR in November 1994 was a key response on the part of the international community to the atrocities which had been perpetrated in Rwanda. There was a demand for accountability for those who were responsible for the genocide and other serious international crimes carried out during one hundred days of horror and grievous suffering.

The establishment of the ICTR and, the year prior, of the International Criminal Tribunal for the former Yugoslavia, marked the beginning of two decades which have seen the most profound change in dialogue within the international community when atrocity crimes are perpetrated. Before the early 1990s, international criminal justice was a lofty but in large part theoretical ideal with little practical impact since Nuremberg.

However, over the past twenty years we have witnessed a sea-change in realising accountability not just in rhetoric, but in action and in deed. We have seen the development of a deep and broad body of both substantive and procedural international criminal law. This has led to the creation of a framework of international criminal justice which has the power, in complement with effective action at the national level, to ensure real accountability across the whole range of perpetrators of international crimes.

It is now axiomatic that those who hold the highest echelons of power can no longer consider themselves above the reach of law and expect to commit serious international crimes with impunity. At the time the ICTR was established such a notion was still a radical view in international discourse.

Yet the ICTR has shown reach extending to the highest ranks of political and military power, with the conviction of the Prime Minister of Rwanda for genocide in the *Kambanda* case. Many ministers, military leaders and prefects have been brought to justice before the tribunal. Just this past September, the Appeals Chamber upheld the convictions of former Minister Karemera and

National Party Chairman Ngirumpatse for genocide and crimes against humanity.

The jurisprudence of the ICTR has contributed in many other 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 impact of this jurisprudence is readily apparent from the frequency with which other courts and practitioners around the world have cited this law of the ICTR.

[Complementarity]

A cornerstone of the international criminal justice system has developed over the past two decades, namely the principle of complementarity. This principle is elaborated most fully in the Preamble to the Statute of the International Criminal Court. However, it has also become key to the work of the ICTR, ICTY and the other international and UN-assisted criminal tribunals.

The principle of complementarity reaffirms an elementary principle: States are primarily responsible for prosecuting those who have perpetrated serious international crimes. An international court or tribunal has a subsidiary role to play, engaging only where States are unable or unwilling to genuinely investigate and prosecute.

The international criminal tribunals could not be – and 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.

Indeed, in examining the evolution of the mandates of the international and UN-assisted criminal tribunals, we can discern a trend towards narrower jurisdictions conferred upon them. This re-emphasises the original point that the

focus of prosecutions at the international level is, as it must be, on bringing to justice those most responsible for the most serious crimes.

National courts and domestic reconciliation mechanisms therefore have a vital and essential role in ensuring that there is no accountability gap where an international jurisdiction no longer has a role to play.

In the context of the ICTR, the principle of complementarity has additionally found specific expression through the referral of cases pursuant to Rule 11*bis* of the Rules of Procedure from the ICTR to Rwanda for prosecution at the national level. These cases are monitored both by the Prosecutor, through an independent monitor, as well as by the Residual Mechanism and the tribunal.

[The impact of the work of the ICTR on the future of international justice]

Within the Office of Legal Affairs, we have a clear starting point for considering the future of international criminal justice. We begin with the firm conviction of the United Nations that justice delivered according to law is an essential precondition to sustainable, lasting peace within - and between - communities.

The legacy of the ICTR includes not only its many important and ground breaking judgments which have advanced international criminal law. Its legacy includes the record of the judicial process itself.

Legal proceedings are somewhat unique in the way in which they create a historical record. The judicial process is the culmination of painstaking and detailed investigation and research. The accused have the opportunity to present their case on both the facts and the merits.

Victims and witnesses of serious international crimes – often the most marginalised and under-represented sectors of society – can come to tell their story. Indeed, the progress made over the past twenty years in the field of international criminal justice owes a great deal to the courage of those individuals who have come forward to testify about the horrendous events which they have endured.

One of the most significant decisions of the ICTR, having heard the voices of many of these victims and witnesses, was to take judicial notice of the fact that between 6 April 1994 and 17 July 1994 there was a genocide in Rwanda against the Tutsi group.

As this audience is well aware, "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.

The fight against genocide was again recalled by the Security Council in April this year, when it unanimously adopted the landmark resolution 2150 (2014). That resolution called 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".

Of course, the nature of the judicial process can – and must be able to – render acquittals as well as convictions. It is essential that acquittals are not understood as denials of the commission of a crime. Rather, the important principle is to maintain respect for the judicial process in assigning individual criminal responsibility.

As we mark the twentieth anniversary of the ICTR, we note that it is scheduled to complete its work next year and to conclude the transition to the Residual Mechanism for International Criminal Tribunals. I am pleased to note that the transition has gone smoothly, and I have full confidence that will continue to be the case in the coming months.

[The ICTR's legacy]

I have touched on various aspects of the tribunal's legacy – its strong body of jurisprudence; its contribution to the development of international procedural law; its judgments which have brought about accountability for heinous international crimes.

Building upon all of these achievements, however, I return to the principle that reconciliation and justice must go hand in hand. We have seen this time and again. Unfortunately today we continue to see situations in which atrocity crimes are perpetrated. Individuals continue to abuse positions of political and military power, with civilian populations the subject of targeting.

However, when those atrocities are committed today, there is a clamour for accountability. People and civil society demand justice, and upon that justice, communities, nations and societies can move to build a collective future protective of the rights of all. It may take time before perpetrators of serious international crimes will find themselves before the bench, but they must know

that impunity is no longer an option. Just this year, judgments rendered in Cambodia in respect of crimes committed by political leaders almost 40 years ago are testament to that fact.

The ICTR, for its part, has played a fundamental role in this regard. It is an integral part of the international justice landscape. Those who prosecute serious international crimes in the future – at national level as much as at international level - will find wisdom and guidance in the work of the ICTR, both in its substantive contributions to the law and to the fabric of accountability it has woven alongside other courts and tribunals.

The discussions of the last two days have highlighted many aspects of the rich legacy of the ICTR. Humanity, both in Rwanda and globally, is the stronger for the ICTR's work. On behalf of the Secretary-General and on my own behalf I wish to congratulate all who contributed to the ICTR's work to fight impunity and to bring about an age of accountability, in particular the judges, the prosecutors, the defence lawyers and their respective staff. Their collective accomplishments have guaranteed such an enduring legacy.

Thank you.