



UNITED NATIONS
OFFICE OF LEGAL AFFAIRS

ICTR Legacy Symposium

Remarks

By

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5 November 2014

Closing session of the 7th Colloquium of International Prosecutors

Excellencies,
Ladies and Gentlemen,

It is a pleasure to address you this evening as we close this Prosecutors' Colloquium following two days of engaged and stimulating discussion.

Over the past two days, we have considered many factors relevant to the prosecution of serious international crimes at the domestic level. I wish to touch on several of those factors in the course of my remarks.

Tomorrow we will open the Symposium commemorating the 20th anniversary of the establishment of the International Criminal Tribunal for Rwanda. It is therefore fitting that we look to the context of the tribunal's establishment as a starting point.

The Security Council acted under Chapter VII of the Charter of the United Nations when it established both the ICTR and the International Criminal Tribunal for the former Yugoslavia. The ICTY and ICTR are subsidiary organs of the Security Council and Member States are required to cooperate with them. This duty to cooperate is given expression in the tribunals' Statutes, and the tribunals have primacy over domestic courts.

The crimes over which the ICTR and ICTY have jurisdiction were considered by the international community to be of the utmost gravity, and therefore action

under Chapter VII was the appropriate response. From the outset of the tribunals' existence, therefore, the need for cooperation with national legal systems was clear to the international community.

As the tribunals proceeded with their work and moved towards completion of their mandates, however, it became clear that cooperation would be required from national authorities in several respects. On the one hand we can identify the types of cooperation necessary for the tribunals to carry out their work – the execution of arrest warrants; provision of evidence; facilitation of witness attendance; and execution of sentence.

On the other hand, and as became a matter of increasing importance, we see the role of domestic prosecutions themselves supporting, enhancing and, indeed, complementing the work of the tribunals.

This therefore brings me to the principle of complementarity. Over the past two decades the centrality of this principle to our system of international criminal justice has become ever more clear.

The Office of the Legal Counsel works closely with the international and UN-assisted criminal tribunals, as well as with the International Criminal Court. Our work covers a wide range of matters related to the operation of those institutions. That work includes cooperating with national authorities whose work complements that of the tribunals and the ICC.

In this regard, we review requests for the provision of UN documents for use in national criminal proceedings, cooperating where possible, subject to considerations of confidentiality, privilege and the interests of the Organisation. We accompany staff members and experts on mission who have been called as witnesses in domestic proceedings, supporting them in providing their testimony and advising them on their applicable privileges and immunities.

We consider supporting national proceedings in this manner to be of fundamental importance. Our work with the international and UN-assisted tribunals gives us a unique insight into many of the reasons why complementarity is essential.

The challenge of resources in the context of the international and UN-assisted tribunals, particularly those which are funded by voluntary contributions, is a matter with which my Office engages on a daily basis. We are well aware of the difficulties which constrained funding places on the smooth operation of judicial proceedings.

It is well known that international criminal justice can be costly both in terms of resources in time, in human resources and in money. The cases which have been prosecuted before the international jurisdictions are generally the most complex, the most high profile and of the greatest significance. However, the international criminal tribunals and the ICC simply cannot be the venues before which very large numbers of perpetrators are prosecuted. Nor, I would submit, should they be.

There are very many benefits to cases being prosecuted at the local level where possible. Conducting prosecutions closer to the locations where crimes were perpetrated facilitates the gathering of evidence; the participation of victims and witnesses; the access of local media and civil society; and the impact of the proceedings on local communities, including in the context of reconciliation efforts.

The sight of a once powerful political or military leader in the dock can be of enormous importance to a people which has come through atrocities. The symbolism of such a figure, brought before a group of independent judges, is a very potent image, even before trial is conducted and judgment rendered. Embedding a culture of accountability within a domestic legal system plays a fundamental role in enabling a society to move forward after conflict. It is also essential to developing a legal system that is sensitive and protective of the rights of all persons within its jurisdiction. Put another way, the work of the United Nations both assumes and demands that there can be no peace without justice.

Over and above this, however, strengthening domestic legal systems, building capacity and improving institutions of good governance at the state level will have a lasting impact on fractured societies. I also consider that it is important that where possible, states take responsibility for their own matters, including criminal prosecutions. Indeed the establishment of the ICC as a “court of last resort” reflects the recognition of that importance.

Having said this, and as we have heard over the past two days, there can be many challenges to successful prosecutions of serious crimes of international concern at the domestic level. The Office of Legal Affairs was intimately involved in setting up the international and UN-assisted tribunals, and the reports of the advance missions prior to their establishment highlight many of these challenges.

Serious international crimes are most often committed in the course of armed conflict, be it international or non-international. Commencing legal proceedings in the chaos or immediate aftermath of war may be simply impractical.

Legal systems are often left decimated, with institutions simply unable to function and a near total dearth of capacity. There may be a lack of basic infrastructure, including a functioning court system. The perpetrators of atrocities may remain in power and exert influence, leaving victims and witnesses too afraid to testify before nascent legal proceedings or susceptible to unacceptable risks of harm after having taken courageous decisions to be part of such proceedings.

For these reasons, at least in the immediate aftermath of conflict, conducting prosecutions of serious international crimes outside the State in which the crimes were committed may be preferable.

In the past two decades, however, we can identify a role for complementarity, even in circumstances in which the national legal system of the country concerned does not yet have the capacity to prosecute the most serious crimes in application of full due process and fair trial standards. Other States which may be able to exercise jurisdiction can, and should, consider doing so, in order to prosecute serious international crimes. The principles of “extradite or prosecute” set out in a number of key international treaties in respect of serious crimes is a valuable additional element in this regard. The accountability options presented by this framework are an important element in fully closing off any impunity gaps that may result from the interaction of differing national legal systems.

In the long term, however, the challenges which face national jurisdictions in bringing their own prosecutions can, and must, be overcome. National prosecutors have a key role to play in that regard, collecting the evidence, weighing the strength of the case and leading trial proceedings. It was fitting that yesterday afternoon was devoted to the sharing of reports from national prosecutors on the implementation of their mandates to prosecute international crimes.

The international and UN-assisted criminal tribunals have developed a broad wealth of experience and expertise over the last twenty years. It is incumbent upon those who have built up such a reservoir of knowledge and skills to share them with national counterparts. I am aware of many of the initiatives in which the tribunals are engaged to broaden the knowledge and expertise of national counterparts. I commend the Prosecutors and their staff, and the other entities within the tribunals who work on these matters, for all these efforts to transfer their hard-won skill and experience.

Moreover, in an increasingly interdependent international community, the role of regional organisations and institutions becomes of greater importance. This principle applies across a wide range of issues, and the prosecution of serious international crimes is no exception. We heard this morning discussion of the ways in which such institutions may contribute to the prosecution of such crimes. Where this would facilitate efforts, I would encourage the sharing of information and expertise in pursuit of this common goal.

It strikes me that the core theme which has run through the discussions of the previous two days – namely the importance of complementarity and the centrality of that principle to our system of international criminal justice – is one which I am certain will be the subject of further discussion during the Symposium on the ICTR's legacy over the next two days. Translating the understandings won over the ICTR's lifetime into strengthening the ability of States around the world to deter and punish international crimes will itself be a worthy achievement. I therefore look forward to building upon the work of these two days in our ongoing discussions and, indeed, in the long term as we continue to support national institutions across the full range of legal cultures.

Thank you.