



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

Arria-formula meeting of the UN Security Council

**Human rights, accountability and justice: contributions to international
peace and security**

Address by Mr. Miguel de Serpa Soares

Under-Secretary-General for Legal Affairs and
United Nations Legal Counsel

Monday, 11 March 2019, 3:00 p.m.

Excellencies,
Ladies and Gentlemen,

I would like to thank the governments of Peru and France for the invitation to participate in this meeting on the contributions of human rights, accountability and justice to international peace and security. These are foundational issues to this Organization and the Security Council has played and continues to play a special role in ensuring that they are respected.

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Through its resolutions establishing the International Tribunals for the former Yugoslavia, in 1993, and for Rwanda in 1994, the Security Council has had an undeniable impact on international law. Those two tribunals have, together, laid



the groundwork for the development of a body of rules of international criminal law — a field that barely existed before.

At the same time, by establishing those tribunals, the Council advanced the interpretation of the Charter and of its own functions thereunder. It acknowledged the existence of a close link between international criminal justice and the Purposes of the United Nations. It affirmed that the advancement of international criminal justice fell within the scope of its responsibility for the maintenance of international peace and security. And it established that it had the power to create tribunals as a measure for the restoration and maintenance of international peace and security.

The Security Council was also involved in the establishment of the Special Court for Sierra Leone and the Special Tribunal for Lebanon. But the Security Council's role in the fight against impunity has gone beyond “simply” creating international tribunals. In the Central African Republic, it mandated MINUSCA to support the Special Criminal Court. It also requested the Secretariat to work closely with the African Union Commission in support of the African Union's efforts to establish the Hybrid Court for South Sudan. And so on.

Recently, we have seen a new trend with respect to international criminal accountability mechanisms. In contexts where it is difficult to foresee effective judicial accountability in the immediate future, there is an increasing appetite, at a minimum, for gathering and securing evidence, so that such evidence can be used





in the future by national, regional or international courts that may have jurisdiction over crimes that have been committed in these territories.

In this regard, the Security Council established in 2005 the International Independent Investigation Commission to assist the Lebanese authorities in their investigation of all aspects of the terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and others.

More recently, in 2016, the General Assembly established the International, Impartial and Independent Mechanism on Syria (IIIM). This mechanism represents a significant new approach, focusing on supporting the prosecution efforts of other stakeholders rather than conducting its own prosecutions.

In the case of Iraq, the Security Council adopted resolution 2379 in September 2017, requesting the Secretary-General to establish an independent Investigative Team to support domestic efforts to hold ISIL (Da'esh) accountable for its actions in Iraq. The investigative Team is mandated to collect, preserve, and store evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL in Iraq. The Investigative Team commenced its work on 20 August 2018 and its Special Adviser briefed the Security Council for the first time in December 2018.

Most recently, on 27 September 2018, the Human Rights Council decided to establish an independent mechanism to collect, consolidate, preserve and analyse





evidence of the most serious international crimes and violations of international law in Myanmar since 2011 in order to facilitate and expedite fair and independent criminal proceedings. On 22 December 2018, the General Assembly called for the expeditious entry into operation of this mechanism and OHCHR and my Office are working together to operationalise the mechanism as quickly as possible.

The establishment of these mechanisms reinforces the idea that the main responsibility in the fight against impunity remains with States. This is also the rationale behind the principle of complementarity, as reflected in Article 17 of the Rome Statute of the International Criminal Court. In this regard, I wish to note the cooperation between the United Nations and the ICC, in accordance with the Relationship Agreement between the ICC and the United Nations on 13 September 2004, as well as the cooperation that the United Nations provides to domestic judicial authorities.

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Ladies and Gentlemen,

The establishment of international criminal tribunals constituted a milestone in the development and consolidation of an “age of accountability”. The next step is, however, of a different nature and implies placing domestic mechanisms to fight impunity at the centre of the accountability system.

In recent years, there has been indeed an increasing attention to the role that national institutions could play in the field of transitional justice. We have





witnessed, for instance, new forms of domestic tribunals, with different levels of international assistance or participation, in order to hold accountable those responsible for serious crimes under international law. The United Nations has been supporting those nationally-owned efforts.

The important work of building domestic capacity in this regard continues to be necessary and the assistance of the international community in supporting nationally-owned efforts towards ensuring accountability for serious crimes under international law remains essential.

The Special Criminal Court in the Central African Republic is an example of a domestic court (with certain hybrid features like foreign judges, a foreign prosecutor and a foreign deputy registrar) steadily moving forward with its own investigations, cooperation with the ICC, judicial training and outreach to constituencies. The United Nations peacekeeping mission deployed in that country (MINUSCA), together with UNDP and other United Nations departments and entities, have assisted the Central-African Government in the establishment of the Special Criminal Court. The United Nations has also facilitated the identification of candidates with the relevant background for the international component of the Court.

Another example relates to the peace process in Colombia, and its inclusion of a domestic judicial mechanism, the important work of which has been underlined by the Security Council. The Colombian Special Jurisdiction for Peace is composed





exclusively of Colombian judges, although it allows for the participation of foreign *amicus curiae* lawyers. The selection of all the judges and other officials of the Colombian Special Jurisdiction was undertaken by a Selection Committee consisting largely of international members, in which the United Nations had a key role.

The United Nations has also been providing capacity-building to domestic judiciaries, in particular through training and support to internal reform processes. Such efforts intend, among others, to align domestic systems with international rules and standards.

Last, but not least, I would like to remind [as the High Commissioner for Human Rights clearly noted] that justice does not only mean criminal accountability.

Justice requires a comprehensive approach, which runs from fact-finding to judicial processes, and from international to domestic efforts. Effective transitional justice processes include a combination of judicial and non-judicial responses and mechanisms that have been designed to address the past, including the commission of serious crimes under international law. As such, accountability should be pursued through and alongside prosecutions, truth-seeking, reparations, and institutional reform and guarantees of non-recurrence. Such steps can facilitate a community-wide sense of accountability and contribute to reconciliation objectives.





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Ladies and Gentlemen,

International criminal accountability is still a relatively new area of work for the United Nations, and there is no doubt that the Security Council has played a pivotal role in advancing justice and accountability.

As some International Tribunals close and new accountability mechanisms are established, it is timely to look into the future. In this regard, I would like to conclude by reflecting on four specific areas where I believe that improvements could be made.

My first point concerns coordination between different mechanisms dealing, in different manners, with the attribution of responsibilities, from fact-finding missions and sanctions committees to criminal accountability mechanisms. In this regard, I would like to stress the importance of ensuring coordination between different bodies often established by different institutions. This is particularly important regarding the sharing of information collected by these different entities, which, sometimes, concern the same facts, the same perpetrators and the same victims and witnesses.





Secondly, I wish to refer to international humanitarian law and international human rights law rules, standards and best practices. The Security Council needs to be the driving force to ensure that these rules, norms and standards are fully included in any accountability process, in particular as we celebrate this year the 70th anniversary of the 1949 Geneva Conventions.

Thirdly, finding resources to sustainably support accountability bodies remains a problem. Already today, as members of the international community create new institutions, funding for some of the existing hybrid institutions that are voluntarily funded has largely dried up, putting at risk the orderly conduct of the judicial process as well as the legacy of these institutions, which continue to play an important role in the restoration and maintenance of peace and security.

Last, but not least, effective accountability requires the constructive engagement of the international community. I would particularly encourage Member States to engage with the Secretariat before intergovernmental organs take decisions on establishing or supporting accountability mechanisms. This should help to ensure that the framework for the establishment of any mechanism and the mechanism itself conform with applicable United Nations regulations, rules, policies and standards.

Thank you.

