



THE PRESIDENT  
OF THE  
GENERAL ASSEMBLY

11 February 2013

Excellency,

In reference to my announcement of 21 December 2012 on the occasion of the closing of the main part of the General Assembly to hold a thematic debate on International Criminal Justice, I have the pleasure to inform you that I will convene an interactive thematic debate entitled “**Role of International Criminal Justice in Reconciliation**”. This event will be held at United Nations Headquarters in New York on Wednesday, 10 April 2013.

International criminal justice is no longer in its infancy. Two decades after the establishment of the first UN ad hoc tribunal, and ten years after the entry into force of the Rome Statute, there is a wealth of practical experience that we can build on. These two decades of experience should allow us to have a closer look at the long-term impact of international criminal justice, in particular as it relates to reconciliation, as well as the rights of victims. The thematic debate will also provide the occasion to share experiences on the relations between national and international criminal procedures and to share their views on the impact of the international criminal justice on reconciliation in their respective environments.

This one-day interactive debate will include an opening session, a high-level morning session, two consecutive panel sessions in the afternoon as well as closing remarks. A concept paper is attached to this letter. Updated information about the event will be available on the website of the President of the General Assembly. To benefit from the wide range of knowledge and expertise throughout the Membership, I invite respective Governments to be represented at the highest possible level.

I look forward to an active and dynamic debate.

Please accept, Excellency, the assurances of my highest consideration.



Vuk Jeremic

All Permanent Representatives and  
Permanent Observers to the United Nations  
New York

**11 February 2013**

**THEMATIC DEBATE  
67<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

**“Role of international criminal justice in reconciliation”**

New York, 10 April 2013

**Concept Note**

The President of the 67<sup>th</sup> session of the General Assembly will convene an interactive thematic debate of the General Assembly on the role of international criminal justice in reconciliation.

**Background and Objective**

Over the last two decades, international criminal justice – the complex undertaking of investigating, prosecuting and adjudicating international crimes at the international level – has developed to a multi-faceted operational system.

In a speech to the UN General Assembly in 1989, A.N.R. Robinson, Prime Minister of Trinidad and Tobago, revived the idea of establishing an International Criminal Court that led to negotiations culminating in the adoption of the Rome Statute of the ICC in 1998. In 1993, the Security Council established the ad hoc Tribunal for the Former Yugoslavia (ICTY), followed by the establishment of the ad hoc Tribunal for Rwanda (ICTR) in 1994. In 2000, the United Nations established Special Panels in East Timor to prosecute inter alia genocide, war crimes and crimes against humanity. In 2002, the United Nations agreed with Sierra Leone on the establishment of a hybrid tribunal to try those who bear the greatest responsibility for war crimes and crimes against humanity committed during the country’s civil war. In 2003, the United Nations helped establish Extraordinary Chambers in the Courts of Cambodia to try senior members of the Khmer Rouge for serious crimes. In 2007, the Security Council created the Special Tribunal for Lebanon to prosecute the 2005 assassination of Lebanese Prime Minister Rafiq Hariri. In 2012, the ICC celebrated the tenth anniversary of the entry into force of the Rome Statute. Today, the Court’s preliminary investigations, formal investigations and trials extend to fifteen countries on three continents. Two of its current investigations are based on referrals by the UN Security Council (Darfur, 2005; Libya, 2011).

These select examples clearly illustrate that international criminal justice, and in particular transitional justice, has become an important factor in the United Nations' efforts to promote peace and security, development, rule of law, human rights and reconciliation.

The international community is entering an "era of accountability", as Secretary-General Ban Ki-moon and others have called it, but we must be vigilant to ensure that international criminal justice serves in the best way its purpose, operate within a neutral and impartial framework, and achieve its goals in a sustainable manner.

The challenges for international criminal justice are significant: it often operates in an environment burdened by political tensions stemming from a violent conflict, seeking to bring alleged perpetrators of crimes to justice while respecting their right to due process as well as the rights of victims. In doing so, it aims at deterring future crimes and to contribute to reconciliation.

As highly complex trials are conducted, available resources must be deployed in the most efficient manner for the sake of the rights of the accused and victims alike. In addition, international criminal justice is closely linked to other processes aimed at truth seeking, reparation and reconciliation, such as truth and reconciliation commissions.

International criminal justice is no longer in its infancy. Two decades after the establishment of the first UN ad hoc tribunal, there is a wealth of practical experience that we can build on. These two decades of experience should also allow us to have a closer look at the long-term impact of international criminal justice, in particular as it relates to the rights of victims, as well as to reconciliation.

What are the lessons from the past and present work of the various international and mixed criminal courts and tribunals in these areas, and how can we apply them in the future? What will be the role of relevant UN organs, such as the General Assembly and the Security Council, in promoting the convergence of peace, justice, truth-seeking, reparation, strengthening of domestic institutions and reconciliation?

The thematic debate will also provide the occasion to share experiences on the relations between national and international criminal procedures, and to share views on the impact of the international criminal justice on reconciliation in respective environments.

**Draft Program**

This one-day debate will include an opening session, a high-level morning session, two consecutive interactive panel sessions in the afternoon as well as closing remarks.

**Morning Session**

## Opening

This will comprise opening statements from the President of the General Assembly, the UN Secretary General, and keynote speakers.

## High-level session

This will comprise a High-level debate with the participation of UN Member and Observer States as well as relevant Institutions.

**Afternoon Session**

## First panel

This panel, under the title "Justice" will consist of an interactive debate with non-state participants.

## Second panel

This panel, under the title "Reconciliation" will consist of an interactive debate with non-state participants.

## Closing

The President of the General Assembly will make closing remarks.



**UN General Assembly**

**Thematic Debate**

**Role of International Criminal Justice in Reconciliation**

**10 April 2013**

**Tentative programme**

**WEDNESDAY, 10 APRIL 2013**

| <b>TIME</b>     | <b>PROGRAMME</b>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10am – 10:15am  | <b>OPENING SESSION (Conf Room 4 NLB)</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
|                 | H.E. Mr. Vuk Jeremic, President of the General Assembly<br>H.E. Mr Ban Ki-moon, United Nations Secretary-General                                                                                                                                                                                                                                                                                                                                     |
| 10:15am – 1 pm  | <b>HIGH LEVEL SESSION (Conf Room 4 NLB)</b>                                                                                                                                                                                                                                                                                                                                                                                                          |
|                 | Member and Observer States (to be continued in Conf Room 4 NLB on 11 April, at 10am)                                                                                                                                                                                                                                                                                                                                                                 |
| 3pm – 4:30pm    | <b>INTERACTIVE PANEL DISCUSSION I: JUSTICE (Conf Room 4 NLB)</b>                                                                                                                                                                                                                                                                                                                                                                                     |
|                 | Moderated by Dr. Matthew Parish, Partner, Holman Fenwick Willan Geneva<br><br>High-level panel:<br><i>Prof. Charles Chernor Jalloh, School of Law, University of Pittsburgh</i><br><i>Major-General Lewis MacKenzie (ret.), 1st commander of Sector Sarajevo</i><br><i>Prof. John D. Ciorciari, University of Michigan</i><br><i>Mr. Savo Strbac, Information and Documentation Centre – “Veritas”, Belgrade</i>                                     |
| 4.30pm – 5.45pm | <b>INTERACTIVE PANEL DISCUSSION II: RECONCILIATION (Conf Room 4 NLB)</b>                                                                                                                                                                                                                                                                                                                                                                             |
|                 | Moderated by Prof. John Schindler, National Security Affairs, US Naval War College and Senior Fellow, Boston University<br><br>High-level panel:<br><i>Prof. William Schabas, School of Law, Middlesex University, London</i><br><i>Dr. Cedomir Antic, Institute for Balkan Studies, Belgrade</i><br><i>Dr. Janine Clark, School of Politics, University of Sheffield</i><br><i>Dr. John Laughland, Institute of Democracy and Cooperation Paris</i> |
| 5:45pm – 6pm    | <b>CLOSING SESSION (Conf Room 4 NLB)</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
|                 | <b>Remarks:</b><br><br>H.E. Mr. Vuk Jeremic, President of the General Assembly                                                                                                                                                                                                                                                                                                                                                                       |

**THURSDAY, 11 APRIL 2013**

|             |                                                             |
|-------------|-------------------------------------------------------------|
| 10am – 1 pm | <b>CONTINUATION OF HIGH LEVEL SESSION (Conf Room 4 NLB)</b> |
|             | Member and Observer States                                  |

10-11 April 2013

## **The Role of International Criminal Justice in Reconciliation**

### *Summary*

#### **Introduction**

On 10th April 2013, the President of the General Assembly H.E. Mr. Vuk Jeremic, convened the thematic debate entitled “The Role of International Criminal Justice in Reconciliation” at United Nations headquarters—two decades after the founding of the inaugural UN ad hoc tribunal, and eleven years following the entry into force of the Rome Statute establishing the ICC.

The decision to organize this event was premised on the fact that since international criminal justice is no longer in its infancy, the international community would be well served by an appraisal of the accumulated wealth of experience, ascertaining lessons learned and best practices that should be applied to improve its future effectiveness. It was determined that the General Assembly—the international community’s most inclusive, equitable, and representative body—would be the most appropriate institution in which this could take place.

The thematic debate was designed to consider not only practical questions about the administration of international criminal justice—such as prosecutorial discretion, the legal criteria by which judgments are rendered, the selection process of court officials and staff, jurisdictional primacy and how it has evolved over time, etc.—but also broader questions, such as how to reconcile the delivery of justice, the prevention of impunity and fostering general deterrence with respect for the rights of both victims and the accused. Each of these aspects of the work of international criminal justice institutions is critical to promoting reconciliation, as well as furthering peace and stability in post-conflict societies.

The thematic debate was convened, in short, to further the cause of international justice, premised on the notion that doing so in the best possible manner requires that it takes place in the context of advancing efforts at achieving reconciliation between former belligerents—thus supporting the first enumerated purpose of the United Nations: to maintain international peace and security.

The debate itself was comprised of a keynote segment and a high-level segment, as well as two interactive expert panels that addressed the issues of justice and reconciliation.

In the high-level segment, 47 speakers delivered statements on behalf of 82 Member States, one Observer Member, and one Non-member Observer State. The number of participants clearly indicated that the event was of significant interest to Member States. The expert panels each had one moderator and four distinguished panellists.

One of the main messages delivered by the participants in the debate was that greater engagement of the international criminal justice system in the further pursuit of the goal of reconciliation was needed. They also called for strengthening the relationship between international and national judicial systems, the continuation of decisive actions against impunity, and strengthening international efforts towards improving the current system of international criminal justice.

In delivering his introductory remarks, the President of the General Assembly, H.E. Mr. Vuk Jeremic, said that the issues to be discussed were of enormous significance for the international community, expressing his firm belief that there should be no forbidden topics in the General Assembly. The efforts to achieve justice and reconciliation should be mutually reinforcing, and be bound together in what they aim to accomplish—namely, bringing about an end to enmity, and breaking for good vicious cycles of hatred. Reconciliation will be achieved, he stated, when all parties to a conflict are ready to speak the truth to each other, adding that honouring all victims is at the heart of such an endeavour. That is why, he said, it is critically important to ensure that atrocities are neither denied nor celebrated as national triumphs. Moreover, President Jeremic stressed that the paramount question must be how international criminal justice can help reconcile former adversaries in post-conflict, transitioning societies. In the absence of all parties to a conflict accepting responsibility for reconciliation, international criminal justice could be perceived as an instrument of revendication, or portrayed as an attempt at assessing communal blame or collective guilt, which would serve no constructive purpose.

In his opening remarks, Secretary-General H.E. Mr Ban Ki-moon emphasized that the topic is one of tremendous importance. He argued that deepening the system of international criminal justice is the most positive development in international relations of the past generation. Furthermore, he said that the new institutions of international criminal justice have ushered in a new age of accountability. He further expressed his full support for the system of international criminal justice, and argued that it succeeded in giving voice to the victims and witnesses of crimes. Relating to the ICC, the Secretary-General stressed that it continues to contribute to our efforts to promote peace and security and respect for human rights. At the same time, he added, we must remember that it is a court of last resort, and that the primary responsibility for adjudicating such categories of crimes lies with Member States. A successful ICC will be one that sees its workload diminish, universal acceptance of its jurisdiction, and all of its State Parties fully engaged in efforts to end impunity and ensure accountability for such crimes. Furthermore, he stressed that one cannot expect to attain the goals of peace, development and respect for human rights without promoting and supporting a robust system of international criminal justice.

### **High-level Segment and informal debate**

During the high-level segment, a majority of speakers reaffirmed that one of the main goals of the international criminal justice system was to promote and contribute to processes of reconciliation in post-conflict situations. The discussion revolved around the assessment of levels of such contributions and the prospects for improvement in the future. Member States took the floor in accordance with the level of their representation in the debate. Bosnia and Herzegovina as well as Serbia participated at a



presidential level, while Namibia and Rwanda were represented by their distinguished Ministers of Justice. These four speakers set a critical tone, with assessments that pointed out various inadequacies with the work of the tribunals, especially with regards to their respective contributions (or lack thereof) to reconciliation efforts and the criteria by which prosecutorial discretion is applied.

The remaining participating Member States were: Croatia, Turkey, Suriname, Costa Rica (speaking on behalf of 14 Latin American and Caribbean State Parties or Signatories to the Rome Statute, namely Antigua and Barbuda, Belize, Colombia, Costa Rica, Dominican Republic, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, and Uruguay), the Russian Federation, China, Argentina, Egypt, Switzerland, Chile, Pakistan, Brazil, Indonesia, Ghana, Sri Lanka, Tanzania, Australia, Trinidad and Tobago (attached itself to Costa Rica's statement and delivered its own), South Africa, Uruguay (attached itself to Costa Rica's statement and delivered its own), Republic of the Congo, Lesotho, Japan, Thailand, Cuba, Gabon, Jamaica (attached itself to Costa Rica's statement and delivered its own), Tunisia, India, Liechtenstein, Albania, Cambodia, Botswana, Bolivia, Venezuela, New Zealand, Sudan, Ecuador, Kenya, Iran and Syria. In terms of the participation of observers to the UN, The European Union (speaking on behalf of its 27 members) and the Observer State of Palestine also provided contributions. In addition, a representative of the International Development Law Organization took the floor. Moreover, graduate students of the University of Geneva supervised by the former President of the Swiss Confederation, Ms. Micheline Calmy-Rey, presented a written brief, as did the Association of Defence Counsel Practising Before the International Criminal Tribunal for the Former Yugoslavia (ADC-ICTY).

Speakers noted that the ad hoc International Criminal Tribunals were created to deliver justice and contribute to prevention efforts. It was also said that tribunals were established with the aim of bringing a measure of satisfaction to the victims of atrocities, irrespective of their ethnicity, and thereby allowing for a feasible prospect of reconciliation between parties.

The vast majority of speakers in the debate expressed their views on the international criminal justice system's current state of effectiveness. Evaluations were made in reference to lessons learned from the available experiences about the work of ad hoc tribunals, so that conclusions about their potential for improvement could serve as a blueprint for the work of other institutions of vital importance to the international criminal law system, namely the ICC. Overall, it was determined that justice and reconciliation are and must continue to be considered complementary elements of a modern system of international peace and security. The effective, fair and unbiased administration of justice in such an approach is an integral part of post-conflict reconstruction, but also an important part of efforts to prevent future threats to international peace and security.

Some speakers seized the opportunity to emphasize their contributions in cooperation with institutions of international criminal justice, while others underlined that the work and decisions of the various tribunals has hindered various reconciliation processes. Others took the floor to demonstrate support for the goals achieved since the creation of these institutions to the present day.

As some speakers argued, reconciliation cannot be achieved by the tribunals alone, therefore implying high hopes for a more active role for Member States in fostering reconciliation. In this sense, Member

States were seen to carry the primary responsibility for investigating and prosecuting the crimes in question, based on the principle of complementarity, to be supplemented by the international community's efforts. Furthermore, available experiences have demonstrated that lasting and sustainable peace without justice for all the victims is problematic. In that respect, a number of speakers commended the "historic" efforts of the ICTR and ICTY for their contributions to peace and justice. Although the establishment of such tribunals had, as claimed by those participants, changed the landscape of international criminal justice, their crucial role was in fact in establishing conditions the creation of the ICC through bringing about the beginning of a new, more advanced phase in international criminal justice. The message of the Rome Statute, which laid the foundation for the ICC, pertained to encouraging States to battle impunity.

As far as justice for victims was concerned, some speakers claimed this had been one of the major recent achievements of international criminal justice. Additionally, international justice was thought to contribute to international security, as well as to the rule of law and reconciliation. Yet, challenges which the system had faced were far from easy to tackle. Expectations were high, in the sense that they included parallel processes of wound-healing and justice-deliverance. Still, as indicated by a few speakers, the examples of the actions taken by the ad hoc tribunals offered a "fitting response." Therefore, according to them, even though the international community faced various challenges when it came to the application of international justice, the ICC and the ad hoc tribunals deserved strong and consistent support. According to some, the ICTY and ICTR ensured that principles of accountability replaced those of impunity. Still, accountability by itself, as an essential element of the international criminal justice system, could not only reflect a desire for justice, but was also needed to meet the important objective of reconciliation as an integral part of post-conflict peace-building. Justice and reconciliation were driven by each other, implying that without complementarity they could not be sustainable. This requires a more even-headed approach, and the unbiased prosecution of alleged perpetrators on all sides.

The ICC, in particular, enjoyed the support of some participants, who stated that its establishment represented a "qualitative leap" in international criminal justice. Hopes were expressed that the Court would be universally seen as competent to deal with issues that fell within its jurisdiction, underscoring the importance of all Member States signing on to its jurisdiction, including all the leading powers. A number of speakers were highly critical of Member States who despite being strong advocates of the ICC have not accepted its jurisdiction. Some commended the work of the Court and the tribunals for a framework that protected presumptions of innocence – one of the key principles of a fair trial. Moreover, many participants argued that international criminal justice needed to be supplemented by economic and social assistance, which could be achieved by providing more resources for the establishment of State structures and institutions to adequately support the aforementioned system. Although imperfect, international criminal justice was seen by a number of participants to have made significant advances. This had especially been attributed to the establishment and work of the International Criminal Court.

On the other hand, some States took a fairly critical approach to the system of international criminal justice and its individual courts. It was argued that justice could be brought to victims only if such processes were to be protected from partiality and political influences. When it came to the ICTY in

particular, a number of participants stated that this tribunal could serve as a negative example with regard to the independence of international criminal tribunals from political pressures and influences. According to these views, the ICTY's very existence was extended "for an absurd length of time," which sometimes resulted in a number of the accused dying before they could be tried. Furthermore, its existence seemed to cultivate the notion of guilt on one side in a given conflict, thus proving the Court's inability to truly promote peace, justice and reconciliation. Some claimed that national courts should enjoy primacy in prosecuting crimes, with the exception of cases in which countries were unable to prosecute internally.

With regard to the ICTY, certain Member States argued that this institution had not fulfilled its established goals, especially those pertaining to fostering reconciliation. In that sense, its overall record of rulings was described as biased, whilst prosecution remained selective and discriminatory. For instance, specific objections pertained to the cancellation of the previous unanimous verdict against Croatian generals Gotovina and Markac, which had been based on years of detailed investigation. The renewed verdict, as was claimed, neglected some of the most important elements of humanitarian law. Therefore, doubts were expressed that such verdicts were based on considerations of their legal merits. Dissatisfaction was expressed, inter alia, with regards to perceived selectivity in prosecutorial strategy and the length of sentences handed out by judges. For the States directly concerned with the work of the ICTY, the Tribunal's proportional assignment of guilt to the sides involved in the conflicts was seen as unacceptable, while the Court's overall contribution to reconciliation was deemed insufficient, or in some cases, non-existent. Additionally, some Member States said that they regretted their contribution to the legitimization of the ICTY, which was done in the hope that by applying the same benchmarks, justice would be served for all victims of the conflict. In their view this had not been the case. A belief was also expressed that all perpetrators of crimes should stand trial and receive proper punishment. That belief, they asserted, was not shared by the ICTY.

Some participants stressed that criminal justice played a significant role in reconciliation, and that it sought individual accountability for international crimes while recognizing victims' rights, promoting trust and strengthening the rule of law. Still, the administration of international criminal justice was described as an expensive exercise, especially in Member States whose limited resources could not support such structures. When it came to the ICC, some States pointed out that the Rome Statute recognized the inextricable link between justice and reconciliation. However, it was emphasized that such global institutions should be protected from political influences. Speakers underscored the paramount importance of the ICC reporting to the General Assembly, asking why it should also report to the Security Council, as it currently does. Concern was also expressed about the selective application of international criminal justice in the Security Council's referrals to the Court, which showed that "political interests were sometimes made a priority instead of the pursuit of justice."

Regarding reconciliation in particular, some suggestions indicated that such processes could be enhanced by the domestication of the Rome Statute, thus allowing space for greater involvement of national courts in the prosecution of international crimes. National reconciliation as well as the restoration and maintenance of peace have been set as objectives by the Security Council to the ICTR. Certain States argued that such objectives had not been achieved. In a similar sense, it was indicated that the effectiveness of the Tribunal for Rwanda was in fact inversely proportionate to the funding it

had received. Several concrete examples were provided as evidence of the aforementioned claims. For instance, Rwanda's domestic Gacaca trials cost 50 USD per suspect and tried about 1.3 million people within period of 10 years, while the ICTR tried 75 Rwandans over 17 years at a cost of over 20 million USD per defendant.

A viewpoint presented in the high-level segment also suggested that the location of such Courts played a significant role in determining their effectiveness in promoting reconciliation. The fact that their location was far away from the places where the atrocities had been committed contributed to their portrayal as foreign and detached, thus indicating a reduced ability to foster genuine reconciliation processes that public opinion would support. For these reasons, they were seen as serving legal and academic interests more than peace-building and national reconciliation. In the case of the ICTR, the criticism predominantly focused on the fact that most of the alleged perpetrators and genocide planners had still not been brought to justice. Moreover, it was stressed that the ICTR turned out to be most beneficial to the "technocrats" in charge of running it instead of the victims.

A major goal was considered to be striking a balance between the need to end the culture of impunity, while at the same time establishing safeguards against the potential abuse of the principle of universal jurisdiction. International arrest warrants should enjoy a "blessing" by the International Criminal Police Organization (INTERPOL), in order to avoid partisan political manipulation.

Some States said that, far too often, international criminal justice suffered from political expediency as well as the selective application of the law. One participant asked "what the value of all the laws, covenants, treaties, conventions and resolutions legislated by the international community really is, if they are not applied equally, fairly and consistently." As additional remarks by participants about the general functionality of international criminal justice suggested, the current system of international criminal justice did not embrace values from various cultural backgrounds, remaining centred on a Western historical and cultural mindset. On the other hand, some participants saw reasons for the current imperfections in the existing relations with the Security Council, a body that preserved the power to suspend investigations. The reluctance of some of the Security Council permanent members was identified by some as a reason for missed opportunities to develop a more functional and efficient legal system.

Regarding the ICC, some strongly objected to any politicization of the Court, mindful of the potential for the selective application of justice. It was also argued that the Office of the Prosecutor had not lived up to its mandate of strengthening national judicial systems. Some indicated that misunderstandings of legal principles and jurisdictions of the ICC had already taken place. A number of statements were also made referring to the inability of international criminal justice to replace national reconciliation. Others admitted that the ICC faced significant challenges, but that these were due to lack of cooperation from certain States. Many participants agreed that there remained room for improvement in the ICC's work, given the inexplicability of the fact that the vast majority of cases that the ICC had dealt with pertain to the African continent. In this respect, the ICC was said to be insufficiently effective, which was inevitable given that this judicial body retained its strong link with a "political body" (i.e. the Security Council).

## Panel Discussions

### Panel “Justice”

The first of two panel discussions that followed in the afternoon session of the thematic debate focused on the topic of “Justice.” Moderated by Matthew Parish, former Chief Legal Adviser to the International Supervisor of Brcko District in Bosnia, and Partner at Holman Fenwick Willan (a Swiss law firm), it included four additional panellists: Charles Jalloh, Professor at the University of Pittsburgh School of Law; Lewis MacKenzie, Major-General, Canada (retired), the first UN Commander of Sector Sarajevo; John Ciorciari, Professor at the University of Michigan; and Savo Strbac, of the Information and Documentation Centre “Veritas”, Belgrade, a long time cooperating NGO with the ICTY that has been applauded by the international community for its objectivity.

Among the questions Dr. Parish posed to his respective panellists were the following: What could be done to prevent crimes and what could contribute to reconciliation? Why had the area of international criminal law “grown so extensive in so little time,” when, in years prior, “it had been a small field?” What had triggered its growth and why did the international community feel it “could not live without it now”? Furthermore, he was specifically interested in the relationship between international and domestic criminal law, and questioned why the language of international law was often dressed in terms of intense moral outrage.

Mr. Jalloh focused the majority of his remarks on the African Union’s proposal to establish a criminal justice chamber within the African Court of Justice and Human Rights. Although the idea was widely seen as the latest manifestation of the African Union’s rejection of the International Criminal Court, in fact, Jalloh argued that the project would complement the work of the Court if States could address some of its fundamental problems. According to Jalloh, “the view that the African Union is not entitled to look for other possibilities” in the search for criminal justice was not only incorrect, but perhaps even racist, as the Court was never intended to be the sole body for international criminal justice.

Offering arguments in favour of the proposal, he urged all Member States to engage in the debate over the creation of the criminal justice chamber within the African Court of Justice and Human Rights, even though “we are all in favour of the ICC.” States had a responsibility to investigate crimes that took place on their territory, which suggested that one must at least have an open mind to consider the African Union proposal.

Retired Canadian General Lewis Mackenzie said that during his tenure leading the Sarajevo Sector of the United Nations Protection Force in the former Yugoslavia, he had frequently pointed out the inadequacies of the United Nations’ engagement. He had long dealt with United Nations “naïveté” and could, to a certain extent, understand the United States’ reluctance to sign up with the ICC due to concerns regarding false and/or frivolous charges which could be made against their senior personnel. In terms of the ICTY, he underscored the “valid perception” that it represented a form of victor’s justice. Fairness and objectivity are important, he stressed, adding that if proceedings did not appear to be fair and objective, justice was counterproductive to reconciliation. To support his point, he gave the

following example of “impropriety:” a judge presiding in a case involving a defendant from a country which was at odds with the judge’s country over the specific issues and events the defendant is charged with. In such an instance, he said, the judge should recuse himself, as is done in most national juridical proceedings when there appears to be even the perception of a conflict of interest.

General Mackenzie also referred to the case against senior Croatian military officials for war crimes committed during Operation Storm in 1995, resulting in the expulsion of hundreds of thousands of Serbs from Krajina (Croatia). During this offensive, Croatian forces “overran with their armour and artillery” lightly armed Canadian peacekeeping positions. When the Canadian troops accepted to shelter Serbian civilians who had fled the Croatian assault, the Croatian army responded with artillery shelling. Canadian generals gave compelling evidence to that effect during the trials, and public opinion in Canada reacted very negatively when the defendants accused of ordering these strikes were found not guilty on appeal.

Professor Ciorciari, an expert on the subject of justice and reconciliation in Cambodia, said that working towards better models of international criminal justice was an important process. He described some of the work of the Extraordinary Chambers in the Courts of Cambodia — a hybrid court that played a role in prosecuting alleged crimes against humanity in Cambodia between 1975 and 1979. The Extraordinary Chambers had been charged with prosecuting individuals from a regime responsible for some 1.7 million deaths. In many respects, the institutional structure of the Extraordinary Chambers had been experimental, and showed that hybrid courts had some “special hazards.” Spotlighting some lessons that had been learned from the Court, he underscored that the United Nations should be wary of attaching its name and committing resources to a court over which it did not have leadership.

Among other lessons learned in the context of the Extraordinary Chambers, Ciorciari said that the Court’s experience had shown that justice and efficiency were fundamentally intertwined in international criminal justice systems. Moreover, the Extraordinary Chambers’ complex system of appeals — instituted as a result of Cambodian sovereignty concerns — meant that issues could be litigated up to four times. There were several perils of divided leadership and management, with national and international staff working figuratively, and sometimes literally, on opposite sides of the hall. Those issues had challenged the Court to speak with a single voice in cases where there might be differences of opinion between national and international players.

Mr. Strbac, shared some of the staggering numbers of casualties of war in the region. Not counting the victims of the 1999 NATO bombing that was not authorised by the Security Council, there had been 130,000 victims in total. He also shared some of the statistics of the trial and appeals chambers of the ICTY. In the period of 20 years from its founding to the day of the thematic debate, a total of 161 persons had been indicted, and 82 of the accused were convicted. Of the accused, 110 people (68% of the total) were Serbs, 34 were Croats, 9 were Bosniaks, 7 were ethnic-Albanians and one was Macedonian. Of all the convictions pronounced, 80 per cent were against Serbs, as well as all five life sentences pronounced by the ICTY. In precise terms, 82 indictees were convicted to a total of 1215 years in prison, out of which 62 Serbs were convicted to a total of 974.5 years. In comparison, 12 Croats were convicted to a total of 166 years in prison, 5 Bosniaks to 43.5 years, 2 ethnic-Albanians to 19, while the lone Macedonian was convicted to a 12 year sentence. Twelve indictees (six Serbs and

six Croats) are still waiting for their verdicts. Strbac argued that the ICTY's partiality was seen in the fact that only four indictees were convicted for crimes against the Serb population in Bosnia (three of whom were Bosniaks, along with one Croat), whilst there were no convictions for crimes against Serbs in either Croatia or Kosovo. This, he added, did not correspond to the historical facts, and would serve as an undue burden for those seeking reconciliation for many years to come.

Strbac said that the Serbs had been fiercely opposed to the establishment of the ICTY, fearing that the Tribunal would see Serbs as criminals and oppressors. He noted that he had wished to cooperate with the Tribunal from the onset, thus meeting with the delegation of the prosecution for the first time in 1994. However, in the 20 years of judgments brought, he admitted with great bitterness that the vast majority of his countrymen from Serbia had been "quite right" in their assertion that the Tribunal would be guided by selective, politicized justice. The ICTY evidently failed to hold any parties accountable for the expulsion of almost a quarter of million Serbs from Croatia during "Operation Storm" in August 1995 (i.e. the evidence indisputably indicates that a terrible crime was committed with malice and forethought, yet through the actions of the Court, no individual has been convicted of having ordered or even participated in its commission). Thus, according to Strbac, the Tribunal had not fulfilled any of the goals for which it was founded, in particular reconciliation. "Do not allow for a similar tribunal as the International Criminal Tribunal for the Former Yugoslavia to happen anywhere else," he concluded.

#### Panel "Reconciliation"

The second panel revolved around issues related to reconciliation. The panel consisted of moderator John Schindler, Professor of National Security Affairs at the United States Naval War College, and Senior Fellow at Boston University, and four panellists: William Schabas, Professor at Middlesex University School of Law, London; Cedomir Antic of the Institute for Balkan Studies, Belgrade; Janine Clark of the University of Sheffield School of Politics; and John Laughland, Director of Studies at the Institute of Democracy and Cooperation, Paris.

Professor Schabas offered his perspectives on the links between international criminal justice and reconciliation. He stressed that none of the resolutions which initiated the establishment of the ICTY had mentioned reconciliation, which was a stark omission. Still, he expressed a belief that the achievement of goals in the area of international criminal justice should fit into the following postulates: sustainable peace, deterrence, justice for victims and reconciliation. When it came to justice for victims, he argued that a measure of justice had been delivered although not entirely to satisfaction of all sides, which in his view is "the reality we all live in". He added that reconciliation is most difficult to measure and in that sense said that it is too soon to know the answer of whether international criminal justice had promoted reconciliation effectively or not. He underlined the fact that the Tokyo and Nuremberg trials had been the symbols of one-sidedness but had still managed to make critical contributions to an accurate historical portrayal of events, although what happened in the Balkans was entirely different in scope and scale. In terms of the political dimensions of international criminal justice, he reminded participants that the decision to prosecute is ultimately a political one.

Dr. Antic said that we stand before a task that is ultimately an easy one, but also a sad one. Even though the founding resolution on ICTY did not contain the word reconciliation, this was continuously being declared as one of the Tribunal's goals in its statute, programme and the public appearances of its officials. He claimed that the ICTY's contribution to reconciliation could be best measured through levels of trust expressed within the populations concerned with the affairs of the Court. In that sense, he underlined the fact that very high percentages of both Albanians and Serbs have negative sentiments towards this institution. He reiterated the claim that the Tribunal had already demonstrated one-sidedness by deciding not to indict any NATO officials for crimes during the bombing campaign against Serbia in 1999. Antic also described the difficulties that the ICTY brought to the development of democratic society in Serbia. According to Antic, the constant pressure and high expectations that this institution had been using in its interactions with the Serbian government had already once resulted in halting the country's EU accession process. Similarly, Antic claimed that the ICTY contributed to worsening relations between Balkan nations, and fostering divisions within them.

Dr. Clark said that the normative value of the Courts is beyond any doubt. In her view, it is their practical implications that could be deemed problematic. One of the reasons why it remained fairly difficult to measure reconciliation was the fact that very few people had conducted serious empirical work on the issue. Therefore, evaluation of contributions to reconciliation cannot be made with absolute certainty. She was of the opinion that the ICTY had not contributed to reconciliation in the Balkans, although it was not its job or mandate to aid reconciliation. The major issue, she claimed, remained the length of the sentences pronounced by the Court. Plea agreements made between the accused and the prosecutors represented a problem to the victims. She added that in light of the number of atrocities committed, in which thousands of persons were killed or missing, courts have no option but to be selective in the prosecution of the perpetrators. These decisions, she argued, are difficult to explain to the populations affected by war. She added that there are cases in which courts are willing to prosecute crimes but are not able to do so to a full extent, due to the lack of cooperation by States. In order for courts to make a greater contribution to reconciliation processes, Dr. Clark argued that States have to demonstrate greater eagerness for cooperation.

Professor Laughland expressed his firm belief that the project of international criminal justice is destined for a major failure. He said that none of the arguments in favour of international criminal justice are able to deal with the legal right of statehood to punish and convict criminals. He pointed to the lack of a social contract between institutions of international justice with the population, which is contrary to the situation that exists within States and their judicial systems. Even so, he said, what is arguably an implicit social contract is being systemically broken by international Tribunals. In terms of partiality of the Tribunals, he pointed to one specific example. NATO's attack on the Federal Republic of Yugoslavia in 1999 was illegal, thus implying the necessity for the ICTY to prosecute NATO senior officials. The decision not to prosecute them, according to Laughland, proved the Tribunal's partiality. Laughland emphasised that acts of warfare still represent a state act. In that sense, it was noted that many have forgotten that peace treaties made in the past 500 years contained amnesty clauses, and were produced and signed by States. He concluded with the remark that instead of continuous attempts to fix the system of international criminal justice, we should redirect the efforts towards rediscovering the role of the State and the lost art of peace making.



**Note:** The thematic debate took place against the backdrop of various endeavours to divert attention from the substance of the day's proceedings. In a concentrated period of time several weeks before the day of the event, a number of panellists who had confirmed their participation in writing suddenly informed the organizers that they would be unable to attend (during the same period, a negative media campaign against the event was launched). Moreover, there was an unsuccessful attempt to organize a boycott of Member States to participate in the debate (in the end, only 2 Member States announced their decision not to participate). As the event was taking place, an NGO representative chose to break the rules against demonstrating on UN premises.

## Conclusion

The thematic debate provided an unprecedented opportunity for Member States, international judicial institutions and representatives of academia and civil society to voice their views in the General Assembly on this topic of vital importance for international relations.

The debate was widely recognised as having achieved its goal of reviewing lessons learned and best practices stemming from two decades of work of the institutions of international criminal justice. The contribution of a record number of participants for an event of this sort demonstrated the deep international interest in this topic.

Some participants unequivocally supported the two decade-old record of work by the ad hoc tribunals, the ICC, or both, strongly endorsing the continuation of their activities, although in some cases allowing for the possibility that there was some room for improvement. Other participants expressed the view that numerous mistakes have been made in the way ad hoc tribunals have conducted their work—mistakes that have made the process of reconciliation between former adversaries more difficult to bring to a successful conclusion. Several reasons were given, including the perception of bias in the exercise of prosecutorial discretion; the shifting legal criteria by which judgments are rendered; the non-transparent process of selecting court officials and staff; the evolution of the doctrine of jurisdictional primacy and the inability in many cases to properly reconcile the delivery of justice; the prevention of impunity and fostering general deterrence, with respect for both the rights of victims and the accused.

The thematic debate represented a first, successful step by the General Assembly to review the record of international criminal justice. Some participants extended support for, while others gave constructive criticism of, past and current efforts—thus providing useful guidance to the International Criminal Court and other institutions.

It is hoped that the discussions will help ensure the delivery of international criminal justice in a more inclusive, unbiased and impartial manner, divorced from political influence, thus enabling the aforementioned institutions to achieve their goals in a sustainable way.

It is now up to the Member States to choose how to follow-up, and decide whether further action is warranted to enhance the transparency and accountability of international criminal justice, as it enters its third decade of existence within the UN system.

**List of Member States that delivered statements in the high-level segment of the thematic debate:**

Bosnia and Herzegovina (Chairman of the Presidency H.E. Mr. Nebojsa Radmanovic)  
 Serbia (President H.E. Mr. Tomislav Nikolic)  
 Namibia (Minister of Justice H.E. Mr. Utoni Nujoma)  
 Rwanda (Minister of Justice/ Attorney General H.E. Mr. Tharcisse Karugama)  
 Croatia (Permanent Representative H.E. Mr. Ranko Vilovic)  
 Turkey (Deputy Permanent Representative Mr. Levent Eler)  
 Suriname (Permanent Representative H.E. Mr. Henry Mac-Donald)  
 Costa Rica (Permanent Representative H.E. Mr. Eduardo Ulibarri), on behalf of 14 Latin American and Caribbean countries which are State Parties or Signatories to the Roma Statute  
 Russian Federation (Permanent Representative H.E. Mr. Vitaly Churkin)  
 China (Permanent Representative H.E. Mr. Li Baodong)  
 Argentina (Permanent Representative H.E. Mrs. Maria Cristina Perceval)  
 Egypt (Deputy Permanent Representative Mr. Osama Abdelkhalek Mahmoud)  
 Switzerland (Permanent Representative H.E. Mr. Paul Seger)  
 Chile (Permanent Representative H.E. Mr. Octavio Errazuriz)  
 Pakistan (Permanent Representative H.E. Mr. Masood Khan)  
 Brazil (Permanent Representative H.E. Ms. Maria Luza Ribeiro Viotti)  
 Indonesia (Permanent Representative H.E. Mr. Desra Percaya)  
 Ghana (Permanent Representative H.E. Mr. Ken Kanda)  
 Sri Lanka (Permanent Representative H.E. Mr. Palitha Kohona)  
 United Republic of Tanzania (Permanent Representative H.E. Mr. Tuvako Manongi)  
 Australia (First Secretary Ms. Julia O'Brien)  
 Trinidad and Tobago (Permanent Representative H.E. Mr. Rodney Charles)  
 South Africa (Counsellor Mr. Thembile Joyini)  
 Uruguay (Permanent Representative H.E. Mr. Jose Luis Cancela)  
 Congo (Permanent Representative H.E. Mr. Raymond Serge Bale)  
 Lesotho  
 Japan (Ambassador H.E. Mr. Jun Yamazaki)  
 Thailand (Deputy Permanent Representative H.E. Mr. Chayapan Bamrungphong)  
 Cuba (Third Secretary Mr. Tanieris Dieguez Lao)  
 Gabon  
 Jamaica (Deputy Permanent Representative Miss Shorna-Kay Richards)  
 Tunisia (Counsellor Riadh Ben Sliman)  
 India (Deputy Permanent Representative H.E. Mr. Manjeev Singh Puri)  
 Liechtenstein (Permanent Representative H.E. Mr. Christian Wenaweser)  
 Cambodia (Permanent Representative H.E. Mr. Kosal Sea)  
 Botswana (Permanent Representative H.E. Mr. Charles Ntwaagae)  
 Bolivia (Deputy Permanent Representative Mr. Claudio Guillermo Rossell Arce)  
 Venezuela (First Secretary Alfredo Fernando Toro-Carnevali)  
 New Zealand (Second Secretary Ms. Alexandra Lennox-Marwick)

Sudan (Permanent Representative H.E. Mr. Daffa Alla Elhag Ali Osman)  
 Ecuador (Counsellor Mr. Patricio Troya)  
 Kenya (Deputy Permanent Representative H.E. Ms. Koki Muli Grignon)  
 Iran (Deputy Permanent Representative H.E. Mr. Gholamhossein Dehghani)  
 Syria (First Secretary Mr. Koussay Aldahhak)  
 Albania (Permanent Representative H.E. Mr. Ferit Hoxha)

Other provided statements pertaining to the morning session:

State of Palestine (Permanent Observer H.E. Mr. Riyad Mansour)  
 European Union (Deputy Head of Delegation H.E. Mr. Ioannis Vrailas), on behalf of its 27 members  
 International Development Law Organization (Mr. Patricio Civili)

**Panellists who provided the Office of the President of the General Assembly with their presentations:**

Justice panel:

Dr. Matthew Parish, Partner, Holman Fenwick Willan, Geneva  
 Prof. Charles Chernor Jalloh, School of Law, University of Pittsburgh  
 Major-General Lewis MacKenzie (ret.), 1st Commander of Sector Sarajevo  
 Prof. John D. Ciorciari, University of Michigan  
 Mr. Savo Strbac, Information and Documentation Centre - "Veritas", Belgrade  
 Reconciliation panel:

Prof. John Schindler, National Security Affairs, US Naval War College and Senior Fellow, Boston University  
 Prof. William Schabas, School of Law, Middlesex University, London  
 Dr. Cedomir Antic, Institute for Balkan Studies, Belgrade  
 Dr. Janine Clark, School of Politics, University of Sheffield  
 Dr. John Laughland, Institute of Democracy and Cooperation, Paris



*Statement  
of the Permanent Representative of Albania to the United Nations,  
H.E. Ferit Hoxha  
To the Thematic Debate of the UN General Assembly*

*“The Role of International Criminal Justice in Reconciliation”*

*New York, 11 April 2013*

Dear Colleagues,

The requisite for international accountability for war crimes, ethnic cleansing, crimes against humanity and acts of genocide, is based on the tragic legacy of numerous shocking events throughout the 20<sup>th</sup> Century, including more recently the genocide in Cambodia, Rwanda and Srebrenica.

Although the concept of international accountability dates back in the Nuremberg trials after the Second World War, a valuable repertoire of jurisprudence in this field has been undoubtedly generated from the work of the International Criminal Tribunals for Rwanda and the Former Yugoslavia, which now contributes to the work of national courts or other international courts.

These contributions have been widely recognized, and rightly so. These courts were at the heart of efforts of the international community to ensure accountability, end impunity and strengthen the rule of law. These courts will always epitomize the efforts of our generation to significantly advance the cause of justice as the best assurance for a long-lasting peace. Thanks to these efforts we have achieved a common understanding where nobody can be above the law.

Dear colleagues,

A well prepared debate on the role of the International Criminal Justice system in ending impunity and thereby promoting reconciliation among peoples is always welcomed. There is always room for reflection and debate over the extent to which the International Criminal Justice system has met the goals it was set up to achieve. However, in order to serve its purpose, a debate of such magnitude needs to be carefully and wisely prepared, in full transparency, taking into account all sensitivities and free from personal and national prejudgements over the important legacy of the international courts and their impartiality. Unfortunately, this debate has profited from none of this.

We have aligned with the Statement made yesterday by the European Union but I would like to make a few remarks on my national capacity. I must say it, clear and loud: we deplore the whole manner this debate has been shaped. *first*, we have strong reservations on the real motives of such a debate, as widely disseminated by the PGA himself, here and there and everywhere, on its aim to finger point a specific court, the ICTY, with a declared intention to use the event and the UN to denigrate the court's work, diminish its legacy and politically question its verdicts. No surprise, what we heard by the President of Serbia in its repeated assortment of accusations, first against everything the ICTY had done and then against almost every non-Serb in the region, is appalling and a proof of what this event is all about. *Second*, one can hardly recall any similar UN event organised in such secrecy, opacity and lack of transparency as this one. The list of invitees, unknown to the UN until the last day, is very questionable, but more regrettably, the voice of the victims, those justice is to serve, has been excluded. As rightly feared that the list of the guests would be an oriented choice, the vast majority of interventions during the two afternoon sessions were nothing less than an enthusiastic "ICTY bashing". I would nevertheless recall one of the panellists, Janine Clark, one of the rare balanced scholars, which cooled the hysteric minds on the alleged organ trafficking issue, probably one of the main real reasons of this event. She said a very simple yet crucial thing: the ICTY came to the conclusion there was nothing to investigate: there were no proofs, no witnesses, no bodies and no leads. What has remained are allegations and on that basis, tons of propaganda. *Third*, by stubbornly insisting to choose and maintain a date with specific historic significance in the region - *again here the President of Serbia left no room for imagination* -, the PGA has chosen to navigate in murky waters. We deem that this approach is wrong, unwelcomed and detrimental to the ICTY and its work, as it is to the image and role of the PGA office. The topic is interesting and important but unfortunately the way it was organized made this event biased and unbalanced.

Dear colleagues,

Justice, be it at national or international level, is not a matter of preference nor can it be made under pressure of any kind. It is a matter of careful, sometimes long and painful, difficult and complex but always cold judgement, based on the law and the establishment of facts. For over two decades ICTY has served the Balkans on a twofold mission: first, as an impartial legal body to deliver justice and end impunity, it has brought the perpetrators to suffer the consequences of their wrongful acts and pay for them. Second, through the evidence gathered, it has been a teller and record keeper of unspeakable atrocities of war in the early 90ies in the Balkans, of the voice of those numerous victims, those who, let's not forget, were excluded from this debate. We should therefore acknowledge the ITCY's contribution to heal to some extent the wounds inflicted to hundreds

of thousands, to build on lessons learned from the bitter past and by this way, to provide for a slow but steady reconciliation.

Therefore, we owe to the ICTY as well as to all other tribunals respect – respect for both safeguarding impartiality and for delivering justice. In our view, putting the merits of the Court into question in pursuit of whatever specific political agenda is a distorted lecture of the role of the General Assembly; it is at best an untruthful assessment of the work of the Court through an unfounded verdict and, at worst, a great threat to the on-going reconciliation process in the region. Our region doesn't need this and we have no part in it.

Thank you.

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## **Discurso del Embajador Sacha Llorentty sobre el Rol de la Justicia Penal Internacional en la Reconciliación**

**(10 de abril de 2013)**

Gracias señor Presidente.

Sr. Presidente, permítame transmitir un saludo de la delegación a mi cargo a usted y todos los presentes.

Al ser Bolivia un miembro activo de la comunidad internacional y respetando siempre los preceptos, institucionalidad y la misión de la Corte Penal Internacional dentro del derecho internacional, me permito resaltar la esencial tarea que viene cumpliendo dentro de la justicia penal internacional.

La aprobación del Estatuto de Roma para el establecimiento de la Corte Penal Internacional en julio de 1998 marcó un hito histórico en el desarrollo del Derecho Internacional, el Derecho Internacional Humanitario, los Derechos Humanos, y en particular, la Ley Penal Internacional. Sin embargo, la interpretación y aplicación de las disposiciones penales establecidas en el Estatuto no es tarea fácil.

Sin dejar de lado los avances que la Corte ha demostrado desde que entró en funcionamiento, estos progresos se han enfrentado a numerosos retos, como ser la falta de voluntad política de algunos de los Estados Partes en el cumplimiento de las órdenes de detención emitidas por la Corte, la naturaleza compleja del derecho penal internacional y el doble rasero de algunos Estados al no permitirse ser sujetos de investigación y procesamiento dentro de la jurisdicción de dicha Corte.

Las lecciones del pasado, nos encaminan a poner relieve a la fundamental e importante tarea de fortalecer el mecanismo jurídico de la Corte Penal Internacional para que trabaje en estrecha consulta con los Estados Partes; ya que el sistema penal internacional actúa de forma complementaria a través de relaciones de coordinación y cooperación entre instituciones nacionales e internacionales.

En lo que concierne a las reparaciones, el objetivo principal de este órgano tiene que ser el de asegurar el derecho de reparación a la mayor cantidad posible de víctimas, tal como lo estipula artículo 75 del Estatuto de Roma. Por otro lado, el Art. 79 establece un Fondo Fiduciario en beneficio de las víctimas, el cual actualmente tiene una tendencia de aumento de contribuciones voluntarias y de donantes; pero es preciso acrecentar los recursos del Fondo Fiduciario para dar una mejor respuesta a las expectativas de las víctimas.



Permanent Mission of the Plurinational State  
of Bolivia to the United Nations



La justicia penal internacional está estrechamente ligada a los procesos de la búsqueda de la verdad, reparación y conciliación. Los órganos principales de Naciones Unidas, como ser la Asamblea General y el Consejo de Seguridad tienen que aportar instrumentos para alcanzar objetivos más concretos que simplemente políticas, para que de esa forma se llegue a una efectiva contribución en el marco de la paz y seguridad internacionales.

En el caso del Consejo de Seguridad, el Estatuto de Roma le da a este la atribución para remitir casos a la Corte pero también la posibilidad de veto a los Estados que no ratificaron dicho Estatuto. El apoyo a la ratificación del Estatuto de Roma es de vital importancia para que así la Corte pueda impartir justicia de manera imparcial y sea una institución verdaderamente global y universal, con un funcionamiento efectivo. No es admisible que en determinadas acciones, ciudadanos de Estados que no ratificaron el Estatuto de Roma no puedan ser juzgados por la Corte, ¿o es que acaso vivimos en un régimen de privilegios en el que algunos Estados constituyen una "Aristocracia" especial, misma que les permite votación pero no así el sometimiento a su jurisdicción? Se debe desnudar la naturaleza del poder que impide a esta Organización ser más eficaz y más realista.

Se tiene que fortalecer los vínculos y relaciones entre países para aportar al orden jurídico internacional un sentido de respeto hacia la justicia penal internacional, ya que existe en la actualidad un cambio en el contexto internacional favorable a los derechos humanos, ya no se elige perseguir crímenes contra los derechos humanos porque llevan consigo riesgos que no existían en el pasado. La sensación de impunidad ante crímenes de cualquier índole hacen que los actores políticos de todas las tendencias estén cada vez más predispuestos a una eficaz lucha por la justicia penal internacional.

Señor Presidente, en mi conclusión quisiera reiterar, la importancia que la comunidad internacional otorga a la labor de la justicia penal internacional en la reconciliación y llamar su atención a la importancia de fortalecer el funcionamiento de la Corte Penal Internacional proporcionando todos los medios necesarios para los fines requeridos.

Termino mi intervención citando las palabras de un emblemático escritor uruguayo como es Eduardo Galeano, quien escribió: "... No son muertos los seres humanos aniquilados en operaciones militares: los muertos en batalla son bajas, los civiles que se la ligan sin comerla ni beberla, son daños colaterales." Palabras que deben llevarnos a una profunda reflexión en sentido de evitar ataques contra la población civil en ambientes hostiles, respetando en todo momento los derechos humanos de las personas, situación que fue recogida y normada por la justicia penal internacional en el marco de los crímenes de guerra, lo cual es de vital importancia en el tiempo actual dadas las amenazas de guerra en la región asiática conocidas por todos.

¡Muchas gracias!



**Speech by the Chairman of the Presidency of Bosnia and Herzegovina  
H.E. Mr. Nebojsa Radmanovic**

**67<sup>th</sup> Session of the United Nations General Assembly  
Thematic Debate ‘Role of International Criminal Justice in Reconciliation’**

*New York 10 April 2013*

Mr. Chairman,

Mr. Secretary-General,

Excellencies,

Ladies and Gentlemen,

At the beginning I would like to express my gratitude to the President of the United Nations General Assembly for initiating the idea to convene the General Assembly thematic debate on the role of the International Criminal Justice in reconciliation that is getting more importance in the years after its establishment and instigate different views particularly in the countries and the regions for which the special international tribunals have been established.

I am honored to thank the UN Secretary-General, Mr. Ban Ki-moon, for his last visit to Bosnia and Herzegovina and the region and especially for the support expressed on that occasion.

Three years ago the 65th anniversary of the famous Nuremberg process was marked, where the perpetrators of the most serious war crimes from the Second World War were prosecuted, which have established several legal precedents still being the integral parts of the international law by having become an inspiration for all the subsequent trials at the international level.

Twenty years have passed after the establishment of the first *ad hoc* Tribunal in the international relations and the tenth anniversary of entering into force of the Rome Statute by which the first permanent International Criminal Tribunal in Hague was established. The fact that the United Nations decided to create several *ad hoc*, hybrid and special tribunals, confirmed the determination of this world organization to ensure peace, security and respect for human rights in the world, by criminal prosecution of all the perpetrators of war crimes and crimes against humanity. It is not easy to answer whether the twenty years is enough time to review its real effects especially on the reconciliation of the people, which are difficult to determine. Transitional *ad hoc* international criminal tribunals are relatively new legal mechanism in the international relations to enable rendering a final and decisive evaluation of their work and effects.

Bosnia and Herzegovina /hereinafter BiH/ has welcomed the establishment of the *ad hoc* International Criminal Tribunal for the Former Yugoslavia, as a legal framework for ending the tragic period for all the peoples of BiH. After the war, the BiH authorities have

consistently and constructively cooperated with the Hague prosecution and the Tribunal, which was positively assessed in the relevant periodic reports and the documents of the United Nations.

BiH is strongly committed to process all the crimes committed in Bosnia and Herzegovina and to have the perpetrators punished accordingly by the courts.

Trials for the war crimes committed in BiH, are being carried out at several levels: international, before the special international criminal tribunal for the former Yugoslavia, at the courts of the third countries in accordance with the universal jurisdiction principle, at the state and local level before the local courts. The Hague Tribunal has undertaken to process the most sensitive and complex war crimes cases and some less complex and sensitive were assigned to the different levels of the domestic judiciary for further processing.

With the goal of strengthening the processing of war crimes committed during the war in BiH, in 2003 and 2004, special departments for war crimes of the BiH Court and the Prosecutor's Office were formed. National Strategy for War Crimes was developed and adopted by BiH. So far, the country has made significant progress in processing war crimes. According to the national and the international organizations statistics, there still is large number of war crimes that should be processed before the domestic courts.

Before we start the discussion about this complex and delicate issue we must ask ourselves: Why was the International Criminal Tribunal for the Former Yugoslavia established? The International Criminal Tribunal for the Former Yugoslavia in Hague was established with the principal intention to prosecute the perpetrators of the worst war crimes in the former Yugoslavia thus preventing any future occurrence of such events, with clear and resolute message that such actions will be punished consistently and without exception. The ICTY was established to determine the individual guilt of all the perpetrators of the most serious war crimes on the territory of the former Yugoslavia and prevent the collectivization of the guilt to the whole population, ethnic and national communities. There is no collective guilt, but only the individual one. Whole nation cannot be blamed for the crimes committed by some individuals on the territory of the former Yugoslavia.

The priority task of the international criminal court should be simultaneous exercise of justice by punishing the war criminals and satisfaction of the victims' rights, which should contribute to reconciliation among the peoples.

Establishing the truth in the events in BiH and providing justice for the victims of the war should prevent any kind of historical vengeance and retaliation which may come from any group or ethnic community in the country.

Did the court fulfill its duty from the Security Council Resolution? Did some Tribunal's rulings further traumatize the victims thus having us departed from the ultimate goal: reconciliation through justice for all? Does ICTY with its verdicts return in the past or lead to the future and reconciliation of the people? These are all difficult and complex issues to which we today, I am afraid, cannot give complete and clear answer.

The evaluations of thus far ICTY work and its effects to the process of reconciliation in BiH, are still being done burdened by the increasing political tension within the country and current interethnic mistrust, therefore it is still difficult to bring an objective assessment

of its work. The dissatisfaction with some of the ICTY verdicts is present among all three constituent peoples in BiH, as well as the victims of the war. This dissatisfaction is particularly intensified after the latest three acquittals by the ICTY in cases against the Croatian generals, one member of the Albanian paramilitary units from Kosovo and the Chief of Staff of the FR Yugoslavia Army Headquarters.

In my capacity as the Chairman of the tripartite Presidency of Bosnia and Herzegovina representing the Serbs but also, by the nature of my duty, all three constituent peoples and all the BiH citizens, I must say before this eminent world organization event, that we in BiH, the political representatives of the various peoples, the public and the citizens respectively, have different opinions of the ICTY work. The opinions and views are directly related to the perception the individuals and entire ethnic communities have towards certain verdicts of the Court and its overall activity. Generally speaking, many people in BiH are dissatisfied with the Tribunal's work and consider their victims are not treated fairly, and that only the perpetrators from their own people are punished. However, there is something we all have in common: the perseverance for all the crimes committed during the war to be prosecuted, the perpetrators punished, and the community satisfied with a sense of justice and the victims' rights.

There is the widespread perception among the public and the most Republic of Srpska officials that the ICTY is selective and discriminatory against the Serbs convicted before this Court. Among the Serbs people in BiH, some ICTY verdicts have created the sense that they were victims of the Hague Tribunal, apart from having been the victims of the war, as well as the members of other peoples in Bosnia.

The largest paradox of the Hague verdicts is that majority of the Serbs believe that the ICTY has tried only the Serbs people, while, on the Bosniak side, there is a growing dissatisfaction with the high sentences rendered in the cases of the war crimes tried.

Several acquittals having contained a long term sentence in the first instance proceedings were completely overruled after the revision. This has opened the question of how it is possible to completely overrule such judgment and how such judgments contribute to the objectivity and impartial credibility of the court and to what extent they challenge its expertise, objectivity and fair intentions. These acquittals reduce confidence into the overall international criminal justice and judicial system.

The most common complaints and comments from the public on the work of the ICTY are: disproportional sentences, double criteria in the procedure for the same offenses, the selectivity towards the indicted, negative attitude towards the plea agreement on the admission of guilt, overruling of complete sentences to the individuals having been sentenced long-term in the first instance proceedings, without clear indication of who would be responsible for the documented and proven crimes in these and many other cases. 'The proportionality strategy' being likely to impose by the Hague Tribunal is unacceptable for all in BiH, but for different reasons, which indicates that we are still far from a unified opinion and view of what happened in our recent past.

In the BiH public there are different interpretations of the events from the war in BiH. There are also manipulations regarding the number of victims and obstructions from the different levels of government and the political elite related to obtaining the facts and documentation of the committed war crimes circumstances. All this is burdening the

completion of the extensive and complex engagement of transitional justice as the legal framework for recovery of the war-split society.

Ladies and Gentlemen,

How can the so-far work of the Hague Tribunal for the Former Yugoslavia contribute to prevention and deterrence of the future conflicts and crimes, ensure the rights of victims and help the process of reconciliation in the countries that were involved in the local conflicts?

One of the ways to achieve that is to provide researchers and experts the access and insight into the existing archives of the Hague Tribunal, so that everyone has complete written sources from all sides related to the war events in order to get an overall impression of what happened, rather than having just one-sided view of the events. Long lasting peace and reconciliation among the BiH peoples cannot be obtained only by rulings of any court. Reconciliation of the peoples, after such violent conflict, is a process requiring a broad and comprehensive effort of all social and political factors in a society to create the preconditions for true reconciliation. To do so, it is necessary to have an open and honest dialogue of the different actors, government structures, civil society, organizations and associations of the victims and veterans, at all levels, in order to overcome the difficult legacy from the past. One of the ways to overcome this is the inter-ethnic dialogue, particularly between young generations through educational projects on human rights and peace activism. We are encouraged by the more noticeable trend of constructive dialogue and cooperation between the representatives of the associations of victims from different peoples in BiH.

We have set the high and honorable goals - punish all the perpetrators of the worst crimes and violations of international law and the legal system in the territory of the former Yugoslavia. Whether we succeed in that, depends not only on the international community and individual countries, but also on every human being and individual thus the civil society in general.

Thank you.



# KINGDOM OF CAMBODIA



STATEMENT BY

HIS EXCELLENCY SEA KOSAL  
AMBASSADOR AND PERMANENT REPRESENTATIVE  
OF THE KINGDOM OF CAMBODIA  
TO THE UNITED NATIONS

AT THE 67<sup>th</sup> UN GENERAL ASSEMBLY THEMATIC DEBATE

ON

ROLE OF INTERNATIONAL CRIMINAL JUSTICE  
IN RECONCILIATION



NEW YORK, 10 APRIL 2013

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**Mr. President,  
Excellencies, Ladies and Gentlemen,**

1. First of all, allow me to express on behalf of the Royal Government of Cambodia, our high appreciation to His Excellency **Vuk Jeremic**, President of the General Assembly, for organizing this important thematic debate on international criminal justice, which is an important factor to promote peace and security, rule of law and reconciliation.
2. In recent years, justice-related issues have figured prominently on the international agenda. This expansion of the justice space is a product of a growing demand for accountability in world politics. In addressing the issue of heinous crimes such as genocide, war crimes and crimes against humanity, the international community has witnessed the proliferation of institutions and mechanisms, as well as the dynamic interplay between domestic and international processes, in the pursuit of justice outcomes. International and hybrid tribunals have demarcated the space within which ethical, political and legal debates have unfolded in the quest for a more humane world order.
3. Investigations and trials of powerful leaders who have committed crimes and caused mass political or military atrocities is a key demand of victims of human rights abuses. Prosecution of such criminals can play a key role in restoring justice and dignity to the victims, help strengthen the rule of law and send a strong signal that such crimes will not be tolerated in the human society.

**Mr. President,**

4. Allow me to recall the context and history in which Cambodia encountered. Cambodia came across genocide regime from 1975 to 1979, in which nearly half of its population lost their lives. Not a single person was spared from this ravages brought upon our country during Khmer Rouge regime, so called Democratic Kampuchea. Every socio-economic structure, education and health care system, cultural and religious institutions were all destroyed. It was one of the worst human tragedies of the 20<sup>th</sup> century and comprised the largest death toll, in percentage term, of all the genocide in modern history.

5. To bring justice to the victims, in 1997 the Royal Government of Cambodia requested the United Nations to assist in establishing a hybrid tribunal in Cambodia to trial senior leaders and those most responsible for the crimes committed during the Khmer Rouge regime. Subsequently, an agreement was signed in 2003 between the Royal Government of Cambodia and the United Nations to regulate the cooperation in the process of the **Extraordinary Chambers in the Court of Cambodia (ECCC)**.
6. The ECCC became operational in 2006 and since then it has achieved substantial progress. In February last year, the ECCC concluded all proceeding in Case # 1 against Duch, the former head of the Tuol Sleng detention center, where approximately 15,000 people were detained, interrogated and tortured pending execution. Duch was found guilty of war crimes and crimes against humanity and was sentenced to life imprisonment.
7. Currently, the ECCC is proceeding on Case # 2 against four surviving most senior leaders of the KR regime who were then Head of State Khieu Samphan, Chairman of the National Assembly Nuon Chea, Minister of Foreign Affairs Ieng Sary and Minister of Social Affairs Ieng Thearith. Unfortunately, due to aging and illness one of the accused, Ieng Sary died last month and another one was found unfit to stand trial.
8. In the spirit of achieving justice and national reconciliation and according to the Agreement on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, the Royal Government of Cambodia and the United Nations decided that the prosecution should be limited to the most senior leaders and those who were most responsible for the crimes committed during the period of Khmer Rouge regime from 17 April 1975 to 6 January 1979.
9. Under the Win-Win policy of Samdech Prime Minister Hun Sen, the ordinary Khmer Rouge personnel and soldiers had been integrated into Cambodian society with the full assistance of the Royal Government since 1998; and since then Cambodia has enjoyed full peace, security, stability and steady development.

**Mr. President,**

10. It is fundamental to explore how international justice can interrelate better and more effectively with domestic justice systems. Effects of justice are only sustainable if they are embedded and followed by consecutive domestic action. We need to examine more carefully what international justice can realistically achieve, and what impact it has on perpetrators, victims and to draw a proper balance between approaches to justice and national reconciliation as well as peace and stability.
11. The success of the ECCC has contributed to creating rule of law legacy, capacity building within the Cambodian judiciary, inspiring Cambodian confidence in their domestic judicial system and public outreach as well as promoting collaboration between international and national staff.
12. In conclusion, I wish to reiterate that the Royal Government of Cambodia remains fully committed to ending impunity for the atrocities that the Cambodian people endured under the Khmer Rouge regime. We firmly commit to working closely with the United Nations and all stakeholders to ensure that the Extraordinary Chamber successfully complete its mandate in a sustainable manner and achieves its goals.

Thank you.



# 李保东大使在第67届联大“国际刑事司法正义在民族和解中的作用”问题主题辩论会上的发言

( 2013年4月10日上午 北草坪楼第4会议室 )

主席先生：

我想借此机会感谢联大主席耶雷米奇阁下倡议召开这次重要的辩论会。

在国际关系中加强法治有助于维护世界和平、促进共同发展、加强国际合作，推动建设和谐世界的目标。对于国际刑事司法正义在和解中的作用，我愿意强调以下几点：

一、加强冲突和冲突后地区法治、实现刑事司法正义需要考虑政治、经济、社会等多种因素。刑事司法正义是司法正义的基本组成部分，它是通过刑事司法活动所体现出的普遍公认的司法正义精神和原则。在冲突和冲突后地区加强法治是在冲突局势下实现和平过渡的必要前提，同时也是巩固持久和平的根本保障。我们认为，加强法治，特别是实现刑事司法正义不是单纯的法律问题，而是与政治、经济和社会等各种因素密切相关。冲突后重建涉及各个方面，包括刑事司法正义在内的法治，不应与其它因素孤立和割裂开来，而应有机结合，相互促进，最终实现民族和解、社会稳定和经济发展。

二、确保遵守国际人道主义法是加强国际法治的重要方面。我

们谴责在冲突地区一切侵犯人权和违反国际人道主义法的犯罪行为；支持国际社会推动解决冲突地区“有罪不罚”问题，通过追究犯有战争罪、灭绝种族罪等严重国际罪行的人的个人刑事责任，促进民族和解，恢复秩序与法治。同时，国际社会惩治犯罪的努力，不应干扰冲突地区正在进行的和平进程，不应妨碍冲突地区促进民族和解和实现持久和平。

**三、实现刑事司法正义不应以牺牲和平为代价。**司法正义与和平是人类追求的两大价值目标。从长远看，两者是相互促进，相辅相成的，但在特定时期或阶段，和平与司法正义可能发生冲突，在此情况下，追求司法正义不应仅仅局限于对某些个人的惩罚，应以化解矛盾，满足冲突或冲突后地区人民核心关切和福祉为长远依托，以和解、稳定和秩序为根本要求，确保实现刑事司法正义不以牺牲和平为代价。

**四、国际刑事司法机构的司法活动应秉持公正和独立原则。**我们希望国际刑事司法机构在司法活动中，应根据《联合国宪章》所确立的国际法基本原则和各自的组织章程，尊重各国司法主权，不越俎代庖，注重促进冲突国家的司法能力建设，审慎行使权力，避免采取双重标准，秉持公正和独立原则，在追求司法正义的同时，避免对冲突国家和地区的局面和政治解决进程产生不利影响，通过司法活动为促进和平、稳定、民族和解做出贡献。

谢谢主席先生。



## **DÉCLARATION**

### **DU REPRÉSENTANT PERMANENT DE LA RÉPUBLIQUE DU CONGO AUPRES DES NATIONS UNIES**

**Son Excellence Monsieur Raymond Serge BALÉ**

**Au Débat thématique de l'Assemblée Générale  
intitulé :**

***"Le rôle de la justice pénale internationale dans la  
réconciliation"***

**New York, Mercredi 10 avril 2013.**

***Vérier au prononcé***

**Monsieur le Président de l'Assemblée Générale,  
Excellences Mesdames et Messieurs les Représentants  
Permanents, Chers Collègues,  
Mesdames et Messieurs,**

Je voudrais tout d'abord vous remercier pour l'organisation, sans doute pour la première fois dans le cadre d'une session de l'Assemblée générale, d'un débat thématique sur **"Le rôle de la justice pénale internationale dans la réconciliation"** qui Indubitablement, par son actualité, revêt un intérêt avéré.

**Monsieur le Président,**

L'histoire nous apprend que la justice est une composante essentielle de l'organisation des sociétés humaines, mieux un attribut du pouvoir de la cité. A l'époque contemporaine, la complexité des relations sociales dans les sociétés nationales et la société internationale confère une place particulière à l'institution «Justice», comme garant de la paix et d'équilibre, d'une part, des relations entre gouvernants et gouvernés et d'autre part, des relations entre citoyens.

L'apparition sur la scène internationale d'une justice pénale, naguère attribut exclusif du pouvoir national, est l'aboutissement d'une longue évolution historique et d'événements d'une extrême gravité dont la répétition et la généralisation justifient, aujourd'hui encore, son utilité. A partir des généralités souvent peu précises dans la qualification juridique, la communauté internationale est parvenue progressivement à circonscrire avec clarté le domaine d'application de la justice pénale internationale.

En effet, l'article 227 du Traité de Versailles du 28 juin 1919 prévoit la mise en accusation de l'Empereur allemand Guillaume II pour «offense suprême contre la morale internationale et l'autorité sacrée des traités». La Déclaration conjointe publiée le 30 octobre 1943 à Moscou par les Etats-Unis d'Amérique, l'Union des Républiques Socialistes Soviétiques et la Grande-Bretagne affirment la détermination des trois puissances alliées de «châtier les criminels de guerre» après la victoire. Mais il a

fallu attendre la période qui a suivi immédiatement la fin de la Deuxième guerre mondiale pour qu'apparaissent les premières institutions de justice pénale internationale (tribunaux de Nuremberg et de Tokyo), puis plus tard, les tribunaux pénaux pour l'ex-Yougoslavie et le Rwanda et la Cour pénale internationale). Parallèlement, la définition des quatre crimes les plus graves qui entrent dans le champ d'application de la justice pénale internationale s'est progressivement précisée, à savoir : le génocide, le crime de guerre, le crime contre l'humanité et l'agression.

Comme on peut le constater, la justice pénale internationale s'est progressivement enracinée dans la société internationale dans un laps de temps relativement court. C'est ce qui explique, sans nul doute, les attentes et les espoirs qu'elle nourrit, et en même temps, les défis et les critiques auxquels elle ne peut échapper, notamment de la part de nombreux Etats, et voire même de certaines organisations non gouvernementales.

**Monsieur le Président,**

Si la justice pénale internationale est un facteur essentiel pour promouvoir la paix et la lutte contre l'impunité, son rôle dans la réconciliation, aspect qui nous intéresse particulièrement aujourd'hui, inspire à ma délégation cette inévitable interrogation. Dans quelle mesure la justice pénale internationale peut-elle accompagner un processus de réconciliation nationale ou au besoin, se substituer à celle-ci ? A l'observation, les expériences nationales sont aussi riches que différentes les unes des autres.

La République du Congo, mon pays, comme bien d'autres pays africains, est partie au Statut de Rome de la Cour pénale internationale (CPI). Le lien juridique que le Gouvernement de mon pays a volontairement contracté avec la CPI se fonde sur de hautes valeurs de justice et d'équité à l'échelle internationale. Mais en tant que Représentant d'un pays membre de l'Union Africaine dont la position collective est bien connue, l'exercice de la justice pénale internationale n'est pas exempt de reproches.

L'un des défis auxquels elle a été confrontée, pour ainsi dire, découle des incompréhensions qui sont survenues entre la CPI et certains pays africains, membres de l'Union Africaine notamment deux d'entre eux qui sont liés par la position commune africaine.

En effet, le 13 décembre 2011, la Chambre Préliminaire I de la CPI avait pris une Décision contenue dans le document référencée ICC-02/05-01/09, suite au refus des Gouvernements de ces deux pays d'accéder aux demandes de coopération fondée sur l'article 27 du Statut de Rome, au sujet de l'arrestation et le transfèrement à la Cour d'un Chef d'État africain qui fait l'objet d'un mandat d'arrêt international.

Dans la lettre de réponse le Gouvernement d'un de ces deux pays confirmait la présence du Président incriminé sur son territoire à l'occasion d'un Sommet sous régional et justifiait le refus de coopération en invoquant, entre autres, les arguments d'immunités et de privilèges que ce pays accorde à tout Chef d'Etat et de Gouvernement qui le visite, y compris l'immunité contre des poursuites judiciaires. Ce pays membre de l'Union Africaine s'est entièrement aligné sur la position de l'Organisation régionale concernant l'inculpation de Chefs d'Etat et de Gouvernement qui ne sont pas parties au Statut de Rome, tel est le cas de ce pays africain.

Quant au deuxième pays africain, il a fait valoir la position commune adoptée par l'Union Africaine face au mandat d'arrêt international émis par le Procureur et qu'en l'espèce, la requête du Procureur ne pourrait prospérer dans ce pays».

Dans ces deux cas de figure, les incompréhensions se situent entre la position juridique de la Cour fondée sur l'article 27 du Statut de Rome et la position politiquement motivée d'une organisation régionale, en l'occurrence l'Union Africaine.

L'évolution de la situation politique au Soudan qui a conduit au processus référendaire d'autodétermination du Soudan du Sud, couronné par la proclamation de l'indépendance, le 09 juillet 2011, haut fait que nous avons tous salué, n'aurait été possible si l'option judiciaire

avait d'abord été considérée et mise en avant. Au contraire, celle-ci aurait occasionné, sans aucun doute, des situations conflictuelles et une déstabilisation durable de la sous-région.

La position de l'Union Africaine ne constitue pas pour autant une violation par les Etats africains de leurs obligations juridiques en vertu du Statut de Rome, loin s'en faut. Elle est, au contraire, un aménagement subtil *mutatis mutandis* de l'application du droit dans un contexte social bien particulier.

En faisant une lecture rétrospective des événements qui se sont produits en Afrique, il y a moins de deux décennies, personne, par exemple n'aurait pu prévoir les conséquences de l'exerce indifférencié d'une justice pénale, même interne, dans l'Afrique du Sud postapartheid. Le génie politique du Président Nelson MANDELA et du Président Frederik DE KLERK, conforté par la grandeur du peuple d'Afrique du Sud dans toutes ses composantes ethniques, a inventé la «Commission Vérité et Réconciliation» à laquelle le continent africain et le monde entier doivent à ce pays et à ce peuple d'être un modèle de réconciliation et d'unité, un facteur de stabilité régionale, de paix et de sécurité internationales.

### **Monsieur le Président,**

Ce seul exemple montre l'alternative ingénieuse et l'interaction positive que la justice pénale internationale peut avoir avec la réconciliation. Si, au contraire, elle se substitue à la réconciliation et reste muette ou inopérante devant des horreurs qui ont été commises et continuent d'être commises dans certaines parties du monde, la justice, le droit international et le droit humanitaire international s'exposent alors à des applications sélectives, contraires à la nature fondamentale de la Justice qui est d'être juste. Ce serait aussi l'expression contraire du but ultime de la Justice qui est de faire justice.

L'engagement de mon gouvernement dans la lutte contre l'impunité est constant, c'est ici que mon pays réitère son appui à la justice pénale internationale pour que les crimes les plus graves ne restent impunis.

Cependant, la réconciliation se nourrit aussi d'autres ingrédients dont la justice ne peut être que complémentaire.

**Je vous remercie.**





Statement on behalf of “Some Latin American and Caribbean States” (SLACS), Parties or Signatories to the Rome Statute, at the General Assembly’s Thematic Debate

## **International Criminal Justice in Reconciliation**

*Ambassador Eduardo Ulibarri, Permanent Representative*

67<sup>th</sup> Session of the General Assembly. New York, 10 April, 2013

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Mr. President,

I have the honor to speak on behalf of the following Latin American and Caribbean Countries, States Parties or Signatories to the Rome Statute: Antigua and Barbuda, Belize, Colombia, Costa Rica, Dominican Republic, Guatemala, Honduras, Jamaica, México, Panamá, Paraguay, Perú, Trinidad and Tobago and Uruguay.

Mr. President,

Allow me to begin by highlighting the relevance of ensuring an inclusive and open debate on the topic under consideration for the strengthening of the international criminal justice system.

The principles of International Law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal, that were affirmed by Resolution 95(I), of the General Assembly, on December 11, 1946, constituted, in the words of the International Law Commission, the “cornerstone of the international criminal law system”. These principles, which unequivocally establish international criminal accountability for all individuals who commit the most heinous crimes, have been at the forefront of the work of the United Nations when dealing with mass atrocities. They also lead to the creation of international “ad hoc” and hybrid tribunals in the fight against impunity and to the establishment of the International Criminal Court as the first permanent judicial institution in history to prosecute these crimes. Given the relatively short time elapsed since Nuremberg, such significant developments in international criminal justice should not be underestimated. However, there are still major challenges to overcome.

We wish to underline that under international law, included the Rome Statute, States have the primary responsibility for the investigation and prosecution of the most serious crimes of international concern, based on the principle of complementarity. The international community has the duty to support and supplement these efforts, with a view to combating impunity and ensuring accountability.

Legislative measures and institution building are among the public policies that may contribute to strengthen national capacities of States to investigate and prosecute such crimes. This is particularly relevant in the reconstruction of post-conflict societies affected by these crimes, and the United Nations has a key role to play in this regard.

We also want to stress the clear commitment of our countries with the fight against impunity and with the work and consolidation of the ICC. As of today, 27 States from our region have become Parties to the Rome Statute, and a large number of them have also ratified or acceded to the Agreement on the Privileges and Immunities of the Court. In several of them, the Kampala amendments are under consideration with a view to ensuring their prompt entry into force.

Mr President,

We live an era of accountability. Questions of the past, such as whether to make peace or justice, have given place to a new paradigm, the paradigm that peace and justice are no longer competing objectives, but complementary ones.

Experience shows that there can be no lasting peace without justice. International criminal justice tribunals established by the international community provide the sense of independent and impartial justice that post-conflict societies need. The United Nations must, therefore, support “ad hoc” Tribunals established by the Security Council, special tribunals established pursuant to arrangements between States and the organization, and the International Criminal Court.

As the International Criminal Tribunals for Rwanda and the former Yugoslavia approach their twentieth anniversaries, we commend them for their historic contribution to justice and accountability. We also recognize the substantial work that remains in concluding trials, downsizing staff and transferring remaining functions to the International Residual Mechanism for Criminal Tribunals. The establishment of the Mechanism is essential to ensure that the closure of the Tribunals does not leave the door open to impunity for the remaining fugitives and for those whose trials or appeals have not been completed.

We fully support both Tribunals and respect their decisions. With regard to ICTR, in particular, we urge all United Nations Member States to cooperate in the detention of the nine remaining fugitives. In addition, we commend the work that has been carried out by the Security Council Informal Working Group on International Tribunals.

Mr. President,

Throughout its first decade, the International Criminal Court has achieved important progress in its analyses, investigations and judicial proceeding. However, the Court will not succeed in its fight against impunity without timely, effective and comprehensive cooperation and assistance in all aspects of its mandate by States, the United Nations and other international and regional organizations.

We deeply regret that repeated instances of non-cooperation with the Court have allowed certain individuals to elude justice. States Parties to the Rome Statute and non State Parties, when appropriate, have the obligation to arrest and surrender anyone with pending arrest warrants issued by the Court, regardless of its official capacity.

Our countries share another concern: the coherence of the United Nations policies and actions in relation to the ICC.

The Rome Statute gives the Security Council the possibility of referring situations to the Court. This is a unique prerogative, which imposes a huge responsibility on the Council. We firmly believe that

the Security Council must act in compliance with the principle that international criminal justice should never be tainted by political biases and that uniform, transparent and predictable standards should always be applied.

The Security Council cannot create exemptions to the jurisdiction of the Court . We therefore call on the Council to refrain from this practice in the future, since it does not allow justice to be fulfilled and jeopardizes the credibility of both the Court and the Council. Every resolution should also include the obligation of all UN members to cooperate with the Court, based on article 103, Chapter XVI, of the Charter.

We also consider inadequate and incoherent for the Council to try to defer the financial implications of its referrals, disregarding article 13 of the Relationship Agreement between ICC and the United Nations. The Court has seen its workload increase exponentially, and it cannot fulfill its mandate without the necessary resources.

The Council should also provide for adequate follow up to the situations referred to the Court and assist the ICC throughout the process. So far, the Council has refrained from acting upon notification of cases of non cooperation. Neither has it adopted any resolutions when ICC indictees have been promoted to key official posts. We welcome the decision of the Security Council to do a follow up of its decisions regarding the ICC contained in PRST/2013/2, and urge the Council to consider that a subsidiary body systematically ensures both cooperation and proper follow up.

Mr. President,

Our countries are deeply concerned with repeated instances of non-essential contacts between UN personnel and individuals with pending arrest warrants. We believe that such acts undermine accountability and, thus, promote impunity and we urge the Secretary-General to investigate them and initiate an assessment of the knowledge, understanding and application of the policy of non-essential contacts by UN officials.

We welcome the content of the policy in this regard informed by the Secretary General to the Security Council in its letter of 3 April. We hope that with the necessary intervention of the DPKO and other instances of the Secretariat, such policy will be upheld by peace-keepers.

Mr President,

Reparations for victims of Rome Statute crimes are crucial for addressing their expectations and hope for justice in all its dimensions. We call on Parties to the Rome Statute to fully engage in the support of the ICC regarding this issue.

Finally, we would like to reiterate the strong commitment of our countries to International Criminal Justice and call on the General Assembly and the Membership of the United Nations to continue to support the fight against impunity and the work of “ad hoc” Tribunals established by the Security Council, special tribunals established pursuant to arrangements between States and the organization, and the International Criminal Court.

Thank you

Mr. President,

The history of mankind is not only the history of advancement, development, humanism, scientific discoveries and artistic masterpieces, but also the history of wars, crimes, conflicts and atrocities. Seldom were they punished. Moreover, occasional punishment came only in the form of retaliation or retribution. This practice went on for millennia, causing ever repeating vicious circle of vengeance and grief.

Recent past saw the escalation of such evil acts, both in gravity and scale. But for the first time in history, major parts of mankind, embodied in what we call „the international community“, decided to act. Almost sixty-eight years ago, international criminal justice was embodied in the form of Nuremberg and Tokyo processes. We may say that there were imperfections, but the clearly demonstrated will to prosecute and punish those crimes, led by the sense of justice and moral responsibility – significantly outweighed possible deficiencies. Justice delivered for those crimes could not bring the victims back to life, but it did help us reveal and face the truth, bring notorious mass murderers to justice and heal wounds of the ones left behind. Since mid-twentieth century the international community proudly stands behind the vision of the world where the most heinous crimes cannot and will not go unpunished.

In the following years, the significant strengthening of international humanitarian law, especially through the Geneva Conventions and their Additional Protocols, substantially contributed to confirming and broadening the notions of fairness, humanity and responsibility in armed conflicts and stressed the need for their consistent application. Those most important international agreements were a clear expression of the view that the rule of law should be upheld and observed in all times.

However, a real breakthrough in the field of international criminal justice was achieved with the establishment of the International Criminal Tribunal for Former Yugoslavia in 1993 and, a year later, the one for Rwanda. Those two institutions, whose jurisprudential and other contribution to international criminal justice could not be overemphasized, were followed by the establishment of other, more specific tribunals, such as Special Tribunal for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia and Special Tribunal for Lebanon.

Yet, all those tribunals were temporary, ad hoc tribunals, created for a concrete situation or country. Their achievements could have been only ex post, and their preventive role was limited. The international community needed something more. We needed a permanent and universal court in charge for the prosecution of the most serious breaches of international humanitarian law, which would act in all those cases where national jurisdictions are unable or unwilling to perform. The establishment of the International Criminal Court in 1998, and entry into force of its Statute in 2002, could undoubtedly be regarded as one of the most

important civilizational achievements of the last century, and, as Secretary General pointed out „the beginning of the new era of accountability“.

Mr. President,

We are aware that with the mentioned achievements, which are remarkable in a relatively short period of time, the work has only begun. What has been achieved is, in fact, the institution setting. In that regard, both the ad hoc Criminal Tribunals, which will close their doors soon, and the ICC, which remains as a permanent court, should not be perceived as ends in themselves. Their basic long term task is clear – by bringing justice to once bitter enemies to also restore sustainable peace.

This motive led my country, Croatia, to wholeheartedly support the idea of the establishment of the International Criminal Tribunal for Former Yugoslavia in 1993. Being a victim of aggression, Croatia realized that international engagement, including through the establishment of the international criminal tribunal, would give us the best opportunity to seek justice and make certain that the perpetrators of many serious violations of international humanitarian law would meet their well-deserved faith. Although my country was not always necessarily pleased with its procedures, rulings or decisions, it has at all times cooperated with the ICTY to the best of its abilities, respected its decisions and never challenged them outside the established procedure. This is exactly what we expect from everybody else, particularly from the countries with which the Tribunal is directly involved. Nothing more and nothing less. Responsible members of international community have no other option.

Mr. President,

The title of today's debate suggests that we should examine whether international criminal justice contributes to reconciliation and - if so in what way. Too often have we seen that neither justice without peace, nor peace without justice are sustainable. Ultimately, the impact of the Tribunals on the ground is their main raison d'etre and what really counts at the end. Establishing individual accountability based on the judicially verified facts is a vital tool in the process of reconciliation.

The process of reconciliation cannot be carried out by international tribunals themselves. Their work and decisions can lay foundations for it. It takes for the critical portion of a society to recognize the facts and to start questioning whether something that they did or supported was right. National political leadership in this respect is crucial. Political leaders can play a very positive, but also a negative role.

Other stakeholders, governmental and non-governmental, should also lend their full support. In that vein, today's open debate could have contributed to that goal, if it was balanced and prepared in an objective, dispassionate and open-minded manner. We regret that many elements in the preparation and organization of this debate, including non-transparency as well as the selection of the panelists, some of them even with very questionable ethical and professional profiles, lead us to a conclusion that truth, justice and reconciliation were not the values for which this debate was organized.

Mr. President,

Let me also say that some, and not so few, observations made here today by the President of the Republic of Serbia, Mr. Tomislav Nikolic, do not correspond with the facts and we cannot but disagree with them.

**DISCURSO DEL ECUADOR, EN EL DEBATE TEMATICO SOBRE  
“ROL DE LA JUSTICIA PENAL INTERNACIONAL EN LA  
RECONCILIACION”.**

**10/04/13**

Señor Presidente de la Asamblea General  
Señores Representantes Permanentes y distinguidos colegas

Agradecemos al Excelentísimo Embajador Vuc Jeremic la organización de este Debate Temático organizado por la Presidencia de la Asamblea General de la ONU y confiamos en que este foro tendrá efectos positivos en el trabajo de la Organización.

El Ecuador ha sostenido permanentemente que sin justicia no hay paz.

Para ello insistimos en que es responsabilidad primordial de los Estados el enjuiciamiento de los crímenes más graves, mediante la construcción de instituciones sólidas y el fortalecimiento de las capacidades nacionales de los Estados.

De igual manera, el Ecuador está persuadido de que la Corte Penal Internacional es el único medio por el cual las víctimas de los graves crímenes sometidos a su jurisdicción, pueden expresar su voz; el Estatuto de Roma es la mejor herramienta en la lucha contra la impunidad.

En esta primera década de existencia la Corte Penal Internacional ha logrado importantes avances mediante el enjuiciamiento de algunos de los peores violadores de los DD.HH. como lo demuestra la sentencia emitida en el Caso Lubanga, que cerró uno de los capítulos más sangrientos del conflicto en la República Democrática del Congo y demostró el aporte de la CPI al mantenimiento de la Paz y Seguridad internacionales, por ello mi país demanda la mayor cooperación de parte de la Comunidad Internacional para que la Corte pueda cumplir con su mandato.

Sr. Presidente

El Estatuto de Roma otorga al Consejo de Seguridad la posibilidad de remitir casos a la Corte y le permite, asimismo, suspender investigaciones que se encuentre en marcha. Frente a ello el Estado Ecuatoriano se ha manifestado en varias ocasiones en contra de cualquier tipo de ingerencia política en la actuación de la Corte Penal Internacional; sin embargo consideramos que, en aquellos casos en los que el Consejo de Seguridad remita situaciones a la Fiscalía de la Corte, ese Organismo debe actuar evitando dobles raseros y sin prejuicios políticos que resulta injustificables desde todo punto de vista.

Es indispensable la cooperación entre ambas entidades dentro del marco del mayor respeto a la labor que le compete a cada una de ellas, de manera tal que la Corte apoye el mantenimiento de la Paz y la Seguridad internacionales juzgando a quienes atenten contra ellas y el Consejo de Seguridad actúe **dentro de y a favor de** la vigencia del Estado del Estado de Derecho a Nivel Internacional.

Saludamos, por otra parte, la decisión del Consejo de Seguridad para hacer un seguimiento de sus decisiones con respecto a la Corte Penal Internacional que figura en PRST/2013/2.

La Delegación del Ecuador considera que los casos referidos a la Corte por parte del Consejo de Seguridad siguen creando una carga financiera a los Estados Partes del Estatuto de Roma, mientras se posterga innecesariamente el cumplimiento de las estipulaciones del los Arts. 13 del Acuerdo de Relación entre la Corte Penal Internacional y la Organización de las Naciones Unidas y 115 del Estatuto de Roma, relativos al financiamiento de los gastos en que incurra la Corte en razón de los casos que le refiera el Consejo de Seguridad.

Es necesario, Sr. Presidente, que, sin más dilación, se establezcan los arreglos pertinentes para dar cumplimiento a lo estipulado en el Art. 115 del Estatuto de Roma y que el Secretario General y la Asamblea General, cada uno en el marco de sus respectivas competencias, den los pasos necesarios para incluir en el presupuesto general de la ONU los aportes financieros de esta organización al presupuesto de la Corte.



Mas allá de consideraciones políticas coyunturales es indispensable avanzar hacia la creación de una auténtica justicia penal internacional con jurisdicción para afrontar incluso los crímenes más horribles y sancionar a los culpables indistintamente de su nacionalidad, posición o cargo; en tal virtud hacemos un llamado firme para que se hagan todos los esfuerzos necesarios para asegurar la plena vigencia de las disposiciones sobre el crimen de agresión el año 2017, sin más dilaciones ni excusas.

La Reparación a las víctimas de los más graves crímenes es un elemento fundamental en el proceso de reconciliación y es un paso ineludible para quienes confiamos en el imperio de una justicia universal que se aplique sin distinciones de ninguna naturaleza a todos los pueblos del mundo.

Para concluir expresamos nuestro anhelo de que este tipo de debates tenga un efecto real y positivo en el trabajo de esta Organización y reiteramos nuestro agradecimiento al Excelentísimo Embajador Jeremic, Presidente de la Asamblea General.

Muchas gracias.



**Statement on behalf of the European Union and its Member States**

**By**

**Ioannis Vrailas  
Deputy Head of Delegation  
Delegation of the European Union to the United Nations**

**at the**

**General Assembly Thematic Debate**

**on**

**The Role of International Criminal Justice in Reconciliation**

**United Nations**

**New York**

**10 April 2013**

**- CHECK AGAINST DELIVERY -**

Mr. Chairman,

I have the honour to speak on behalf of the European Union and its Member States.

The Acceding Country Croatia<sup>\*</sup>, the Candidate Countries the former Yugoslav Republic of Macedonia<sup>\*</sup>, Montenegro<sup>\*</sup> and Iceland<sup>†</sup>, the country of the Stabilisation and Association Process and potential candidate Albania, and the EFTA country Norway, a member of the European Economic Area, as well as Ukraine, the Republic of Moldova and Georgia, align themselves with this declaration.

We wish to reiterate our very strong support for international criminal justice, which is key to ending impunity, to assist with building peace and reconciliation, and to bringing justice to, and rehabilitation for, victims of mass atrocities. It is a welcome fact that we have entered, to quote Secretary General Ban Ki Moon, an "*age of accountability*". Those who commit the most serious crimes of international concern must know that they will be held accountable for their actions. Accountability and full cooperation with the ICC are principles to which all the EU Member States are fully committed. They also represent commitments that we expect from all those who want to join the EU family. We would like to insist on this also in the light of some of the assertions made earlier today.

The Security Council led the way in advancing the role of the United Nations in the area of international criminal justice, by establishing two groundbreaking *ad hoc* Criminal Tribunals for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law in Rwanda and in the former Yugoslavia in the early 1990'ies.

International criminal tribunals have made a considerable progress in the development of the international criminal jurisprudence. The case-law from ICTY and ICTR has contributed greatly to the development of international criminal law in areas such as individual criminal responsibility and crimes of sexual violence. We pay tribute to their achievements and contribution to the fight against impunity.

The landscape of international criminal justice has changed dramatically in a short period of time with the creation of tribunals in Sierra Leone, Cambodia, Lebanon, East Timor, Bosnia and Kosovo, and international criminal tribunals (ICTY, ICTR and ICC). In the last decades we have also witnessed a sharp increase in the number of criminal cases prosecuted before domestic courts and international criminal tribunals.

The main objective of a reconciliation process, including through international criminal justice, is to return society to a normal course of life, often in a context of devastated institutions, exhausted resources, diminished security and a traumatised and divided population. In these circumstances, national judicial institutions are not always able to address some or all international crimes that were committed. Both resolutions 808 and 955 of the Security Council establishing respectively the ICTY and the ICTR state that the establishment of an international tribunal would contribute "*to the restoration and maintenance of peace*".

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<sup>\*</sup> Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia continue to be part of the Stabilisation and Association Process.

<sup>†</sup> Iceland continues to be a member of the EFTA and of the European Economic Area

Letting such crimes go unpunished would go against that aim and therefore against the objective of reconciliation.

The *ad hoc* tribunals helped pave the way for the creation of the International Criminal Court in 2002, which is the pinnacle of our efforts to promote international criminal justice. The Rome Statute of the ICC was adopted on 17 July 1998 to establish a permanent, non-partisan judicial instrument to "promote the rule of law and ensure that the gravest crimes do not go unpunished". Today, 122 States are Parties to the Rome Statute and have committed themselves to cooperating with the Court. Also non States Parties are cooperating with the Court, as illustrated by the recent surrender of Bosco Ntaganda to the Court. As noted by the Security Council on 22 March, this arrest will contribute to the restoration of peace in the Democratic Republic of Congo.

The ICC represents an outstanding achievement in terms of promoting an end to impunity. There is a consensus today that there can be no impunity for the most serious crimes under international law. The Rome Statute's core message of fighting impunity is embraced universally.

Article 1 of the Rome Statute places the primary responsibility to prevent and prosecute crimes on States by providing that the Court is "*complementary to national criminal jurisdictions.*" The Rome Statute embodies a system where national and international courts work together in an interdependent manner. The ICC encourages national prosecutions and favours legal reforms at national level as well as cooperation between States.

Furthermore, the ICC constitutes a major achievement for victims of international crimes, who have the right to participate in the judicial process and may be rewarded reparations. In particular, the Trust Fund for Victims can provide physical and psychosocial rehabilitation or material support to victims of crimes within the jurisdiction of the ICC. In the *Lubanga* Case, the ICC established landmark jurisprudence in the field of better respect for the rights of the children.

The Security Council fulfils an important role with regard to the ICC. It is therefore important that these two institutions continue their dialogue on a regular basis. The open debate in the Security Council on 17 October 2012 was a welcome initiative in this regard. We also welcome the call of the Security Council on Member States to cooperate with the ICC and other tribunals. We strongly support the Council's commitment to an effective follow up of Council decisions in this regard. We believe that Security Council resolution 2085 (2012) on Mali and resolution 2098 (2013) on DRC calling for AFISMA and authorizing MONUSCO to support the ICC's efforts are important examples of the Council's commitment. We call on the Security Council to continue to find ways and means to further support international criminal justice efforts within its mandate, *inter alia*, by holding regular debates on cooperation with the ICC; referring situations to the ICC when appropriate; and by ensuring proper follow up mechanisms.

A main challenge to international criminal justice continues to be that of universality of the Rome Statute and we need to continue to work tirelessly to make the Rome Statute truly universal.

Another fundamental challenge remains that of ensuring consistent cooperation with the Court and in particular how to react timeously, collectively and consistently to instances of non-cooperation of States which are in violation of their legal obligations with regard to the ICC. In this connection, the EU and its Member States recall the need to always carefully consider any contacts with persons against whom charges have been confirmed by the ICC, and to avoid non-essential contacts with individuals subject to arrest warrants issued by the ICC. This 67th General Assembly addressed those challenges in its first resolution, resolution 67/1, which "emphasized the importance of cooperation with the Court".

The more we overcome those challenges, the more international criminal justice will reinforce the prospects for reconciliation. International criminal justice and reconciliation go hand in hand, and ignoring justice simply puts peace and reconciliation in a fragile situation. We know, in the light of historical events, that when peace is achieved by ignoring justice, it is not sustainable. As ICC Prosecutor Bensouda recently wrote: "*The road to peace should be seen as running via justice, and thus peace and justice can be pursued simultaneously*". And the Secretary-General of the United Nations recently said that the ICC "*is our chance and our means to advance justice, reduce suffering and prevent international crimes*." We fully agree with these statements. There can be no lasting peace without justice and due attention to victims.

ICC also has an important preventive role, as stipulated in the preamble of the Rome Statute. By putting an end to the impunity it deters persons or groups from committing criminal activities.

Today's event will also comprise, later this afternoon, other exchanges of views in the form of panels. We would normally expect such panel discussions to include a range of views addressing international criminal justice in a balanced manner. It is not clear to us that will be the case today. It is essential, however, that all the views expressed respect fully the principle, central to the rule of law, of independence and impartiality of Courts, Tribunals and their judges. We owe it to the victims, and in this spirit, we are disappointed that not all statements in this morning's session upheld this principle.

Mr Chairman,

In conclusion, we take this opportunity to reiterate our appreciation for the achievements of the various Courts and Tribunals and for the remarkable work they have done in helping to establish the age of accountability. The European Union and its Member States will continue to strongly support both the principle and system of international criminal justice and its integral role in the reconciliation process, and we call on all states to do the same.

I thank you.

*Please check against delivery*

**Statement**

**by**

**H.E. Mr. M. S. Puri**

**Ambassador & Deputy Permanent Representative**

**in the UN General Assembly Debate on**

**"The Role of International Criminal Justice in  
Reconciliation"**

**New York**

**10 April 2013**

**Mr. President**

At the outset, I would like to thank you for convening this interactive thematic debate on the role of international criminal justice in reconciliation.

**Mr. President,**

Peace and justice are intertwined. There is no peace without justice and there is no justice without peace. A coherent application of the rule of law at all levels of governance is a precondition of avoiding conflicts and ensuring peace and justice. This applies to both international and national affairs.

As such, publicly vindicating human rights norms and punishing those who are guilty helps to prevent future atrocities in conflict and post-conflict situations. Individual accountability for massive crimes should not only be seen as an essential part of preventive strategy but also help arrest the culture of impunity.

**Mr. President,**

India believes that accountability, as an essential element of international criminal justice system, does not only reflect a desire for justice but also meet the important objective of reconciliation as part of post-conflict peace building.

India also firmly believes that international efforts to address the issues of serious crimes of international concern and impunity should be anchored in the UN Charter and international law.

**Mr. President,**

It is also necessary that the international justice system be supplemented by substantial post-conflict economic assistance and social rehabilitation. Reconciliation carries with it not only an element of justice for victims by bringing perpetrators of atrocities to book but also promotion of peaceful co-existence; focusing on developmental needs and the democratic principles; and settling the disputes through peaceful means.

A synergy of these measures alone will help avoid emergence of conflict situations and commission of mass crimes, as well as establish sustainable peace,

security and stability in post-conflict situations. It is, therefore, absolutely necessary that sufficient resources are made available for building institutions and state structures. Resources for the work of the international justice system alone will not suffice.

**Mr. President,**

Since the rule of law serves as a key element in the conflict prevention and peacekeeping as well as conflict resolution and peacebuilding, India has always supported international cooperation for the development and codification of international criminal law and to strengthen the rule of law as a whole.

India has also been a supporter of international cooperation to suppress and deter heinous crimes of international concern through the relevant judicial instruments.

At the same time, **Mr. President**, India firmly believes that we need to strengthen the rule of law at the international level by avoiding selectivity, partiality, and double standards as well as by freeing the international criminal justice institutions from the clutches of political considerations.

The system of accountability has not only to operate but also seen to be operating uniformly. Any selective application will ruin the credibility of the international criminal justice system and force people to view it as an instrument to meet the political objectives of the powerful states.

Moreover, **Mr. President**, we need to ensure that international criminal justice does not become what one author has said "the attractive spectacle of courtroom drama, which pits darkness against forces of light and reduces the world to a manageable narrative".

**Mr. President,**

It is also necessary to underscore that long-term peace and reconciliation can take place not through international mechanisms but through building national institutions by means of capacity building efforts. Domestic reform constituencies must be fostered in an effort to build the capacity of national justice systems and to reinforce the rule of law.



These measures alone will ensure that the world community is able to meet the challenges that face us today, including accountability, reconciliation, and resolution of conflict situations as well as post-conflict peacebuilding.

I thank you.

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*(Please check against delivery)*

**Statement**

**Mr. M. Chandra Widya Yudha  
Counselor**

**Permanent Mission of the Republic of Indonesia  
to the United Nations, New York**

**At the**

**United Nations General Assembly Thematic Debate  
"Role of the International Criminal Justice in Reconciliation"**

**New York, 10 April 2013**

**Mr. President,**

Thank you for convening this thematic debate. I share the opinion of other delegates that this forum offers a good platform to discuss international criminal justice, and its impacts to the world peace.

**Mr. President,**

Indonesia reiterates its support to the global efforts to address, and in particular to strengthen preventive frameworks for crimes against humanity, genocide, war crimes, and the crime of aggression. In this context, accession to the Rome Statute remains a priority and has been embodied in our National Plan of Action on Human Rights for 2011-2014.

In relation to the principle of complementarity, Indonesia wishes to reemphasize the importance of Paragraph 10 of the Preamble and Article 17 of the Statute. This principle is one of the cornerstones of the architecture of the Rome Statute, and we truly believe that its effective implementation would increase the universality of the Rome Statute, and in the end paved the way for the success of the ICC in further promoting criminal accountability for the perpetrator of the heinous crimes in the future.

While moving forward in this direction, we still firmly believe that national courts should be given the primary role in the prosecution of human rights violations. Indonesia is of the view that giving States the responsibility to investigate and prosecute perpetrators of human rights violation will help solidify adherence to the principle of the rule of law. This would also reflect a genuine spirit of partnership among nations, one that is based on respect for the sovereignty and political independence of States.

**Mr. President,**

For Indonesia, the principles of justice and the rule of law are fundamental in our national development. This strong conviction comes from our very experience of more than 30 years of living under an authoritarian regime.

Yet Indonesia, I am proud to say, is now a thriving democracy. The experience of life under an autocracy taught us the values of justice and the rule of law. Therefore, when we began our transition to democracy, more than 10 years ago, we started by strengthening our Constitution. Elements that are vague or which held the possibility of preventing the emergence of true democratic rules were amended. Systems that allow for proper checks and balances and

respect for human rights were put in place. The press and civil society were encouraged to develop into important and functioning elements of democracy.

Let me underline one important point, namely that the process of transition from authoritarian rule to a democratic one is hardly easy. At one point, there were people who suggested that Indonesia would disintegrate in the effort and cease to be a unitary State.

That prediction did not occur. Our democracy is not a perfect one but our determination to preserve and nurture it is unquestionable. Democracy entails in itself good governance, justice, and the rule of law, which have enabled us to maintain our territorial integrity, preserve peace and harmony among our people, as well as foster our development.

I share this story as a platform for aligning myself with the exact proposition of this interactive debate, which is the instrumental role of justice and the rule of law in maintaining peace, security, and prosperity.

**Mr. President,**

The role of the United Nations, in particular the General Assembly, in propagating the spirit of justice and rule of law has been widely recognized. Last year's High Level Meeting on the Rule of Law is one such recent example.

But we still have a long way to go. In some parts of the globe, we see democracy triumph and justice flourish, while in others, we witness conflict and injustice. This poses a great challenge for the international community.

Against this backdrop, Indonesia would like to reiterate its call for a strong national capacity to implement principles of justice and the rule of law. To achieve that, it is our belief that human resources, legal framework, institutions, and above all, a national perspective that upholds the supremacy of law, must continue to be nurtured and disseminated throughout the society.

The United Nations can and should play a critical role in this, particularly in coordinating the international efforts aimed at helping States to develop their own legal institutions. Within this framework, we would like to renew our call for a more concerted effort by the international community in helping countries that are strengthening their national capacity to implement the rule of law and achieve justice.

In this regard, we believe that training and other forms of capacity building should be further intensified to allow for the sharing and exchanging of knowledge and best practices.

Nonetheless, Indonesia wishes to reiterate the importance of national ownership in implementing rule of law and achieving justice. The development and improvement of legal institutions and perspectives must naturally be in conformity with each nation's history, culture, and way of life, without prejudice to internationally-recognized principles of transparency and inclusiveness.

Only in this way can the national character of each State be fully reflected in its legal system.

I thank you.

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PERMANENT MISSION OF  
JAMAICA TO THE UNITED NATIONS

**STATEMENT BY**

**Ms. SHORNA-KAY RICHARDS  
CHARGÉ D'AFFAIRES, A.I.**

**ON THE**

**THEMATIC DEBATE ENTITLED:  
"ROLE OF INTERNATIONAL CRIMINAL JUSTICE IN RECONCILIATION"**

**TO THE**

**67<sup>TH</sup> SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

**WEDNESDAY, 10<sup>TH</sup> APRIL 2013**

*PLEASE CHECK AGAINST DELIVERY*

Mr. President,

The Jamaican delegation attaches great importance to the issue of International Criminal Justice and believes that it has played, and will continue to play, a significant role in the reconciliation process. The continued strengthening of the international criminal justice system will serve to promote the rule of law at the national and international levels, thereby advancing the achievement of international peace and security.

Mr. President,

20 years ago the Security Council established the International Criminal Tribunal for the former Yugoslavia. This was the first international criminal tribunal to be established after the historic Nuremberg and Tokyo Tribunals. The Rwandan Tribunal was established one year after the Yugoslav Tribunal. Both Tribunals were mandated to try persons for war crimes, crimes against humanity and genocide. The Statute of the International Criminal Court was adopted in 1996. The work of all three courts has built on the principle of individual accountability for heinous crimes, affirmed by the Nuremberg and Tokyo Trials. At the same time, all three courts are to be commended for the manner in which they have ensured that the fair trial rights of the accused are respected.

Jamaica commends these tribunals for the neutral and impartial framework which they have established to protect one of the key foundations of fair trial proceedings, that of the right to be presumed innocent until proven guilty. In the discharge of their duties, the Tribunals have brought to justice not only low-ranking perpetrators, but also, those politically and militarily most responsible for serious violations of international humanitarian law. Indeed, the legacy of the Tribunals is that they have shown that political leaders of countries are not exempt or immune from being tried for the most heinous crimes. The Tribunals have tried persons across the entire spectrum of national life, from presidents to generals to foot soldiers to civilians. The special legacy of the Tribunals is, therefore, that they have served to stress accountability and that there is no impunity for war crimes, crimes against humanity and genocide.

Mr. President,

Approximately 20 years have passed since the establishment of the International Criminal Tribunals for Rwanda and the former Yugoslavia. Within that time the tribunals have, through the corpus of law that they have developed, made a tremendous contribution to the strengthening of international criminal justice, thereby influencing many national criminal justice systems.

In particular, Jamaica congratulates both tribunals on their effective balancing of the need for expeditiousness in trial proceedings with the need to protect the rights of the accused and the interests of victims and witnesses, without whom, the pursuit of justice would come to a grinding halt. The focused and impartial manner in which the tribunals have discharged their mandates has created a strong and sure foundation for sustained reconciliation. In this context, we remain supportive of the work of the International Residual Mechanism for Criminal Tribunals, which will complete the outstanding work of the tribunals.

Mr. President

In closing, I wish to reiterate Jamaica's firm support for the rule of law and for the work of the Tribunals as well as the International Criminal Court.

I thank you.



**Statement by H.E. Mr. Jun Yamazaki  
Ambassador, Permanent Mission of Japan to the United Nations  
At the Thematic Debate of the General Assembly  
On the Role of International Criminal Justice in Reconciliation**

11 April 2013

(Check Against Delivery)

Mr. President,  
Distinguished Delegates,

I am delighted to make a statement on behalf of my Government at this thematic debate on the role of international criminal justice in reconciliation.

We are in a “new age of accountability,” as Secretary-General Mr. Ban Ki-moon once noted. In the past two decades, we saw significant development in the field of international criminal justice. The fundamental break with history began with the establishment of two ad hoc international criminal tribunals in the former Yugoslavia and Rwanda in 1993 and 1994 which was later followed by the launching of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2006. Epoch-making progress was undoubtedly the establishment of the International Criminal Court (ICC) in 2002. As the ICC’s leading contributor who has been making efforts to enhance the universality of the Court, we welcome the ICC’s increased capability in dealing with grave crimes, as shown in its very first judgment in the Lubanga case in March 2012.

As many agree, the wide range of criminal institutional models set up by the international community can not only advance the cause of justice and rule of law in transitional societies, but also help societies emerge from war-torn situations and restore peace. Indeed, international criminal justice is expected to cut the vicious cycle of revenge and prevent further violence through holding perpetrators accountable. If I take up the example of the ECCC, its judicial proceedings are reported in Cambodia on a daily

basis and more than 100,000 people have visited the courtroom to hear the trials, helping Cambodia establish a society where justice is being realized.

Mr. President,

Since its inception, the system of international criminal tribunals has enjoyed increased credibility in consolidating peace and ensuring justice for victims; however, over the past two decades, history has also revealed some challenges. We must admit that the process of international criminal justice is not always accepted as justice by all parties concerned. To ensure that justice plays a positive role in reconciliation, impartiality and due process must be respected in the whole process under the principle of judicial independence.

State cooperation with the ICC is also a major lesson learned in recent years. Whether it be States Parties or non-States Parties, the international community as a whole needs to unite to combat the culture of impunity and promote reconciliation in conflict and post-conflict societies. In particular, the Security Council has an important role to play in supporting the ICC, especially in situations where the Security Council refers a case to the Court. As the organ responsible for maintaining international peace and security, the Security Council should continue to be duly engaged and provide support to the Court even after its referral. Japan therefore expects the dialogue between the Security Council and the Court to further deepen.

Mr. President,

International criminal tribunals have contributed significantly to bringing justice to victims, fighting impunity and helping reconciliation in war-torn societies. It is therefore regrettable that some tribunals such as the ECCC face financial difficulties. Japan calls upon all states to make their best efforts to cooperate with and support those tribunals.

I thank you, Mr. President.

STATEMENT

BY

**H.E. MS. KOKI MULI GRIGNON**

AMBASSADOR AND DEPUTY PERMANENT REPRESENTATIVE  
OF THE REPUBLIC OF KENYA TO THE UNITED NATIONS

DURING

THE

**THEMATIC DEBATE: "ROLE OF INTERNATIONAL  
CRIMINAL JUSTICE IN RECONCILIATION"**

Wednesday, April 10, 2013  
Conference Room 4 (NLB),  
United Nations, New York

Mr. President,

I thank you for giving me the floor and for organizing this important debate.

This discussion that seeks to establish the place, importance and relationship between international criminal justice and reconciliation could not have been held at a better time. As important as this subject is, it never gets the attention that it deserves. Any discussion regarding the role of international criminal justice has to commence with the objectives of justice in general.

Like national Criminal Justice systems, the objectives of international justice system must be to enforce societal tenets, general deterrence of wrongdoing, rehabilitation and punishment of perpetrators and compensation to victims. These are in themselves Herculean tasks. In order to be achieved, therefore, any justice system regardless of the level has got to be managed appropriately and with a lot of care.

Mr. President,

Kenya fully supports the international criminal justice initiatives, the Rome Statute and the International Criminal Court (ICC) not just because we were co-authors of the Rome Statute but because Kenya believes in the rule of law, justice, reparations for victims and the necessity to end impunity. However, Kenya strongly objects to the politicization of the ICC and particularly the Office of the Prosecutor. Kenya also notes the selective application of the universal jurisdiction of the ICC and the selective referrals from the Security Council. This conduct undermines the credibility of the ICC and other tribunals and can sabotage national and regional peace, security and stability. This in turn leads to the weakening of the international criminal justice machinery. Many speakers before me have made these points.

The interpretation of the place and role of international criminal justice must take into consideration the prevailing circumstances at the time of the commission of the alleged crimes, the communal and national processes that have taken place thereafter and the achievements and

long-term goals of the community and society. Having undergone through a divisive and traumatic experiences on either side of the divide, the community's priority must be a cessation of strife, bringing its ethnic groups together, embracing peace and creating stability. Nothing therefore, should be done to jeopardize the delicate balance that will put the realization of peace and stability in danger.

Mr. President,

It is in this regard that the international community has a very special obligation. We should restrain from adopting a narrow and rigid interpretation of the role of international criminal justice system in reconciliation. This role must not seek to exclude all other processes relevant and important to sustained international, regional and national peace and stability. Instead, it must seek to advocate for an all-inclusive and carefully calibrated system with clear benchmarks and achievable standards that prioritize and build on the gains of reconciliation without focusing only on meting out individual punishment. In any event, international criminal justice cannot be an end to itself; it must be part of a process towards guaranteeing lasting peace, stability and reconciliation.

Mr. President,

It is understood that international criminal justice is not the first stop for delivery of justice especially for alleged crimes that take place within jurisdictions in which there exist functioning governments and national institutions that are able and willing to deal with perpetrators and suspects. International criminal justice must be complementary to national justice system. These components of justice such as the rights of victims including reparation thereof, can only be adequately and systematically be addressed by comprehensive national compensation mechanisms. Without a comprehensive framework for compensation, reconciliation will drift further away from being achieved.

Investigation and prosecution of suspects under International Criminal law is the primary responsibility of Member States. The responsibilities

of the Prosecutor therefore include the necessity to strengthen national judicial systems to equip and enable Member States to prosecute international criminal cases where such capacity building is required. In our experience the OTP has simply not lived up to its mandate in this regard.

In the cases where such capacity exists, the international criminal justice system should endeavour to compliment the work of the national and/or regional judicial systems. If this approach is adopted, more can be achieved with fewer resources as stated by the Minister for Justice & Attorney General of Rwanda in his presentation yesterday. He informed us that Rwanda's Gacaca trials cost 50 dollars per suspect and tried about 1.3M people while the ICTR tried only 75 Rwandans over a period of 17 years at a cost of over 20 Million dollars per individual suspect. Even though the circumstances and conditions were different, 20 million US Dollars is still a lot of money per suspect.

Mr. President,

The achievement of international criminal justice must be undertaken in a manner that does not exacerbate an already fragile peace and stable environment; where different communities are engaged in efforts of building national cohesion, healing and reconciliation. It should instead focus on building bridges and bringing communities closer. Punitive vengeance in the name of justice cannot be a means to reconciliation; it instead festers quietly until a time that it explodes.

It is important to note that the ICC prosecutor cannot without the concurrence and acquiescence of the member States investigate and prosecute nationals especially in cases where the member States did not refer the cases to the ICC in the first place (as was the case of Kenya, which were referred to the ICC in an envelope by the Chief Mediator, H.E. Kofi Annan, the former Secretary General of United Nations).

And where the prosecutor has taken such action, member states should be allowed an opportunity to return such cases for trial under their national juridical and legal systems when it is demonstrated that there is a credible, independent, free and fair Judiciary. We believe this will reconfirm the primacy of States responsibility and enrich the jurisprudence of the international criminal justice system while at the same time strengthening the national legal and judicial systems; the very *raison d'être* of the ICC mechanism.

We wish to remind that the ICC is the court of last resort and it is supposed to compliment the national judicial systems as espoused by the provisions of the Preamble of the Rome Statute, for this is what the family of Nations collectively signed up to. As the international criminal justice system is currently constituted, it is ill equipped to address the multi-dimensional nature of reconciliation and achievement of lasting peace and stability; especially if selective prosecution and selective application of its universal jurisdiction continue.

Further, the conduct of the players and stakeholders in the international criminal justice system must always be above reproach. Their conduct must, **of essence**, be judicial, ethical and guided by the old established tenets of legal adage, practice, use, customs professional courtesy and decency. For instance the rights of the accused person must be respected including the presumption of innocence until proven guilty. The International criminal justice system must never be compromised to the extent that it allows the conduct of trials or the prosecution of suspects in extrajudicial forums such as the Media, YouTube etc. Furthermore the issues discussed in such forums are very well ***sub judice*** and may unnecessarily heighten tensions, threaten peace and stability and jeopardize the ongoing national and regional reconciliation efforts.

Mr. President,

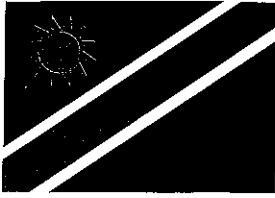
In the current discourse, we are alive to the fact that the Republic of Kenya is not on trial at the International Criminal Court. To the

contrary; the Government of Kenya will continue cooperating with the Court and being a State Party and co-author of the Rome Statute Kenya is fully cognizant of the obligations placed on it. All the while the Government of Kenya has shown and taken each and every opportunity to co-operate with the Court and ensure that it meets its obligations as enumerated by the Rome Statute. This has been even in times when doing so has been unfavorable politically or otherwise been detrimental to the interests of the Government.

In conclusion, I wish to state that when there is a national healing process that has been undertaken and accepted; when there has been truth-seeking processes and reconciliation; when institutional reforms have been undertaken and confidence restored in them, it is time for the international criminal justice and indeed the larger international community to allow the national judicial system to assume its primary responsibility of investigating and prosecuting alleged perpetrators of these crimes and provide remedies to the victims. Let me again re-iterate our unbridled support to the international criminal justice system that is fair, applied equally using same standards for all. Universal jurisdiction of ICC and the Rome Statute cannot succeed if they are applied selectively or are used as political tools to undermine certain States or Regions.

I thank you Mr. President.





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## **STATEMENT**

**BY**

**HON. UTONI NUJOMA  
MINISTER OF JUSTICE**

**AT**

**THE HIGH-LEVEL THEMATIC DEBATE  
ON  
“ROLE OF INTERNATIONAL CRIMINAL  
JUSTICE IN RECONCILIATION”**

**NEW YORK  
10 APRIL 2013**

Your Excellency Vuk Jeremic,  
President of the 67<sup>th</sup> Session of the General Assembly,  
Your Excellency Ban Ki-moon, Secretary-General of the United Nations  
H.E. Nebosja Radmanovic, President of Bosnia Herzegovina,  
H.E. Tomislav Nikolic, President of the Republic of Serbia,  
Distinguished Delegates, Ladies and Gentlemen,

I wish to express, on behalf of my delegation our gratitude to you Mr. President for hosting such an important debate. The debate is important because of deficiencies within the justice system around the world. As a result uprising against governments have become common phenomena. All these threaten the existence of the social democratic order that [we as human beings] have developed for so many years in our respective countries and as an international community.

Mr. President,

Allow me, to commend you for highlighting extremely important issues which needs special attention to enhance the role of International Criminal Justice in Reconciliation. After a bitter conflict reconciliation becomes necessary and it must be preceded by political will to build and sustain

peace in any jurisdiction. The objective of Criminal Justice on the other hand, is to deliver justice to all. However, administration justice requires all parties to the conflict are heard and the system ensure that parties are treated fairly, in accordance with set rules and procedures.

Mr. President,

The Government of the Republic of Namibia supports efforts by the United Nations to promote peace and security, development, Rule of Law, Human Rights and Reconciliation. After attaining our independence from the then Apartheid South African regime in 1990, Namibia repealed Apartheid discriminatory laws and embraced reconciliation by choosing not to open old wounds for atrocities which were committed prior to independence. This policy has served Namibia well to date and the country is enjoying peace, stability and democracy and continues to reform its laws.

Reconciliation can be further enhanced by domesticating the principles of the Rome Statute. This would ensure that complimentarity as enshrined in the Rome Statute is observed, thereby affording primary jurisdiction to prosecute international crimes by National Courts.

Namibia, as an African country, further supports the ideology of exploring indigenous and traditional African and religious approaches to justice and reconciliation. It is important in our view, to fully understand the values and beliefs, fears and suspicions, interests and needs, of communities involved and affected by decisions of forums of international criminal justice, such as the International Criminal Court. By adopting these approaches to justice and reconciliation, it may influence local people to better understand the role of the ICC.

Indeed Criminal Justice plays a significant role in reconciliation. Criminal Justice seeks individual accountability for international crimes whilst recognizing the Right of Victims, promoting trust and strengthening the Rule of Law. The latter serves as a deterrent from committing crimes .

Mr. President,

Whilst acknowledging the important role that International Criminal Justice plays in the promotion of peace and security, we have to be cognizant of the fact that administering it, is an expensive exercise. This can be attributed to the lack of adequate fiscal- and human resources which are limited in developing countries.

Mr. President,

In this regard, Namibia continues to reiterate its call on the international community to ensure that that international institutions, like the International Criminal Court are not used to advance the interests of certain member states, at the disadvantage of others.

We continue to register our concern on the selective application of International Criminal Justice, especially the referrals by the UN Security Council to the ICC. These referrals demonstrate that political interests enjoy priority over the pursuit of justice.

The operations of ICC should, at all times, be guided by fairness and an objective assessment of situations to ensure justice. We should avoid the temptation of subjecting this institution to self-serving political considerations and influences. This can go a long way in restoring confidence in the ICC as the primary institution tasked with administering international criminal justice.

We are equally concerned with a trend within international criminal justice where only the victor in a warring situation seem to enjoy justice, and the

loosing or defeated party are subjected to prosecutions at the ICC. In any conflict situation there are atrocities committed on both sides, hence for the ICC to be objective, investigations of atrocities have to be conducted on both sides, and if there is sufficient evidence of grave human rights violations, the culprits should be prosecuted without fear or favour.

Mr. President,

We fully endorse and support the potential rights granted to victims by the ICC in its regulations. These potential rights are: the right to participate in the proceedings, the right to be kept informed of developments in the trial, the right to obtain reparations for their injury and the right to be protected when they appear before the court.

We condemn the invasion of other countries and especially the use of drones against any person. These tactics undermines efforts of international peace and security, the Rule of Law, development, human rights, justice and reconciliation. The use of force against any country or person should be the last resort.

Mr. President,

We would look forward to fruitful discussions during the sessions of this very important debate.

I thank you.

# New Zealand Permanent Mission to the United Nations



## TeMāngai o Aotearoa

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### New Zealand Statement

#### General Assembly Thematic Debate

#### The Role of Criminal Justice in Reconciliation

11 April 2013

Delivered by

**ALEXANDRA LENNOX-MARWICK, SECOND SECRETARY**

**Check against delivery**

Mr President-

New Zealand believes that international criminal justice is essential to the maintenance of international peace and security.

We have consistently supported the international courts and tribunals which have been established to ensure that those guilty of genocide, war crimes and crimes against humanity are held to account.

Specifically, we are a party to the Rome Statute, and have provided specific and active support for the various *ad hoc* tribunals.

Although discussions of international criminal justice often focus on international mechanisms, we must not lose sight of the fact that, ultimately, and ideally, it is States themselves that have the primary responsibility to prosecute serious crimes committed



in their territory or by their nationals; a commitment which requires appropriate national laws.

International criminal justice mechanisms exist as a complementary and necessary safety net of accountability; but, if these mechanisms are to operate effectively, States must also implement associated international criminal law obligations at the national level.

Mr President -

Accountability mechanisms play an immensely important role in rebuilding communities after the destruction wrought by atrocities.

These processes not only record, denounce and punish such crimes and their perpetrators; they also restore dignity to victims by providing public recognition of their suffering.

In this way, criminal justice mechanisms, and the accountability they bring, are vital to achieving sustainable peace.

As many colleagues have recalled, over the last two decades, there have been great advances in the field of international criminal justice. Most notably amongst them was the creation of the International Criminal Court – the first permanent, global court with criminal jurisdiction.

Even so, there are still considerable challenges:

- we must be vigilant in ensuring that our efforts to promote accountability are consistent;
- we must honour our commitments by supporting international courts and *ad hoc* tribunals right through to the conclusion of their mandates (it's simply not good enough that tribunals must pass round an international begging bowl for continued funding); and

- in an on-going conflict situation, the international community must carefully judge the timing of the application of international criminal justice initiatives.

We are confident that working together, with pragmatism and fresh thinking, we can tackle these challenges and build ever-more robust systems.

New Zealand knows, Mr President, that credible restorative justice processes can also help promote accountability, rebuild communities and reinforce lasting peace in societies emerging from conflict.

While continuing to strengthen and support criminal justice responses, we should also recognise the important role that can be played by other, non-adjudicatory, processes in post-conflict situations.

Mr President –

As we undertake these important discussions today and in the future we must ensure that our debates are not only forward-looking and productive, but also represent the diverse experiences States have had with international justice and reconciliation.

Above all, we must remain focused on ensuring a system of international criminal justice that, without fear or favour, serves and does justice to the victims of atrocities, and which helps prevent the future repetition of such crimes.

In closing, we would note that New Zealand listened carefully to the views expressed during yesterday's discussions, although we do not share many of those views. We would have welcomed the opportunity to hear a broader, more representative range of opinions; and we particularly believe that the victims of serious international crimes should be given a voice in discussions such as this.

**Statement by Ambassador Masood Khan, Permanent Representative of Pakistan to the United Nations, during the thematic debate of the General Assembly on 'The Role of International Criminal Justice in Reconciliation' New York (10 April 2013)**

**Mr. President,**

We appreciate the highly substantive statement made by the Secretary-General, H.E. Mr. Ban Ki-moon yesterday.

Pakistan is speaking today to express its views on the Role of International Criminal Justice in Reconciliation.

Since time immemorial, the aphorisms suggesting *might is right* and *justice is in the interest of the stronger* have been disputed.

But it was in the last century that the international community took the preliminary steps towards a truly international criminal justice system. This system is thus not an external imposition but a product of our collective experience.

The quest for justice is natural. Justice is central to the march of civilization. The charter of the UN, its purposes and principles and international law are at the heart of a rule-based international community.

The evolution of international criminal justice from the Second World War to the current wave of establishing institutions and rules during the last two decades is an irreversible trend.

Apparently, the emerging new system of international criminal law seems to be a combination of loosely linked proceedings of regional, international and hybrid courts.

But the common thread that runs through judicial proceedings at all levels is the denial of impunity for the most egregious crimes and mass atrocities.

The justness of a cause or a war does not allow for atrocities and indignities to be directed against combatants or unprotected civilians representing the other side. This has now become jus cogens or a peremptory norm of international law.

As the Secretary General underlined this morning international criminal justice is something much more than punishment. It should recognize injury, establish truth, acknowledge victims' dignity and preserve their narrative in collective memory.

It has to be administered in such a manner that it leads to reconciliation and sustainable peace.

The basic objective of establishing these international criminal law institutions was the search for justice and truth. However, there was an expectation that these institutions would not only deliver justice but heal the wounds of war, lift the burden of collective guilt, and pave the way to reconciliation.

In spite of the heavy burden of the secondary objectives, the role of the UN-assisted tribunals in delivering justice and ending impunity has been satisfactory.

We support the mandates and work of the UN-assisted tribunals. They have shown that no one is above the reach of international law. Their decisions have highlighted the importance of due process and highest standards in judicial proceedings.

We want to pay tribute to UN tribunals' judges, prosecutors and staff for their hard work, dedication and professionalism.

We are happy to note that a comprehensive corpus of precedents in international criminal law has been developed as a result of the tribunals' work. We acknowledge their contribution to procedural and evidentiary international criminal law. Legal doctrine and an impressive body of jurisprudence developed by these tribunals would influence the fight against impunity and shape the future of global justice.

The UN-assisted tribunals will leave behind an abiding legacy. They are not a transient phenomenon.

Accountability is important for countries and regions that have been ravaged by war and armed conflict. It helps them rebuild their societies and transition them towards reconciliation, cooperation, stability and security.

The purpose of the international criminal law is to foster a culture of accountability for peace and security; not to sanction, incite or fuel reprisals.

The Tribunals, by upholding the rights to due process, fair trial and appeal, have demonstrated that international criminal justice is taking root.

The Tribunals have faced teething problems related to arrest of suspects, witness protection, implementation of decisions including requests to States for hosting convicted persons, inadequate regional cooperation and delays.

The courts are in the process of building trust in regard to administering justice for all victims. They need help with enforcements of their judgments and relocation of those acquitted.

Pakistan lauds the cooperation extended by Bosnia and Herzegovina, Croatia, Serbia, and Rwanda to the two Tribunals and the Residual Mechanism.

Overall, this cooperation has stabilized the situation in the Balkans, as well as Rwanda and its neighbouring countries. Other tribunals had salutary impact in Sierra Leone, Cambodia, East Timor and Lebanon.

The Tribunals themselves have a critical role in national capacity building for consistent resort to domestic criminal law (DCL). The principle of complementarity is important. National institutions must be enabled and strengthened to prosecute serious war crimes effectively where such capacity does not exist.

National and regional ownership become particularly important as the Tribunals begin to wind down their work.

**Mr. President,**

There are limits to retributive justice both domestically and internationally. True, the war tribunals help restore confidence of shattered societies and attenuate calls for revenge and recrimination.

But problems linger if individualization of guilt paints an entire society with the same brush and if constant litigious atmosphere hamstring reconciliation. In certain complex situations, a gradual transition to truth seeking and reconciliation is a better recipe for transcending the torturous past and moving towards a more interdependent destiny.

In post-conflict situations, there is a time for justice, a time of healing, a time for reconciliation, a time for moving on, and a

time for closure. There is a time for unifying previously hostile segments of populations and nations.

**Mr. President,**

Our discussion should go beyond polemics and excessive self-regard in order to deepen our understanding of the importance of international criminal justice and positive contribution made by UN-assisted tribunals to end impunity and uphold principles of IHL.

The international courts' work should always be guided by fairness, impartiality, independence and integrity. A recent verdict of the ICTY has evoked strong emotions. We should handle this controversy prudently and responsibly. We should not allow these emotions against the Tribunal or its defense to undermine its mandate and authority. In fact, the Tribunal's catalytic role to promote reconciliation must be upheld.

I conclude my statement with an extract from the editorial of Oxford Journal of International Criminal Justice:

*“ICTY and ICTR are not fig leaves to cover up the international community’s inability to prevent or stop atrocities. They have grown into effective mechanisms to establish accountability... The strength of the international criminal justice is not so much in its achievement but in the justness of its purpose.”*

**I thank you, Mr. President.**



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**Statement by Ambassador Dr. Riyad Mansour, Permanent Observer of the State of Palestine to the United Nations, United Nations General Assembly Thematic Debate on the "Role of International Criminal Justice in Reconciliation", 10 April 2013, New York**

**Check against delivery**

Mr. President,

I am honored, on behalf of the State of Palestine, to participate in this thematic debate on the role of international criminal justice in reconciliation, and I express appreciation to you for convening the Assembly to consider this very important issue.

Mr. President,

More than ten years since the entry into force of the Rome Statute of the International Criminal Court (ICC), which was specifically legislated by the international community to fight impunity and protect civilian populations with laws aimed at the deterrence, investigation and prosecution of the crime of genocide, crimes against humanity, war crimes and crimes of aggression, significant challenges persist to ensuring universal respect of the Statute and to realizing the aims of international criminal justice.

Efforts to hold the perpetrators of these horrific crimes accountable and to achieve even the modicum of justice for the victims are too often undermined by political expediency, selective application of the law, and the inefficacy and helplessness of the international community in the face of grotesque violence perpetrated by war criminals and in the face of the political protection accorded to some of the worst abusers and illogical pretexts used to justify their actions. The outcome is totally contradictory to the objectives of international criminal law: justice is denied, rights are trampled, human dignity is crushed, the impunity of violators is bolstered, peaceful solutions are obstructed and conflicts are prolonged, causing more human suffering and undermining international law and the international justice system as a whole.

The question of Palestine is regrettably a prime example of this tragic phenomenon. Sixty-five years since *Al-Nakba* and forty-six years since Israel's military occupation of the remainder of historic Palestine, international law continues to be trodden before the eyes of the international community and, in many aspects with its own acquiescence. The result has been the denial of the inalienable rights of the Palestinian people, including their rights to return and to self-determination.

Undoubtedly, the application of international law - humanitarian, human rights and criminal law - would have long ago facilitated achievement of a just, peaceful solution to the Israeli-Palestinian conflict and genuine coexistence between the Israeli and Palestinian peoples. Justice is clearly a fundamental element of peace and reconciliation between any peoples. Yet, the rights of the Palestinian people remain hostage to and are being grossly violated by Israel, the occupying Power, which continues to colonize and pursue hegemony by all illegal means over the Occupied Palestinian



Territory, including East Jerusalem, the Territory that constitutes the State of Palestine. This unjust situation has been exacerbated by the international community's failure to hold Israel accountable for its crimes. Double standards and political protections continue to thwart obligatory respect of the law and to foster Israeli impunity with grave consequences for the prospects for resolving the conflict and for regional and global peace and security.

Mr. President,

The price for this failure of international justice is paid by innocent civilians, who are forced to endure severe hardships and suffering and whose aspirations and futures are blighted. This is the story of the Palestinian people and their decades-long struggle against the Israeli occupation of their homeland and for the realization of their rights, freedom and peace. Yet, the Palestinian people have neither given up on their rights, nor given up on justice, nor given up on the international community.

The Palestinian people and their leadership maintain a deep conviction in the primacy of international law and have repeatedly reaffirmed their adherence to the law and respect for United Nations resolutions. They continue to look to the United Nations – to the General Assembly, the Security Council and the Human Rights Council as well as to the International Court of Justice and the International Criminal Court – to uphold the law, to fulfill their responsibilities, and to aid the Palestinian people in the exercise of their inalienable rights and the achievement of a just, lasting solution to the question of Palestine that brings an end to the Israeli occupation that began in 1967 and ensures the independence of the State of Palestine, with East Jerusalem as its capital, and a just solution for the plight of the Palestine refugees, and establishes peace and security between the State of Palestine and Israel.

Mr. President,

As this august Assembly considers the role of international criminal justice in reconciliation, the core questions must be: what is the value of all the laws, covenants, treaties, conventions and resolutions legislated by the international community if they are not applied equally, fairly and consistently? What is their value if double standards in implementation persist? What is their value if gaps and loopholes remain, including in the Security Council where the veto persists, resulting in protection for the violators, rather than for protection for the civilians suffering such crimes? These are serious questions that must be answered and remedied by the international community if we are to make any progress towards upholding the rule of law and overcoming the many injustices that continue to plague our world.

Thank you, Mr. President.

REPUBLIC OF RWANDA



STATEMENT

BY

**HON. THARCISSE KARUGARAMA,**  
MINISTER OF JUSTICE/ATTORNEY GENERAL OF RWANDA

AT THE UNITED NATIONS GENERAL ASSEMBLY

THEMATIC DEBATE ON THE ROLE OF INTERNATIONAL CRIMINAL JUSTICE IN  
RECONCILIATION

*Please check against delivery*

NEW YORK, APRIL 09TH 2013

**Mr. President,**

**Excellencies here present,**

**Distinguished Ladies and Gentlemen,**

Let me join others in thanking His Excellency Vuk Jeremic, the President of the UNGA for having invited the Republic of Rwanda to take part in this important and interesting thematic debate. We are honored to share experiences and views on the role of international criminal justice in bringing reconciliation in conflict or post-conflict States.

Systems we create, just like our lives, always require us to look back and check their usefulness. It is with this perspective that Rwanda values the importance of this thematic debate, which will evaluate whether the International criminal system in place has met the expectations placed upon them of ensuring accountability, which is important to enhance reconciliation.

**Your Excellencies,**

Let me be courageous enough to state that international criminal justice is in a crisis of credibility with regard to fostering national reconciliation in post conflict situations. Neither the tribunals set up to address the issue nor has the application of the principle of Universal Jurisdiction succeeded in that objective. Hence there is a need to review what we have achieved over the last two decades and chart a way forward for the future.

To be methodical in the assessment of the role of the International Criminal Justice System in Reconciliation, it is important to approach that assessment on whether the International Justice System can by its nature

enhance reconciliation and whether it has best practices/benchmarks to boast of.

To evaluate the performance of the ICJS, allow me to draw your attention to the nature of International Courts and tribunals put in place to ensure accountability in different conflict situations; The ICTR, ICTY, the UN Special court for Sierra Leone (Hybrid tribunal), ICC, etc. Other than the Special Court for Sierra Leone, all the other courts/tribunals are housed outside the Countries where the atrocities were committed. As a result they are viewed as foreign, detached and contribute very little to National reconciliation process. By their nature, they serve legal and academic interests more than peace building and national reconciliation. In that regard the Sierra Leone kind of tribunal may probably be more appropriate because it involves all stakeholders.

In all fairness, these international Courts and Tribunals can be credited for having produced a substantial body of jurisprudence, including the definitions of the elements of the crime of genocide, crimes against humanity, war crimes, as well as forms of responsibility, such as superior responsibility. This is good for the future of the practice of international law as we now have a well-established foundation and precedent on which to move forward into the future. The works of these tribunals have transformed the resolutions, treaties and conventions emanating from the United Nations, into practical tools to be used by the International criminal justice system in its efforts to end impunity.

Permit me to limit my observation to the performance of the ICTR in relation to reconciliation process. The mission given to the ICTR in the UN Security Council resolutions establishing it was partly to contribute “to the process of national reconciliation and to the restoration and maintenance of peace...” In Rwanda’s experience this objective has not been achieved:

1. Most of the master-planners of the 1994 genocide against the Tutsi are still at large.
2. The biggest beneficiaries of the ICTR have not been Rwandan survivors-orphans and widows, or Rwanda as a Country in general but rather the technocrats running the ICTR apparatus
3. In spite of the existence of correctional facilities such as the one housing the prisoners from the Special Court for Sierra Leone, The technocrats running the ICTR system have denied Rwandans the right to host the convicted perpetrators of the genocide, sending them to far distant Countries instead. This has frustrated survivors who feel that the ICTR does not value them. On the contrary trials under Gacaca judicial system (the homegrown legal initiative), the perpetrators of genocide or their families were brought together with the survivors of genocide to collectively examine all aspects of genocide and punish those responsible for it. This gave chance to national healing and reconciliation.
4. Technocrats running the ICTR system have denied Rwandans the right to host the archives, which constitute an integral part of Rwanda’s history. For some obscure reasons they have denied the

Rwandans the right to own their own history. Rwanda feels betrayed by this kind of attitude.

5. The time and cost of the trials at the ICTR in comparison to the trials in Rwanda demonstrate how in the eyes of the Rwandan survivors reconciliation cannot be achieved on the basis of international justice.

- **Comparison in terms of handled cases**

| Courts          | Number of cases handled | Duration |
|-----------------|-------------------------|----------|
| GACACA          | 1.958.634               | 10 years |
| Ordinary Courts | 15,286                  | 17 years |
| ICTR            | 75                      | 17 years |

- **Comparison in terms of financial expenses**

| Courts          | Estimation of expenses | Duration |
|-----------------|------------------------|----------|
| GACACA          | About 52M USD          | 10 years |
| Ordinary Courts | About 17M USD          | 17 years |
| ICTR            | About 1.5 Billion USD  | 17 years |

NB: Rwanda's Gacaca trials cost \$50 USD per suspect and tried about 1.3M people, ICTR tried 75 Rwandan over 17 years at a cost of over \$20M USD per suspect.

In Rwanda's experience international tribunals such as the ICTR do not necessarily foster national reconciliation in post conflict situations. On the contrary, if national jurisdictions were facilitated they could lead to better results.

Another international tribunal that needs mention is the ICC:

In principle the Court was meant to be able to act independently of political interference, an indispensable precondition for its permanent acceptance in the eyes of the world. Unfortunately, its activities have not measured up to the challenge. ICC has been selective in its method of investigating and prosecuting perpetrators of serious international crimes in that it has so far failed to accept the glaring truth that similar crimes have been committed in other parts of the World with impunity.

Another challenge facing the ICC is that the UN Security Council can refer cases to the court yet some of its members have veto powers that would block any move to refer their own nationals to the court.

The nature of the ICC therefore, within the limits of the current mandate, cannot lead to the process of national reconciliation.

The other aspect of international criminal Justice system I wish to deal with is the issue of **Universal Jurisdiction** exercised, most abusively, by some national jurisdictions.

Rwanda believes in an International Justice system, based on equality of states, equality of all the people before the law; a system based on recognizable universal shared values. Rwanda however rejects political manipulations, double standards and excessive abuse in the application of this noble objective.

Rwanda has been a victim of the abusive use of the principle of Universal Jurisdiction. In 2006 a Judge in France (now discredited and proven by competent jurisdictions to have been politically manipulated) issued arrest warrants against senior leadership of the Rwandan Government without any investigations, using genocide fugitives and political opponents of the Rwandan Government. This lone Judge was able to hold an entire Nation at ransom under the guise of international justice and although he has been proven to have been politically manipulated he has not been held accountable.

Another Judge in Spain issued indictments against senior leadership of Rwanda on the basis that no genocide was committed in Rwanda or that if it was committed at all, it was by the victims not by the perpetrators. The Judge clearly denies genocide or negates it under the guise of international justice and universal jurisdiction; yet he cannot be held accountable. He also cited the political manifesto of the **Forces Democratiques pour la Liberation du Rwanda-FDLR** (A genocidal rebel



group operating in Eastern DRC) as a base for his indictment. The whole indictment is full of hate language that is shocking to say the least. Yet some countries or at worst individual actors in those States pretend they have an obligation to respect and perpetuate that kind of situation to persist thus holding our country into perpetual bondage and frustration. This kind of power without controls is dangerous to international peace and security. The UN needs to face up the challenge caused by abusive application of the principle of universal jurisdiction.

In relation to universal jurisdiction:

1. There is need to strike the right balance to end the culture of impunity while at the same time establishing safe guards against the potential abuse of the principle of universal jurisdiction,
2. There must be a system of review where by an aggrieved party can appeal to another judge or another tribunal to review the decision of a judge issuing indictments and/or international arrest warrants against the leaders of another country,
3. The review process can be before a court of national, regional or international jurisdiction but certainly there must be a system of review such that no individual judge anywhere in the world should have unlimited power to hold an independent and sovereign state at ransom for political or any other gain hiding behind universal or other perceived or assumed jurisdictional competence,
4. While this review process is going on, individuals and States should be permitted to conduct their businesses normally until the review process is completed. Short of this, large and powerful states or

political judges from those states may gag, stifle or swallow small nations or its entire leadership or both. This has high potential for instability and negative effects on international law and order.

5. International arrest warrants should have a blessing of the **Interpol** to avoid partisan political manipulation. Bilateral relationship between States should not be taken as an excuse to flout **Interpol's** position. In all circumstances the opinion of international police (**Interpol**), should be sought whether international arrest warrants should be issued on the basis of evidence available. Where **Interpol** itself has not issued or advised that international arrest warrants should be issued, no state should feel obliged to respect arrest warrants issued by individual judges from any UN member state.

In conclusion let me restate that Rwanda believes in a fair international legal order based on shared universal values and mutual respect between States; a system where justice is not just about form but substance. We will cooperate with any State or individual that will enhance a fair international legal order.

I thank you for your kind attention.

## **Draft Statement on the Role of International Criminal Justice in Reconciliation**

Mr President

My Delegation thank you for giving us the floor and for organising the debate on this very important topic.

It is truism to say that justice and reconciliation are inextricably linked. We all know that justice without reconciliation is unsustainable and reconciliation without justice is but a dream. To this end Dr Alex Boraine, the then deputy chair of the South African Truth and Reconciliation Commission, eloquently describes the relationship between transitional justice and criminal justice as follows: *“rather than detracting from criminal justice, transitional justice offers a deeper, richer and broader vision of justice which seeks to confront the perpetrators, address the needs of the victims and assists in the start of a process of reconciliation and transformation.”*

Thus, our search for reconciliation should not be understood to imply the tolerance of impunity nor does it discount the necessity of accountability. Rather it implies a deeper sense of justice that is more encompassing and sustainable. It places a burden on us to search for ways to achieve justice within a framework that permits transition from a society ravaged by conflict and resentment, to one characterised by harmony, prosperity and anchored in the rule of law.

This is what should drive us. This is what should inform the application of the various tools of justice at our disposal, including international justice tools.

Mr President

International criminal justice has played an important role in post-conflict situations by creating possibilities for forging a new beginning through justice and ensuring accountability. In the past decade, the United Nations has established or contributed to the establishment of a wide range of special criminal tribunals. In doing so, it has sought to advance a number of objectives, among which are bringing to justice those responsible for serious violations of human rights and humanitarian law, putting an end to such violations and preventing their recurrence, securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation, re-establishing the rule of law and contributing to the restoration of peace.

The successes of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda go without saying. We are confident that the International Criminal Court, a permanent international tribunal created to bolster the fight against impunity, will constitute an important cog in the fight against impunity.

The Rome Statute creating the ICC, recognizes the inextricable link between justice and reconciliation. The preamble of the Rome Statute recognizes that the Court was established for the present and future generations - an appeal to the sustainable. The principle of complementarity in the Rome Statute, by allowing States Parties the discretion to exercise justice on its own terms, provides states with an excellent

vantage point from which states can ensure that justice is done while ensuring the long lasting peace that can only flow from reconciliation.

However, allow us to be clear. Where national systems do not take up the responsibility for ensuring that justice is done, it is the role of international justice mechanism, such as the ICC, ICTY, ICTR and the Special Court for Sierra Leone to ensure that justice is done for the sake of reconciliation and long lasting peace.

I thank you.



# THE REPUBLIC OF S E R B I A

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UNITED NATIONS GENERAL ASSEMBLY  
THEMATIC DEBATE:  
*ROLE OF INTERNATIONAL CRIMINAL JUSTICE IN RECONCILIATION*

Check against delivery

## STATEMENT

by

H.E. MR. TOMISLAV NIKOLIĆ,  
PRESIDENT OF THE REPUBLIC OF SERBIA

New York, 10 April 2013

Ladies and Gentlemen,

The question to which we have to give an answer today is essential to many small and unprotected countries, such as Serbia, of which I am the president.

The question is:

Has justice, as epitomized in laws, civilization achievements and equality, disappeared from the face of the Earth? Are those pulling all the strings of power and might on earth behaving justly? Or perhaps they think they do not have to, because the God of the mighty and powerful, whom they worship, has not provided justice for the weak and the poor but "the right of the stronger."

Is it justice, as Simone Weil would say, a fugitive from the winning camp, because the winner is not the one who is better and more just, more humane and tolerant, but the one who is simply stronger?

I am posing this question today not only in the name of my country but in the name of all countries having reconciliation and life together in forgiveness as one of their countries' priorities. Has the International Criminal Tribunal for the former Yugoslavia contributed to peace in the Balkans and how far reaching have been the judgments handed down by the Tribunal in the context of the mission of reconciliation and promotion of law and justice in the world? Are we all equal before this Tribunal as we are all equal before God?

Twenty years ago, the United Nations Security Council established by res. 827 (1993), the International Tribunal for the prosecution of those held accountable for serious breaches of international humanitarian law in the territory of the former Yugoslavia after 1991.

The need for establishing such a body was argued by the political position that its establishment "will contribute to reconciliation and return and maintenance of peace" in "special circumstances" of the former Yugoslavia. Desirous of achieving these goals and believing that the purpose of its establishment was justice and reconciliation, and having nothing to hide, Serbia was among the first countries which supported the Tribunal's establishment and has been cooperating with the Tribunal to the present day.

Serbia now feels that it has unfairly given legitimacy to the Tribunal in the hope that by applying the same benchmarks, justice will be served for all the victims of the conflict. Unfortunately, the sense that justice was not satisfied is now present among the Serbian people. The rulings of the Tribunal have made old wounds open because justice has not been done since the Second World War, when in Croatian infamous camp of Jasenovac 700, 000 Serbs and many Jews, Roma and others, including 50, 000 children, were murdered, thus creating the gap of mistrust that will burden the future generations.

1. The official name of the ICTY contains also the word "prosecution" or "criminal prosecution", which is absolutely out of character with the European legal tradition. As a matter of fact, the ICTY can not be an instrument of prosecution (that is the role of the prosecutor) but, on the contrary, an independent body which impartially and without any discrimination weighs arguments of both the prosecution and the defendant as the other equal party. The Hague trials have from the very beginning shown that there is no such even-handedness because the prosecution has been favoured at the expense of the defendants in all the cases and in every respect.

The Prosecutor has various advantages over the defendant. For example, the Prosecutor has exclusive access to the media to explain his case and comment the trial from his angle of view; the Prosecutor has much more numerous team and far greater technical and financial resources, using all these to prevent the defendant to answer the charges against him in an appropriate manner; hence, the Prosecutor submits applications to the defendant in a foreign language without a proper translation; the defendant is being deprived of the possibility to defend himself but is imposed a legal counsel against his will.

If the Prosecutor brings an indictment and accompanied documents in hundreds and thousands of pages, even millions of pages, so that it will take an average individual several years just to go through them while the trials are being limited by short periods of time, it becomes clear to any reasonable man that this is an abuse of the trial rights by the prosecution, resulting in the obstruction of the right of the defendant to defence, amounting to the material denial of the right to defence.

If, in addition to it, the defendant is held in detention for years, essentially in prison, whereby a provisional measure has become a penal sanction (Witness the case of defendant Vojislav Seselj who is being held in detention 11 years without trial, unprecedented in the world's history, because the prosecution was unable to gather evidence for their undocumented indictment issued beforehand), so it would not be highly difficult to deduce and prove that these are the most flagrant violations of human rights of the accused committed both by the prosecution and by the ICTY itself.

On the other hand, the legal fees of defence before the ICTY are very high and not a single defendant is capable of paying them himself. Therefore, the ICTY is paying the attorneys from a roster compiled by it. This means that the defendant's counsels at Hague trials are financially controlled by the ICTY, raising a question of their independence and impartiality. This is all the more so because there were cases where some attorneys have been subsequently taken off the roster.

2. It is not in dispute that all present-day rights and the international legal system insist on the independence of the judiciary (that is why power is divided into executive, legislative and judicial). The ICTY has been financed since its establishment from the budgets of the countries concerned; in other words, its operation and even its very survival has been directly dependant upon the interests of the "countries concerned"!

3. The document establishing the ICTY limits its jurisdiction also in respect of the time: only for events after 31 December 1991. The reason for this is solely of a political nature because in this way crimes against peace have been excluded. Logically, crime against peace precedes all other crimes committed in a conflict. That is why it is more serious and more dangerous. However, the crime against peace committed against the former Yugoslavia, no doubt, implicates also the great powers. Therefore, a trial that would also involve a crime against peace would definitely shed light on the role of the great powers which are mainly responsibly for the establishment of the ICTY.

4. One of the legal civilization rules is that in any event an objective and unconditional impartiality of each and every judge must be ensured. We wonder what kind of impartiality is that when a systematic atmosphere of lynch against everything that is Serbian is being created in an environment where a trial is to take place.

The influential western media have created an image of a presumed Serbian guilt. This is evident in every TV show, article or statement made by public figures. The same is also true of the number of those indicted of war crimes and those arrested or, more precisely, kidnapped indictees.

5. American rules of procedure are strict: on the one hand, unlawful arrest automatically implies release of a suspect; on the other hand, evidence gathered in an unlawful, illegal manner can not be admissible either even though they prove the guilt of the defendant beyond a shadow of a doubt. Glaring examples of unlawful arrest or kidnappings and unlawful gathering of evidence are a rule when Serbs are concerned.

The ICTY has even introduced a totally new institution of trial criminal law, the so-called preventive arrest. Namely, a witness may be brought in without any previous summons, which actually amounts to kidnapping rather than summoning. Many have been arrested without a court warrant, detained, subjected to torture and psychological pressure through interrogations lasting even 20 hours per day. Inhumane treatment continued in the course of the trial; hearings and presenting of evidence have been conducted for extremely long periods, even involving the detainees of seriously damaged health, which resulted in all cases in reduced capacity for defence and in several cases even in death of the accused.

In many instances the evidence has been gathered without a prior consent of a court or other authority and this has been qualified by the Tribunal as only a minor offence. Rules of civilized world do not apply to Serbs and the ICTY does not make inadmissible the evidence gathered in an unlawful way. However, the ICTY deems that the administration of justice would find itself in front of a dangerous obstacle if due to some minor breach of procedural rules whose application is not even binding on the Trial Chamber, the ICTY could not admit as proof a material having relevance and proof value. In this way, the ICTY has given rise to unlawful gathering of evidence, encouraging those resorting to such practices to act illegally.

6. The greatest antinomy concerns the presentation of witness accounts. All evidence against the Serbs is based on witness accounts. Every time a witness is being heard, the basic question is whether

he/she has a quarrel with a defendant. In this case it is not a matter of an ordinary quarrel but a war, so that it is possible to prove almost anything by witness accounts. One of the basic rules also includes the possibility of confrontation of the defendant and the witness. This is impossible in the ICTY, since the defendant neither knows the witness nor can he see him behind the screen!

Let me just mention that the inter-American Commission in its report on the human rights situation in Colombia, considering that there was a possibility of basing the judgement on the statements of secret witnesses, was "concerned by the fact that this system is still part of the law of Colombia", and welcomed the decision of the Colombian Constitutional Court by which the decree allowing this was declared unconstitutional. The Commission said that the system was inconsistent with Article 14 of the International Covenant on Civil and Political Rights, in particular its paragraphs 3(b and e).

Cross-examination of a secret witness is essentially impossible, let alone refuting claims that the witness was able to find out and know facts of the case.

7. One of the basic rules of a criminal trial (and law in general) is the rule of legal certainty. The Tribunal Rules of Procedure are being changed even while the trial is ongoing (so far, these rules have been changed more than 20 times!), which is literally unparalleled in the history of legal civilization.

8. Until the ICTY was established no lawyer could even dream of punishments being passed on the basis of 'sub-legal' acts or unilateral decisions not having any legal basis, and even retrospectively! The ICTY hands down sentences on the basis of its Statute and Rules of Procedure that it adopts itself, the Statute and Rules of Procedure that did not even exist at all at the time of alleged perpetration of crimes!

9. The notion of "joint criminal enterprise" the ICTY introduced six years after it started its work when it realized that the Prosecutor, despite all the advantages given to him at the trial, is unable to prove the responsibility of the highest officials who fought secession and who stood in defence of the people (it should be noted that many of these political and military officials were not Serbs).

To make the parody even greater, the JCE at the Nurnberg Trials held against German political and military leaders was used only in the sense of acts of crime against peace, namely the planning, preparation, starting or conduct of a war of aggression, an act which at the ICTY trials has been excluded from ICTY jurisdiction! The construction of "joint criminal enterprise" has been taken over by the Tribunal from the Anglo-Saxon commercial law (joint enterprise), which is related to financial responsibility and which has no legal basis whatsoever in criminal matters.

10. It should be added that the ICTY has also introduced command responsibility as a kind of objective criminal responsibility, according to which every high-level politician or military leader could be held accountable. Article 7 of the ICTY Statute refers to individual responsibility, and joint criminal enterprise or command responsibility naturally refer to collective responsibility. The purpose is more than obvious: to make the State, or State entity, if not directly, at least indirectly, via implication of the highest government and military officials, responsible, which are, in the case of ICTY trials, only the Republic of Serbia and Bosnian Republic of Srpska. The evidence is simple: these were the grounds on which only Serbian officials have been convicted, while the others, if they were indicted, had been eventually acquitted. Nonetheless, the ICTY has been working and instituted proceedings against more than 160 individuals.

These facts have been known to some extent to the international public. There is no citizen of the Republic of Serbia who has not heard of the ICTY or the Hague Tribunal, as it is commonly referred to according to the city where it is located. As if there were more kinds of justice, the Serbian language has coined an expression "the Hague justice", for the unjust legal decision based on untruths and rendered under political pressure.

The critical view of the ICTY formed in Serbia is not politically motivated. The cooperation of my country with ICTY has not been politically conditioned either or prompted by the desire to get something out of it. The work of the ICTY has been seen in Serbia as partial, which is viewed by certain international quarters as the result of a nationalist approach and the desire to downplay the seriousness of the crimes committed.

The Republic of Serbia and its leadership – in spite of two decades of the Tribunal practices which were in sharp contrast to the standards applied in the Serbian justice system, more exactly, not meeting those standards – nevertheless believed and continue to believe that criminals should be punished. For this



reason only, the Republic of Serbia handed over to the ICTY 46 indictees, including two former Presidents, members of government, three Chiefs of General Staff of its Army and a number of police and military generals.

Cooperation with ICTY came out of our sincere wish to contribute to the reconciliation in the territory of the former Yugoslavia; it has not been the result of any pressures. For this reason, Serbia, often compromising its own national interests, has fully complied with almost all requests for assistance made by the ICTY Prosecutor Office or by the defendants; none of the requests for access to archives has been denied either. Like almost no other country in the world, Serbia has literally renounced its own sovereignty by granting waivers to 750 witnesses to give evidence in ICTY involving classified information. Serbia even delivered a director of its intelligence service to the ICTY, which is a unique case in the world.

Hague trials are being conducted in the name of highest human values, expressed nowadays through the so called human rights.

The application of law which is actually leading into anti-law has been justified in the past from the church pulpits, and, with the technological advances, through the press, newsreels and film, all the way to TV shows of local or global character. The inquisition burnt at the stake in order to satisfy "divine justice", which requires that Satan's followers be purified through fire, because it was for their own good!

The proceedings against Serbs are mainly motivated by punishment and revenge, and revenge, especially in modern law, can never be justified as being fair.

One can not be just to some and unjust to others. In equal cases one must act equally; otherwise not only will justice be lacking, but injustice will take over all the space voided.

How is it otherwise possible to explain that no one, save in one case in Bosnia and one case in Kosovo, has been sentenced for crimes against Serbs? David Harland has been proven right when he wrote in the New York Times in December 2012, and I quote: "It's not fair that only Serbs bear the responsibility for crimes in the wars of Yugoslavia. The judgements handed down only to Serbs have no sense either in terms of justice or in terms of reality or politics. It's very bad to be a Serbian victim of a crime committed in the territory of the former Yugoslavia. In the past Balkan wars, Serbs have been displaced or ethnically cleansed more than any other community. Most Serbs have remained ethnically displaced even today. Almost no one has been held responsible for it, and as things stand now no one will".

This will in no way contribute to the truth and to genuine reconciliation in the territory of the former Yugoslavia. Among Croats and Bosniaks such judgements rendered by the ICTY encourage exaltation and triumphalism, threatening that such acts could be repeated some time in the future, whereas among Serbs such judgements cause frustration and depression.

Statistical evidence of the number of those indicted and convicted by the ICTY is another story. Although an official UN expert submitted to the ICTY a finding, an opinion, saying that there is no apparent great disproportion in the number of killed in the wars, the number of indicted and in particular the number of convicted for crimes where victims were Serbs, is very small.

The total duration of the punishment imposed so far on Serbs is some 1150 years, while the representatives of other nations have been sentenced to a total of 55 years for the crimes against Serbs.

We are talking about true reconciliation, and very often reconciliation, even when it is based on truth, on true facts, can be faked, insincere and hypocritical. Especially when before reconciliation we failed to arrive at real and whole truth. "Hague trials", it seems, will largely fail to come to the real and whole truth, so that reconciliation too will be imposed and insincere.

One can say that truth in general may not lead to reconciliation, even though it is true that reconciliation not based on truth but on delusion, is usually not lasting long and is false and hypocritical.

The truth can also be purifying catharsis, but at the same time a burden for the future. Nevertheless, one can not deny that the wish for the "truth and reconciliation" as well as the desire to establish individual criminal responsibility for war crimes is something which is positive in principle. Putting it simply, it is a question whether or to what extent the ICTY in its work has been objective and impartial, and whether and how much it has succeeded in coming to the "truth" and consequently to "reconciliation" later on.

Has it managed to prevent future crimes and have justice done, justice sought by thousands of victims and their families, but also to contribute to the establishing of an enduring peace in the territory of the former Yugoslavia?

Virtually all ICTY judgements show that the officially identified tasks have not been fulfilled and failure to institute proceedings against some individuals proves that, perhaps, the accomplishment of the mission for which the Tribunal was reportedly created, was not desired after all.

Serbia does not wish to deny that in some cases before the ICTY incontrovertible facts have been established and that those responsible for serious violations of international law have been deservedly punished. Bringing them to justice has really prevented them from committing any further crimes.

The inhabitants of the states which have emerged in the territory of the former Yugoslavia, as well as the inhabitants of Serbia should, taking all this into account, treat their victims with reverence and respect.

Serbia does not deny that Serbs committed crimes in the war and I point out the crime in Srebrenica. Serbia condemns the crimes of its fellow Serbs, but this should also be done by the states in the name of which horrible crimes too have been committed against the Serbian people.

The contribution made by the ICTY is evident in some cases. However, a serious and long shadow has been cast on the work of the whole Tribunal by the fact that political leaders of only one side, the Serbian one, have arrived in The Hague as indictees and left it as guilty ones.

That shadow has been cast over the reputation of the ICTY in particular following the clearing of all charges of Croatian generals Ante Gotovina and Mladen Markac, as well as the commander of the so-called Kosovo Liberation Army Ramus Haradinaj and Bosniak military leader of eastern Bosnia Naser Oric. The work of the ICTY in these cases serves only to support the building of the culture of impunity, of pointing to the criminals at all quarters that, if they enjoy someone's political support, they may freely kill, expel, rape, set fire to, destroy, plunder...

When I said that Serbia believes that criminals should be punished, I had in mind that all perpetrators, organizers and sponsors should stand trial. Regrettably, the ICTY, it is quite clear now, was not of the same view. No Croatian, Bosniak or ethnic-Albanian political figure or any senior officer of the Croatian Army, of the former Bosnia and Herzegovina Army or the so-called KLA have been indicted or convicted of crimes against Serbs.

Serbia has completed its cooperation with the ICTY. We have given the ICTY more than any other country was willing to give, but after the judgements of acquittal of Gotovina, Markac, Oric and Haradinaj, the frustration and indignation of the entire Serbian public, irrespective of their party differences and ethnic or religious affiliation of its citizens, has brought the Serbian Government to decide to cooperate with the ICTY only at the technical level.

In my capacity as President of Serbia, I am bound to defend my people. On the other hand, I do not wish nor am I under the obligation to protect those Serbs who violated the law in the wars in Croatia, Bosnia and Herzegovina or in Serbia. My country, during its glorious past, fought long and hard to defend its own, and not only its own, freedom.

Never has any doubt been cast over its struggle that it was unjust or that Serbian soldiers endangered the lives of innocent people in conflict or that they acted in an undignified manner either towards the enemy or the civilians on the other side. When, for the first time in its history, there has been doubt that crimes have been committed by some members of its army and police or their civilian commanders, Serbia has, as soon as it was possible to do so, arrested them and handed over to the ICTY. Some of them have surrendered voluntarily.

As President of Serbia I do not have the right, however, not to point out that former leaders of Croats, Bosniaks and Kosovo Albanians are also responsible for the suffering of Serbs.

Thousands of those killed, displaced and humiliated seek justice and truth that the ICTY did not want to show to the world.

Croatian generals Markac and Gotovina have been cleared of their responsibility for the killing and expulsion of civilians from the Serbian Krajina, though crimes against them have been proven even in the

ICTY itself. If they are not guilty of these crimes who is, the international observers have asked themselves after the Appeals Chamber rendered its judgements.

Croatian troops drove out more than 300,000 Serbs from the territories which their ancestors inhabited for centuries. Reconciliation without the return of those wishing to return to their homes - which are in large measure, unfortunately, destroyed – can not be realized, while impunity and, which is even more dangerous, glorification of criminals does not contribute to reconciliation, a task which the ICTY largely had in mind.

More than 2000 victims from Bratunac, Kravica and other surrounding villages in eastern Bosnia, where the Bosniak forces commanded by Naser Oric operated, are waiting for at least someone to be found guilty of these crimes.

The Serbs of Kosovo and Metohija have been kidnapped in an organized way, their organs have been harvested and sold on the black market. History knows of no such crimes. Instead of prosecuting these crimes, the ICTY destroyed the evidence.

Hundreds of thousands of displaced people, thousands of killed and kidnapped in Kosovo and Metohija have not been reason enough for the ICTY to punish KLA commanders and soldiers, but during his trial allowed Haradinaj, in an unprecedented manner, to be active in politics. In fact, the ICTY allowed him to kill and intimidate witnesses.

The Information on whether Croats have been tried for crimes against Serbs or by and large (only) for crimes against Bosniaks and vice versa, whether Bosniaks have been tried only for crimes against Croats or have they been tried also for crimes against Serbs, and how much and how frequently this has been the case, sounds disastrous. Serbs as victims of crimes tried by the ICTY are almost nonexistent, namely, even when the ICTY tried Croats or Bosniaks, it tried them because Croats killed Bosniak Muslims or because Bosniak Muslims killed Croats. Only in a few cases like Haradin Bala in Kosovo, he was convicted of crimes against Serbs and sentenced to 13 years in prison; Zdravko Mucic was sentenced to 9 years in prison, Hazim Delic, 18 and Esad Landzo 15 years in prison.

These facts can suggest the following conclusion: among the perpetrators of war crimes in the territory of the former Yugoslavia there are almost exclusively Serbs, and, which is particularly interesting, among the victims of war there are almost no Serbs. Someone is trying to buttress the statement that the Serbian side bestially and orgiastically killed and committed genocide, whereas the other side set back and went about daily tasks and did humanitarian work.

In that war that destroyed us all, it was not that some only got killed, and the others did the killing.

Perhaps it all was a prelude to the wresting away of Kosovo and Metohija from Serbia which is now at work, where an organization of the most advanced and, by definition, most just countries is involved. And yes, also the most powerful countries, from which justice has escaped.

It is clear that with regard to victims, the number of killed, even all war crimes, there had been very many exaggerations in the media, and not only in the media, domain. Media demonization of Serbs has been carried out very fast and with an unparalleled uneven-handedness and uncritical spirit of the western media which has not allowed for full two decades any different opinion or interpretation of events to emerge.

If a future researcher or historian were to make conclusions only on the basis of the number of the accused and convicted Serbs, Croats and Muslims about the war in Bosnia and Herzegovina, he would conclude that only Serbs killed Croats and Muslims (Bosniaks), that there were practically no killed Serbs, that here and there Croats killed Bosniaks and that Bosniaks killed very few Croats.

This very graphically paints the picture of the actual situation as far as the non-objectivity and partiality of the ICTY is concerned.

The ICTY was supposed to play, at least formally, the main role in bringing to justice war criminals in the territory of former Yugoslavia. International participation in this task should have assured impartiality. If the ICTY failed in this task, the Council of Europe was successful in it, to some extent.

The Special Rapporteur of this oldest European organization, Dick Marty, a senator from Switzerland, has proven, and the Parliamentary Assembly of the Council of Europe confirmed that some of the present Albanian leaders of Kosovo and Metohija organized at the end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> centuries, kidnappings and killings of Serbs whose organs had been removed and sold. When

Serbia, prevented from instituting legal proceedings for those crimes, which have not yet been seen anywhere in the world, requested that the Security Council, founder of the ICTY, be responsible for the investigation, the international community was not sympathetic. Probably because the victims were members of my people, Serbs, and it seems that it is allowed to take out their hearts and kidneys and trade them as if they were merchandise.

I appeal to you, dear friends, to support Serbia in its efforts to unveil the truth about these and other crimes, and that the guilty ones receive just punishment.

It is never too late for reconciliation. Almost 70 years after the end of the Second World War, I have agreed with the President of Hungary, in a symbolic manner, to be the initiators of the historic reconciliation between Serbs and Hungarians, neighbours that have found each other on the opposite sides during that conflict. We will erect monuments for the victims and pass a message to this and future generations to live in peace with their neighbours.

Serbia and I are ready not to wait for 70 years to reconcile with neighbours with whom we once lived in the same country or with whom, and I refer to Kosovo and Metohija, we still live in the same country. I am deeply convinced that the ICTY did nothing to help that process and that it probably delayed it unnecessarily for the future generations. It certainly delayed and made it more difficult, to a large extent. If one side is dissatisfied with the work of ICTY, the real truth and reconciliation will not come.

In order to come to truth and reconciliation, that is, genuine reconciliation, it is necessary for all three sides to be at least equally satisfied and dissatisfied.

With such verdicts, this type of balance, and balance is the basis of justice, has in no way been established. But who in the ICTY cares about all of that? Has the Tribunal, by provoking in one people a feeling of doing injustice and enhancing triumphalism in the other, led to reconciliation and removed the anxiety that the civil war from the 1990s could repeat?

Concealing the historical truth comes to bad fruition. No one is mentioning that on this day, 10 April 1941, pro-Hitler Nazi "Independent State of Croatia" was established. In the turmoil of the Second World War, Croatian fascists, with the help of the Third Reich, created a criminal order that, in four years, killed more than a million Serbs, Jews and Roma. That truth had been concealed for the sake of false brotherhood and unity of the Yugoslav peoples and, 50 years later, history had repeated itself in the Yugoslav wars.

International tribunals should, therefore, establish the truth. Without the truth there is no reconciliation. And, most often, you don't get to the truth by outvoting, as the judgments and other decisions were passed in the ICTY, as a rule. In that effort, the political pressures, blackmail, intimidation and bribery – regardless of whether it concerns witnesses, accused, prosecutors or judges, it is all the same – help even less.

Maybe it was expected that Serbia, busy with its concerns, devotes less attention to the work of other international judicial institutions such as the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Special Panels of the Dili District Court, Special departments of the Courts of Cambodia, the Special Tribunal for Lebanon and, in particular, the International Criminal Court.

As a responsible member of the United Nations, Serbia is monitoring and supporting the work of the entire international jurisprudence, but, as it has itself experienced the imperfection of the international judiciary, it is also willing to hear the critical arguments presented by our friends from other parts of the world. As a matter of fact, those coming from Africa, with which countries Serbia is bound with decades-long friendship, based on cooperation, understanding and mutual respect. It seems that international justice has decided to overlook the crimes on other continents and to punish only some. It qualifies as discrimination, to which we have been so often exposed.

We hope that there will be no more crimes, but we expect that the investigations will be also continued into crimes so far committed outside Africa or the Balkans, against all offenders, regardless of their nationality, colour, wealth or political position.

I repeat that I sincerely advocate punishing the guilty, not forgetting the crimes and reconciliation, but emphasize that selective justice, which applies only to a few – be they from the former Yugoslavia or from Africa - which bypasses some, does not contribute to peace and stability. Only equal treatment in equal circumstances and punishing all those responsible for breaking the law will show the world public and the

citizens of the countries where the crimes were committed that the international courts were established to help, and not to achieve the interests of the mighty ones.

The Republic of Serbia has confirmed its commitment to respect international law, by signing the Rome Statute of the International Criminal Court as early as 2000. The role of international justice and, in particular, the International Criminal Court, should not be only in taking over jurisdiction of national courts, but also in assisting national courts to prosecute serious violations.

That is why the International Criminal Court, whose work Serbia strongly supports and in whose mission it believes, should bear in mind the needs of different parts of the world, and also the fact that there are criminals among the "enlightened" nations, and - given the many system lapses and structural errors, but also the wilful failures and overlooking made by ad hoc international tribunals - be truly both international and independent, as it should be.

The purpose of punishment, however, should not be retaliation. Enlightened nations have long since ceased to think of punishment as revenge. Revenge, just like mercy, comes from God. The punishment, if just, should prevent the criminal from committing the crime again. And to point out to others that they will face justice if they commit war crimes. But the purpose of punishment is also the re-socialization of offenders. Not pardon, but, to the extent possible, return to normal life.

Serving a prison sentence in a foreign country, away from one's family, in an unfamiliar environment and without knowing the local language, is not conducive to the designated tasks.

My country guarantees that the Serbs convicted by the ICTY, if they are allowed to serve their prison sentences in Serbia, will have no privileged treatment and is willing to accept international supervision. No individual would be released on parole without the decision of the ICTY, the International Residual Mechanism for Criminal Tribunals or some other United Nations body that would be responsible for these issues.

I appeal, therefore, to the ICTY and the Secretary General of the United Nations, to find a formal way and allow convicted Serbs to serve their prison sentences in Serbia.

We did not find full justice in the ICTY for the abused, expelled and killed Serbian victims. And they exist, as do their families without solace and justice, as exist those who have committed crimes against Serbs. There are victims and there are no penalties that we rightly expected the ICTY to impose on these criminals.

Contemporary international relations certainly require international justice. The ICTY did not meet the primary stated goal - reconciliation in the region, and therefore cannot be the future of international justice, but only its ugly past. The benefit of the ICTY exists only insofar as it is now clear that the manner of its establishment, its overall work (the application of substantive and procedural law, measuring and execution of sanctions) shows that it must never do the job in that way again.

International justice is badly needed today, but the one which is legal and legitimate. International justice may be carried out exclusively by the permanent International Court of Justice.

Proof of this is, among other things, also the absence of the President or any representative of the ICTY today. If they do not respect the most ancient legal rule "Audiatur et altera pars" (Let's hear the other side) how can we expect of them minimum of rights and justice?

Ladies and gentlemen,

The anthem of my country – the Republic of Serbia – is a prayer. Each time we sing it, we turn to the justice of God, to save us and hear our voice of truth.

Serbia is nowadays criticized that it is too dedicated to history and too inclined to patriotism. We do not feel the need to apologize for having history. To justify ourselves for having historically been on the side of the truth, on the side of the allies, defending the homeland? We have nothing to be ashamed of, but we have something to be proud of.

Yes, we were mocked, ridiculed, insulted... We are opposed to such an unfair image as best we can. Our strength is in the truth we are fighting for and we do not want to give up that fight. Justice may be blind, slow and perhaps its cymbals are sometimes up, sometimes down, but it is our duty to constantly add facts and evidence to the cymbal of truth, which will help the truth to be reached.

Statement by H.E. Dr. Palitha T.B. Kohona,  
Ambassador and Permanent Representative of Sri Lanka to the United Nations

**Thematic Debate: "Role of International Criminal Justice in Reconciliation"**  
**10<sup>th</sup> April 2013, New York**

*"International criminal justice, as it is widely understood today, is very much centered on a Western historical and cultural mind set. It pays only lip service to the cultural backgrounds of the much of the world. Accountability, particularly retributive justice, appears to be the first choice, in general, to facilitate reconciliation. There are other paths to this laudable goal. To suggest that there is only way to achieve reconciliation or to advocate a one size fits all approach is to neglect the traditions and experience familiar to the rest of the world."*

Mr. President,

I take this opportunity to thank the President of the UN General Assembly for conveying this timely debate on "The Role of international criminal justice in reconciliation". We hope that today's discussion will facilitate a critical examination of the many aspects of the international criminal justice system and its relevance to fostering reconciliation, especially in the multi-dimensional world in which we live. We take the view that the international criminal justice system must undergo further refinement if it is to serve the wider interests of the international community and the goal of reconciliation.

The end of the Second World War witnessed the establishment of international tribunals by the victors to prosecute the vanquished who had violated international criminal norms. These were the Nuremberg and Tokyo Tribunals. The accused before these tribunals stood charged with committing genocide, war crimes and crimes against humanity. It was hoped that punitive action taken through the mechanism of a fair and impartial international criminal justice system would deter future violations of these rules relating to these egregious crimes, put an end to impunity, strengthen the international rule of law and encourage peaceful coexistence among nations. While the

idea of punishing those who committed egregious violations of such international criminal norms continued to engage the attention of academics and writers, for a variety of geopolitical reasons, no concrete action to develop it further was taken in the next four decades.

It was also hoped by jurists that a functioning international criminal justice system would complement the transitional justice in countries seeking to foster the rule of law, help to establish the truth of what happened during conflict situations and contribute to reconciliation. Many eminent jurists and legal thinkers, especially in the West, continue to subscribe to this thinking.

Following the conflict in the former Yugoslavia, the United Nations Security Council was responsible for establishing the International Criminal Tribunal for the former Yugoslavia funded by the international community. At the time, it was thought that this mechanism would play a critical role in the United Nations' effort to advance peace and security, and post conflict reconciliation required for sustained social, political and economic development.

Since then, in a surge of enthusiasm other Tribunals were established by the United Nations for Rwanda (The International Criminal Tribunal for Rwanda), Sierra Leone (The Special Court for Sierra Leone) and The Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon. The role played by the UN Security Council in creating these tribunals is central.

Despite the enormous costs incurred, running into billions of dollars, whether all these tribunals have succeeded or fallen short in achieving their goals will continue to be debated. Likewise, discussions will continue on whether they have succeeded in deterring future genocide, war crimes and crimes against humanity. More importantly, one needs to examine whether they have enabled the victims and the perpetrators of

grievous crimes to undergo healing and reconciliation. I am particularly conscious of the clear statement made by the distinguished Minister of Justice of Rwanda.

The International Criminal Court was established by treaty in 1997. Although, received with enthusiastic fanfare, many critics have emerged.

International tribunals and other mechanisms, if they are to be of any value, must be established following broad consultations, taking into account ground realities, sensitivities and limitations. As the President's concept note recognizes, externally imposed tribunals are unlikely to succeed in a highly charged domestic environment. A tribunal will not achieve much if it only succeeds in kindling resentment, popular discord and anger. We have heard many voices in this chamber echoing the sentiments of the disenchanting.

Consistent with international law and practice, the responsibility to investigate any alleged violations of global humanitarian and human rights standards must rest with the State itself, in the first instance. In most jurisdictions, breaches of global standards also equate to breaches of criminal law. International criminal justice systems may intervene, if at all, only where national judicial authorities do not, or cannot act themselves. Domestic mechanisms should be given primacy and the time and space to complete their processes. The domestic mechanisms, carry greater legitimacy as they would draw on tradition and accepted practice.

I would also like to suggest that international criminal justice, as it is widely understood today, is very much centered on a Western historical and cultural mind set. It pays only lip service to the cultural backgrounds of the much of the world. Accountability, particularly retributive justice, appears to be the first choice, in general, to facilitate reconciliation. There are other paths to this laudable goal. To suggest that there is only way to achieve reconciliation or to advocate a one size fits all approach is to neglect the traditions and experience familiar to the rest of the world. The process of



reconciliation in a country recovering from conflict would necessarily be complex and should take into account the local sensitivities, political pressures and cultural nuances. Conflicts in countries confronting multiple ethnic and religious pressures take time and effort to resolve. Undue pressure exerted by external entities on a limited range of issues will not be helpful in the healing of deep seated scars.

I would like to share the experience of my country in addressing the immense challenges of post conflict reconstruction, rehabilitation and reconciliation after a 27 year long terrorist imposed conflict. The challenges faced are considerable. The government initiated a domestic mechanism to address all aspects of the conflict, including any alleged violations of international standards. The domestic mechanism, the Lessons Learnt and Reconciliation Commission, made over 285 recommendations, including on alleged criminal acts committed during the conflict. Following this, the Attorney General Department and the military Courts of Inquiry have already undertaken investigations to determine if there were any breaches of military law and the criminal law of the land. I wish to point out that Sri Lanka started its internal mechanism much earlier than comparable situations in other countries. Unfortunately, Excessive external pressure is being piled on Sri Lanka to conclude the process of investigating these allegations to the exclusion of all else even though similar situations in other countries have taken much longer.

Sri Lanka has also taken further significant strides in national reconciliation. Importantly, our culture is not conditioned by an underlying demand for an eye for an eye or a tooth for a tooth for wrongs committed. It is rarely or never that the relatives of victims of a crime attend court hearings in Sri Lanka to demand penalties to achieve justice. Justice is not equated with punishment and revenge. More often than not, a victim would recognise justice in the rehabilitation of the perpetrator of a crime. As the Buddha said 2500 years ago, "Hatred ceaseth not hatred. It is loving kindness that ceases hatred". These are the soothing sentiments that have pervaded our culture for

two thousand five hundred years and will continue to influence us. Or as William Shakespeare said on the quality of mercy, "It dropeth as the gentle rain from heaven, Upon the place beneath. It is twice blessed- It blesseth him that gives, and him that takes."

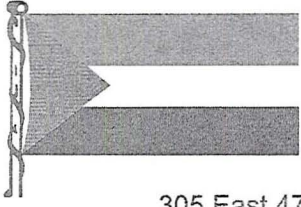
Sri Lanka recognises the complexity of the reconciliation process confronting it with its many ethnic and religious pressures. We recognise that reconciliation is a drawn out process and will not be completed in a few short years. In this process, Sri Lanka has emphasised restorative justice, in keeping with its religio-cultural background and political sensitivities. For example, despite being able to take punitive legal action against many ex-terrorist cadres, including some leaders who surrendered, the State has chosen the option of rehabilitation, and restoration to the community as an integral part of the reconciliation process. Former terrorist leaders such as Daya Master, George and Kumaran Pathmanathan live in peace and under government protection. Other leaders have joined the democratic mainstream. At no time has the rehabilitation process been used to target ex-combatants or LTTE sympathizers but has been used for their benefit and to ensure their speedy reintegration into society. The vast majority of former LTTE cadres, including child combatants, have been rehabilitated and re-integrated into society. Some have even been absorbed in to the armed forces. Our underlying philosophy is that reconciliation is not about finding culprits to punish but undertaking a process of healing. Politically, the government is exploring options that would reflect the political concerns of all entities. Consultations among all stakeholders will continue to find lasting solutions acceptable to all. In addition, vast resources have been allocated to rebuild and restore destroyed infrastructure in the former conflict affected areas so that economic life will return to normalcy as quickly as possible. Bridges, railway lines, roads, houses, hospitals, schools, etc. have been rebuilt, livelihood opportunities have been revived, land disputes have received attention and will be resolved through land tribunals, language issues are being addressed, and democracy which had been denied to the people for so long under terrorist domination

has been restored. All in the short space of four years. The list goes on and on. But no one expects normalcy to return overnight. It has not happened anywhere else, where the world imposed punitive justice.

We note that the use of the home grown Gacaca mechanism in Rwanda and the Truth and Reconciliation mechanism in South Africa. The effectiveness of these domestic entities in achieving reconciliation needs to be studied.

We hope that the UN approach to accountability and reconciliation will take a much broader view than simply emphasising punitive justice. Other approaches must be respected. Where punitive justice is employed it must operate within a neutral, non-selective and impartial framework. Allegations of sexual and other violations against women and children must be addressed with a view to compensating the victims, restoring them to normalcy and ensuring that the criminal acts will not be repeated. We must establish a process that enables countries to share expertise, knowledge, assistance, analysis, advice, lessons learnt and best practices with a view to strengthening national legal systems. The United Nations must provide leadership in capacity building efforts to aid reconciliation.

Thank you, Mr. President.



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أمام

الجمعية العامة للأمم المتحدة

حول

العدالة الجنائية الدولية والمصالحة

نيويورك: ١١ أبريل ٢٠١٣م

الرجاء مراجعة النص عند الإلقاء

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

السيد الرئيس ،،،

نُهنئكم علي عقد هذه الجلسة الهامة حيث أنها توفر مناسبة لإبداء وجهات نظر ضرورية حول موضوع تتباين حوله الآراء . خاصة وأن الجمعية العامة للأمم المتحدة لا يمكن منعها من حق التداول والنقاش في كافة القضايا التي تهتم أمن وسلامة و إستقرار الشعوب . وعبركم أحيي الحضور من الرؤساء و الوزراء المشاركين في هذه المناقشات .

السيد الرئيس ،،،

قضية العدالة الجنائية و المصالحة قضايا تظل موضوع إهتمام لتأثيرها علي إستقرار الشعوب و أمنها ورفاهيتها ، وعليه يصبح الأصل أن كل سبيل لا يؤدي لهذه الغاية من الخطأ إتباعه . كما أن متلازمتي السلام والعدالة وضرورة التوصل لمعادلة متوازنة بينهما من الصعب تحقيقه عبر المناهج القضائية فقط كما أن التجارب أثبتت نجاعة آلية الحقيقة والمصالحة في رفق النسيج الاجتماعي في حالات النزاعات ووضح مثال لذلك ما تم في دولة جنوب أفريقيا بعد كل الأهوال التي ارتكبتها نظام الفصل العنصري هناك .

السيد الرئيس ،،،

إن الآليات القضائية الدولية التي أكملت عقدها الثاني مثلت تطوراً هاماً في نظام العدالة الدولية ، وقد حان الوقت لتقييم تجربتها وعليه فإننا ندعم وبشدة الدعوة لمراجعة هذه الآليات و النظر في مستقبلها . وفي هذا السياق فإن ما أستمعنا إليه في الجلسة الإفتتاحية لاسيما من وفد رواندا الشقيق يوضح ويجلاء العديد من الحقائق المتعلقة بتلك الآليات التي يجب علي الأمم المتحدة العمل علي مواجهتها مثل النفقات الباهظة والاهتمام بأوضاع المتأثرين ومنح دور أكبر للآليات الوطنية .

السيد الرئيس ،،،

استمعنا لعدد مقدر من رؤساء الوفود منتقدين ومتحفظين علي ما تم من خلاصات انتهت إليها هذه المحاكم الدولية في معالجة القضايا المعروضة عليها وأهم تلك الانتقادات اعتمادها علي أدوات غير موضوعية تأسست علي منطلقات تتجاف مع القانون والعدالة .

السيد الرئيس ،،،

إن وفد السودان يرفض توسيع نطاق الولاية القضائية العالمية واستغلالها كوسيلة سياسية تستخدمها دول ضد أخرى ، ويجب أن تظل الولاية القضائية العالمية كما تم التوافق عليها محصورة في أضيق نطاق ممكن بما يُمكن التعامل مع أخطر الجرائم محل الاختصاص المتفق عليه دولياً .

السيد الرئيس ،،،

إن المبادئ التي تنادت بها الدول بغرض المشاركة في مؤتمر روما مبادئ لا خلاف حولها فهي متفق عليها من الناحية المبدئية ، فالجميع مع العدالة وتحقيقها ما حفظت سيادة الشعوب وإرادتها ، دون تمييز وتصنيف لكن للأسف لم تؤخذ هذه في الاعتبار في الممارسة الراهنة . كما لا يجب استثناء مواطني دولة معينة من المثول أمام العدالة فقط بسبب وزن الدولة وثقلها الدولي .

السؤال الذي يطرح نفسه لماذا يظل نظام روما المؤسس للمحكمة الجنائية وثيقة غير مجمع عليها حتي الآن ؟!

الإجابة لا تكمن عند موظفي المحكمة أو قضاتها ولا تقبع في كتب القانون فالسبب واضح وهو إقحام السياسة الدولية بأطماعها ومُختلف وسائلها أدي إلي أن تولد المحكمة الجنائية الدولية مسخاً مشوهاً يستهدف شعوباً ودولاً محددة وأحياناً أشخاصاً بعينهم ترسيخاً لمنطق القوة علي حساب قوة المنطق والقانون .

السيد الرئيس ،،،

وفي ذات السياق هناك تساؤلات مشروعة تحتاج للإجابة ومنها ، ما الذي يجعل غالب قضايا المحكمة الجنائية الدولية من قارة افريقيا ؟ وغالب المتهمين فيها أفارقة ؟ كيف لنا ونحن نسعي لإصلاح مجلس الأمن لا سيما منهجية اتخاذ القرار فيه أن نسمح له أن يقرر في مصير الشعوب وكيف نثق في قراراته في الوقت الذي يسعي بعض أعضائه الدائمين لإستغلال حق النقض لعقاب من يشاءون ويغضون الطرف عن ينال حظوة رضائهم وكل ذلك باسم العدالة والديمقراطية.

إن تجربة المحكمة الجنائية خلال سنواتها العشر الأولى تؤكد وجود خلل كبير من الناحية القانونية والسياسية ويعترف بذلك أطراف في ميثاقها المؤسس .

السيد الرئيس ،،،

يخطئ من يظن أن السلام يصنع في المحاكم فقط ، فإن ما تم استعراضه من تجارب خلال تداولنا الذي استمر ليومين حول تجارب محاكم مختلفة أثبت فشلها في تحقيق المصالحات ، كما كشفت تدخلات المحكمة الجنائية في بعض بلدان أفريقيا أن كلما إقتربنا للسلام في منطقة نزاع في أفريقي تتعثر تلك الجهود نتيجة التدخل السلبي للمحكمة الجنائية . كل ذلك يدعوننا للتأكيد علي أهمية الآليات الوطنية والإقليمية في تحقيق المصالحات بما يدعم استقلال الشعوب ورفاهيتها ، وتظل مسألة العدالة وتحقيقها جزءاً أصيلاً من السيادة الوطنية وأصلاً لا يجب الحياد عنه .

السيد الرئيس ،،،

يحق للجميع أن يتسأل لماذا وقفت المحكمة الجنائية الدولية عاجزة أمام جرائم ارتكبت في بلدان عديدة أكتفي مدعيها العام بالقول بأنها لا تقع في إطار اختصاص المحكمة !! هل انتهى المدعي العام لهذا الحكم لأن الأقويا من ذوي النفوذ الدولي لم يأذنوا بالإحالة للمحكمة الجنائية الدولية إرضاءً لمصالحهم السياسية .

السيد الرئيس ،،،

إن إيمان وفد بلادي بأهمية العدالة لأهمية العدالة والمصالحة تجسده اتفاقية السلام الشامل التي وضعت حداً لأطول نزاعات القارة الأفريقية كما تجسده ما أنجزته

حكومة بلادي من مصالحات تمت حتي الآن في دارفور والتي توجت باتفاقية الدوحة  
لسلام دارفور .

السيد الرئيس ،،،

إن وفد بلادي يحذر من الزج الأمم المتحدة ووكالاتها وبعثاتها وعمليات حفظ  
السلام في أتون الصراعات السياسية الدولية ، كما نحذر من مساعي البعض لاستغلال  
الأمم المتحدة بجعلها سكرتارية وشرطي للمحكمة الجنائية الدولية باسم التعاون  
المشترك حيث لا تزال المحكمة الجنائية الدولية ليست محل إجماع وأن تجريتها الماثلة  
تزيد من شقة الخلاف عليها .

السيد الرئيس ،،،

نختم بالقول أن هذه المبادرة قد وفرت سانحة لإنتاج آراء جيدة لتعزيز مفهوم  
العدالة والمصالحة ونرجو أن تكون هذه البادرة بداية لنقاش يستمر تحقيقاً لمفهوم  
العدالة بعيداً عن محاولات التسييس وإزدواجية المعايير والخروج بهذا المفهوم النبيل من  
المصالح الضيقة إلي رحاب أوسع تخدم البشرية جمعاء في حياد وموضوعية تحقق  
العدالة التي ننشدها جميعاً .

وشكراً السيد الرئيس ،،،



**Remarks by Ambassador Henry Mac Donald (Chairman of the Third Committee)  
at the Thematic debate**

**THE ROLE OF INTERNATIONAL CRIMINAL JUSTICE in` RECONCILIATION**

**67<sup>th</sup> United Nations General Assembly**

**April 10, 2013**

**Mr. President,**

**Distinguished Heads of State,**

**Distinguished Ministers,**

**Excellencies, Colleagues, Ladies and Gentlemen,**

It is a pleasure to be here today and to speak at this *First Thematic Debate on the Role of International Criminal Justice in Reconciliation*.

I thank you Mr. President, for making it possible to consider this important theme, approximately 11 years after the entry in to force of the Rome Statute which established the International Criminal Court.

Consequently I will focus my remarks specifically on the ICC.

No doubt this International Criminal Court was necessary to fill the most important gap in international human rights law.

We all know that the ICC is the outcome of a concerted effort of the international community to address impunity from the law by individuals and institutions wherever grave human rights violations are being committed.

Presently the Rome Statute is being considered as the standard setting instrument that guarantees an effective international strategy to ensure criminal prosecution of the most serious crimes of international concern and guarantees that justice is a basic element of durable and long lasting peace.

We are aware that the ICC, in its short life, has been facing a number of significant challenges since its inception.

I therefore hope that this debate will help to fine tune the focus and the functioning of the International Criminal Justice system.

**One of the most pressing and challenging issues confronting the ICC presently is:**

**“How to fully apply the provisions enshrined in the Rome Statute when the parties concerned are in the midst of conflict-resolution processes”.**

It is important to keep in mind that the International Criminal Court, as the single body complimentary to national criminal jurisdictions, is assigned to investigate and prosecute the most serious crimes of concern to the international community.

However the Court should be mindful of the implications that its investigation and approach may have on ongoing conflict resolution processes.

This is practically as well as judicially not an easy task.

Peace and reconciliation as well as guaranteeing lasting peace should be the main focus of any conflict-resolution process.

The question that we should answer 11 years after the Rome statute has entered into force is how justice, impartiality, peace and regional as well as international conflict –resolution processes should work together in order to attain lasting settlements of national and international conflicts.

In any case all conflicts should finally end in the attainment of long-lasting peace in order for victims to find resolutions and to continue their lives in peace and harmony.

The seeking of justice for victims at itself should not undermine ongoing peace processes.

The objective of the ICC should always concentrate in finding solutions that are in line with the principles and objectives of the Rome Statute.

However every solution should be in tandem with the national laws, as well as with the local and traditional cultures so that accountability is ensured and justice and peace can work effectively together.

An effective instrument for the conclusion of successful peace negotiations has been and is still the provision of immunity, as part of amnesty agreements, for individuals accused of having committed crimes during the conflict.

This instrument has worked successfully in the past including in my own country, Suriname, since it ensures and guarantees the enabling of peace and reconciliation in times of conflict and thereafter.

In this vain I would like to remind that the Court should never become an obstacle to peace and reconciliation. ICC's intervention should not negatively impact the realization of peace in time of conflict.

Our future challenge is how to use the Rome Instrument and its legal framework *-which have been broadly welcomed and accepted within the international community-* to apply international criminal law in such a way that justice, peace and reconciliation are mutually reinforcing, since at the end of the day it should be all about justice, the peaceful coexistence and development of our peoples and communities.

I thank you most respectfully for your attention.



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67<sup>e</sup> session de l'Assemblée générale  
Plénière

**Rôle de la justice pénale internationale  
dans la réconciliation**  
Role of International Criminal Justice in Reconciliation

New York, le 11 avril 2013

S.E. M. Paul Seger  
Représentant permanent de la Suisse

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Monsieur le Président,

Si nous apprécions la tenue d'un débat sur le rôle de la justice pénale internationale dans la réconciliation, nous tenons aussi à exprimer notre inquiétude concernant la date retenue pour la présente discussion ainsi que les modalités de sa préparation. Notre inquiétude s'est confirmée hier. Nous espérons que le débat d'aujourd'hui se déroulera dans un esprit plus constructif et dans une perspective orientée vers l'avenir afin de promouvoir la justice pénale internationale et la réconciliation.

Monsieur le Président,

Concernant le sujet dont il est question aujourd'hui, nous tenons à souligner que les tribunaux pénaux internationaux créés par le Conseil de sécurité de l'ONU en 1993 et en 1994 en réaction aux atrocités perpétrées en ex-Yougoslavie et au Rwanda, ainsi que les autres tribunaux ad hoc, ont apporté une contribution fondamentale au développement de la justice pénale internationale. Si ces institutions ne sont pas sans failles, elles ont apporté justice aux victimes et montré la nécessité de la reddition des comptes. Il s'agit là en effet du fondement essentiel de toute réconciliation et de toute paix durable. A ce propos, je tiens à exprimer le désaccord de ma délégation avec la présentation qui a été faite hier dans le discours du Président de la République de Serbie sur le travail du Tribunal pénal pour l'ex-Yougoslavie et les événements douloureux qui ont mené à son établissement. Nous notons également avec regret qu'il y avait d'autres interventions assez préoccupantes pendant la journée.

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Monsieur le Président

La Cour pénale internationale constitue la clé de voûte de la lutte contre l'impunité. La CPI est la seule institution de justice pénale internationale permanente, établie par un traité international et formellement reconnue par presque deux tiers des Etats membres de l'ONU. Il s'agit également de la seule institution qui s'inscrit dans un cadre légal prédéfini, dispose d'un personnel hautement qualifié et bénéficie de financements assurés. C'est pourquoi la CPI est aussi la seule institution internationale capable d'enquêter de manière rapide, crédible et efficace, et de poursuivre les violations graves des droits de l'homme et du droit international humanitaire.

Monsieur le Président,

L'existence même de la CPI est la preuve que nous possédons les moyens de lutter contre l'impunité. Toutefois, les institutions de justice pénale internationale ne peuvent être efficaces que si elles peuvent s'appuyer sur un soutien politique et diplomatique solide. Les Etats devraient en faire davantage pour soutenir la CPI, en particulier concernant l'arrestation et la reddition des fugitifs. Il est également essentiel que nous respections entièrement les décisions rendues, même si nous ne les approuvons pas toutes. En mettant en doute la capacité des institutions judiciaires à prendre des décisions de manière indépendante, nous sapons le processus judiciaire dans son essence. Nous risquons ainsi de manquer à l'obligation qui nous incombe d'assurer aux victimes le droit à la justice et de leur permettre d'obtenir satisfaction.

Par ailleurs, les Nations Unies peuvent et devraient s'engager davantage pour soutenir la justice pénale internationale. En particulier, il est nécessaire que le Conseil de sécurité établisse une politique cohérente en ce qui concerne les résolutions déférant des situations et assure un suivi effectif à de telles décisions. C'est dans cette perspective qu'il convient de considérer notre demande adressée au Conseil de sécurité de déférer la situation en Syrie à la CPI, demande qui est soutenue par plus de 60 Etats. Par ailleurs, la mise en place de la politique relative aux « contacts essentiels » nécessite, elle aussi, des améliorations.

Monsieur le Président,

La justice pénale internationale est un défi. La Suisse aimerait souligner deux enseignements importants que nous pouvons tirer de ces vingt dernières années:

*Premièrement*, la justice seule ne suffit pas pour obtenir la réconciliation et la satisfaction des besoins essentiels des victimes. Selon les principes de la lutte contre l'impunité, réaffirmés par le Conseil des droits de l'homme de l'ONU, le traitement du passé doit intégrer le droit des victimes à la vérité, aux réparations et la garantie de non-répétition afin d'être efficace. La réconciliation est un processus qui doit se dérouler sur les plans individuel et collectif, et la justice ne constitue ni un raccourci pour y arriver, ni une garantie de réussite. Toutefois, l'absence de justice est clairement la garantie que les antagonismes perdureront.

*Deuxièmement*, la justice pénale au niveau international est par nature complémentaire ; la reddition des comptes relève avant tout de la compétence des Etats. Tous les tribunaux ad hoc ont été créés parce que les autorités nationales concernées étaient incapables de poursuivre les auteurs présumés ou ne voulaient pas agir. La CPI ne peut d'ailleurs intervenir que dans ces cas de figure. La justice pénale internationale ne peut que poursuivre les auteurs qui portent la plus grande responsabilité pour les crimes exceptionnellement graves, en particulier les hauts fonctionnaires qui ont donné l'ordre d'exécuter ces crimes ou les ont tolérés, et elle ne devrait pas aller au-delà de ce rôle.

Monsieur le Président,

Les tribunaux créés par la communauté internationale ont rendu des jugements fondamentaux revêtant une importance cruciale pour les victimes de crimes odieux. Ils ont ainsi assuré que justice soit rendue et ouvert la voie à la réconciliation. Afin d'améliorer l'efficacité de la justice pénale internationale, nous devons renforcer et intensifier notre soutien à ce but commun.

Je vous remercie.

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*Unofficial translation*

Mr. President,

As much as we welcome a debate on the role of international criminal justice in reconciliation we must also voice our concern about the choice of the date for today's discussion, and the manner in which it has been prepared. Our concern has been confirmed yesterday. We hope that today's debate will take place in a more constructive and future-oriented manner with the perspective to promote international criminal justice and reconciliation.

Mr. President,

On the subject matter for today, we would like to emphasize that the two international criminal tribunals created by the UN Security Council in 1993 and 1994 as a reaction to the atrocities committed in the former Yugoslavia and Rwanda as well as other *ad hoc* tribunals have made a fundamental contribution to the development of international criminal justice. While not perfect institutions, they have brought justice to victims and they have highlighted the necessity of accountability as an essential building block of reconciliation and lasting peace. In this regard, I wish to express my delegation's disagreement with the statement that was made yesterday in the speech of the President of the Republic of Serbia on the work of the International Criminal Tribunal for the former Yugoslavia and on the painful events that led to its establishment. With regret, we also take note of other rather worrying interventions during the day.

Mr. President,

The International Criminal Court is the centrepiece of the fight against impunity. The ICC is the only institution of international criminal justice that is permanent, established by an international treaty, and formally recognized by almost two thirds of all UN Member States. It is the only institution that can rely on a pre-defined legal framework, highly qualified personnel and secure funding. Therefore, the ICC is the only international institution that is capable of promptly, credibly and effectively investigating and prosecuting severe violations of international human rights and humanitarian law.

Mr. President,

The existence of the ICC proves that we do have the means to fight impunity. However, institutions of international criminal justice can only be effective with robust political and diplomatic backing. States should do more to support the ICC, in particular by arresting and surrendering fugitives. It is also crucial that we fully respect judicial decisions, even when we do not agree with all of them. By casting doubt on the credibility of judicial institutions to reach independent decisions, we undermine the judicial process itself and thus fail in our obligation to ensure the right to justice and to provide satisfaction to victims.

Furthermore, the United Nations can and should do more to support international criminal justice. In particular, a consistent referral policy and an actual follow-up to referral resolutions by the Security Council are necessary. Our call on the Security Council to refer the situation in Syria to the ICC, which is supported by more than 60 States, must be seen in this light. Within the UN, another field that needs improvement is the effective implementation of the "essential contacts policy".

Mr. President,

International criminal justice is a challenge. Switzerland would like to mention two important lessons learnt from the last twenty years:

*First*, reconciliation and the satisfaction of the essential needs of victims cannot be achieved by judicial means alone. According to the principles against impunity reaffirmed by the UN Human Rights Council, effective dealing with the past must also include the right of victims to the truth, to reparations and guarantees of non-recurrence. Reconciliation is a process that must take place on an individual and a collective level and justice is no shortcut or guarantee for it. However, let us also be clear that the absence of justice is a guarantee for continued antagonism.

*Second*, criminal justice at the international level is complementary; accountability must primarily be ensured at the national level. All *ad hoc* tribunals were created because the national authorities concerned were unable or unwilling to prosecute the alleged perpetrators, and the ICC can only intervene in this scenario. International criminal justice can and should do no more than prosecute the worst crimes by the perpetrators with the greatest responsibility for them, especially senior officials who ordered or tolerated the commission of the crimes.

Mr. President,

The courts created by the international community have passed fundamental judgments of great importance to victims of heinous crimes, and have thereby provided justice and paved the way to reconciliation. To enhance the effectiveness of international criminal justice, we must intensify our support for this common goal.

Thank you.

بيان وفد الجمهورية العربية السورية  
أمام النقاش الذي تجريه الجمعية العامة حول  
"دور العدالة الجنائية في المصالحة"

السيد الرئيس،

اسمحوا لي أن أتوجه إلى معالي السيد "فوكيريمتش"، رئيس الجمعية العامة، بالشكر على المبادرة لتنظيم هذا النقاش الهام الذي يمثل فرصة لتجديد الالتزام بالعدالة والتأكيد على أهمية المصالحة.

وإن وفد بلادي، الجمهورية العربية السورية، يود التأكيد على النقاط التالية:

- إن المسؤولية الأساسية في المساءلة وإقامة العدل تقع على عاتق الدول المعنية ذاتها.
- إن العدالة يجب أن تكون شاملة وبعيدة عن التسييس والانتقائية وازدواجية المعايير، وبالتالي فإن الحديث عن العدالة الجنائية الدولية يقتضي التأكيد على أهمية محاسبة المسؤولين في حكومات الدول التي تقوم بالتحريض على العنف وبتفتنة التي تؤدي إلى إزهاق أرواح السوريين، كما أنه لا بد من مساءلة ومحاسبة المسؤولين في حكومات الدول التي تقوم بتمويل وتسليح وتدريب وتسهيل عبور المرتزقة والإرهابيين القادمين من مناطق مختلفة من العالم لارتكاب الجرائم الإرهابية والتفجيرات الانتحارية وممارسة القتل والتدمير في سوريا.

إن ممارسات هذه الحكومات تستهدف الشعب السوري كله ومؤسسات الدولة والمرافق الحيوية الأساسية لمعيشة الشعب السوري علاوة عن الممتلكات الخاصة.

وبالأمس أكد التقرير النهائي لفريق الخبراء المنشأ عملاً بقرار مجلس الأمن رقم 1973 لعام 2011 أن العتاد العسكري يتم نقله من ليبيا إلى سوريا عبر شبكات وطرق مختلفة وبمعرفة حكومات دول، وأضاف التقرير أن الجمهورية العربية السورية



أصبحت مقصداً بارزاً للمقاتلين الليبيين. هذا غيظ من فيض تحفل به وتؤكدته تقارير صادرة عن الأمم المتحدة وغيرها، أفلا يقتضي هذا مساءلة الدول المتورطة في إرسال السلاح والمرتزة والمتطرفين إلى سوريا؟

السيد الرئيس،

إنه من غير المقبول إساءة استخدام مفاهيم نبيلة كـ "العدالة" لخدمة أهداف سياسية وأجندات مشبوهة تجعل من مثل هذه القيم السامية مثار تضارب في الرؤى بدل أن تكون محل إجماع. ومن غير المقبول أيضاً التغاضي عن ممارسات دول وجرائم عدوان مؤكدة وكيل الاتهامات لدول أخرى. كما أنه من غير المنطقي أن تتخذ دولة وديعة لاتفاقيات جنيف مواقف تخدم أجندات مشبوهة تتعارض مع ما يتوجب على هذه الدولة اتخاذه من مواقف بناءة، ومن المستهجن أن يتم إزهاق أرواح سوريين بأسلحة (قنابل) صنعت في سويسرا الدولة الوديعة لاتفاقيات جنيف، وهذا وفقاً لما أكدته صحيفتي LE MatinDimanche و Sontag Zeitung السويسريتين.

أما بالنسبة لما طرحه مندوب ليختنشتاين، والذي تحدث من برج عاجي ومن دون أن يدرك مشاغل السوريين، فإنني أدعوه للاطلاع على قراري مجلس الأمن 2042 و 2043 وعلى مضمون بيان جنيف، والتي تؤكد على "العملية السياسية بقيادة سورية"، وعلى احترام إرادة الشعب السوري. ومن المستغرب أن يتحدث مندوب ليختنشتاين عن أمور داخلية تتعلق ببلادي، سوريا، دون أن يتحمل عناء النظر ولو بشكل سطحي إلى العملية التي تم من خلالها تشكيل ما يسمى بحكومة المعارضة التي أشار إليها والتي لا تمثل الشعب السوري بل إنها لا تمثل حتى المعارضة.

ويشدد وفد بلادي على أنه من المفترض التحدث، داخل أروقة الأمم المتحدة على الأقل، بطريقة تنسجم مع أحكام الميثاق والقانون الدولي، فالشعب السوري هو الوحيد المخول باختيار قيادته، ولا يمكن لأي شعب القبول بحكومة مصنعة ومفروضة من الخارج، ويعرف رئيسها عن دول أخرى أكثر مما يعرف عن بلاده.

السيد الرئيس،

إن التعامل بانتقائية مع الأحداث الجارية في بلادي وبطريقة تحمل الحكومة السورية وحدها المسؤولية الكاملة عن تلك الأحداث، وتجاهل الجرائم التي ترتكبها المجموعات الإرهابية المسلحة والمرترقة وعملاء دول أخرى، يبرز الازدواجية التي يمارسها البعض في المحافل الدولية. كما أن استغلال المعاناة الإنسانية للمواطنين السوريين لتبرير انتهاك السيادة وإسباغ الشرعية على أفعال تناقض ميثاق الأمم المتحدة وقراراتها وترسي سوابق خطيرة في العلاقات الدولية هو أمر غير مقبول.

ويؤكد وفد بلادي مجدداً لجميع الدول التي تدعي الحرص على سوريا وشعبها، أن الطريق لمساعدة الشعب السوري واضح ومعروف، ويتمثل في بذل الجهود الصادقة والجدية لوقف العنف، ودعم جهود الممثل الخاص للأمم المتحدة الأخضر الإبراهيمي، وخلق الظروف الملائمة للحوار الوطني الشامل الذي يمكن السوريين من التعبير عن إرادتهم بأنفسهم وصنع مستقبلهم بأنفسهم عبر صناديق الاقتراع وبعيداً عن الفرض والأجندات الخارجية المشبوهة.

وشكراً السيد الرئيس.



# TRINIDAD AND TOBAGO

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## STATEMENT

by

**H.E. Rodney Charles  
Ambassador**

**Permanent Representative of the Republic of  
Trinidad and Tobago to the United Nations**

in the

**Thematic Debate Entitled**

**ROLE OF INTERNATIONAL CRIMINAL JUSTICE**

**IN RECONCILIATION**



**United Nations Headquarters  
Thursday 11<sup>th</sup> April, 2013**

Mr. President,

The General Assembly, as the most representative organ of the United Nations, is best placed to assume a leadership role in all efforts aimed at promoting peace and security, development and respect for the rule of law at the global level. These noble objectives cannot be achieved in the face of conflict and other activities which often lead to the commission of grave crimes of concern to the international community, such as genocide, war crimes and crimes against humanity.

International criminal justice is therefore concerned with the effective prosecution of the perpetrators of those crimes so that they do not go unpunished, thereby resulting in impunity.

Mr. President,

Today's debate represents a golden opportunity for us to reflect on the role of those international criminal tribunals, ad hoc, as well as permanent, since the Nuremburg and Tokyo Tribunals were established in the aftermath of the Second World War. After almost two decades since the Security Council created the International Criminal Tribunal for The Former Yugoslavia (ICTY) to prosecute crimes committed on that territory, we have not only witnessed a significant measure of reconciliation in that region, but we have also observed the successful prosecution of numerous criminals who committed for example, grave breaches under the Geneva Conventions, as well as customary international law. By bringing the perpetrators of these crimes to justice, the international community has prevented the development of a culture of impunity for these criminals whose actions shocked the conscience of all humanity. It is also true to say that their prosecution has also served as a deterrent to others who may have had designs to commit similar breaches of the law.

We must also recall Mr. President, the contribution of all of those States which signed agreements with the United Nations to carry out custodial sentences. These developments served to reinforce, the important role that individual countries can play in the promotion of international criminal justice.

The international community also recognized that atrocities which occurred in Rwanda in 1994, should not go unpunished. Consequently, acting under Chapter VII of the Charter of the United Nations, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) pursuant to resolution 955. We applaud the work of the ICTR in bringing to justice individuals responsible for genocide and other serious violations of international humanitarian law. It is also evident, that the work of the Tribunal has contributed to the process of national reconciliation in Rwanda.

Mr. President,

Both the ICTY and ICTR have ensured that a culture of accountability must replace one of impunity for all those criminals who showed flagrant and violent disregard for the human rights of thousands of hapless victims. The Tribunals have also, among other things, allowed

thousands of victims to have a voice in the prosecution of those responsible for the use of, for example, children as soldiers, the use of rape as a tool of war, and other dastardly acts.

As the work of these Tribunals draws to a close, Member States must also ensure that the International Residual Mechanism ("the Mechanism") is provided with adequate resources as it moves to take up the residual work of both ad hoc tribunals. The proper enabling environment must be provided for the Mechanism to conduct its work in order to safeguard the rights of the accused as well as of the victims.

Mr. President,

The promotion of International Criminal Justice is not the sole domain of the UN. Each State must be mindful of its obligations to assist the community of nations in promoting peace and security, as well as to ensure that their citizens live in larger freedom. I am therefore proud of the pioneering work of my own country in the establishment of the International Criminal Court (ICC) as a vehicle to promote international justice as well as peace and security.

Since its establishment as a court whose jurisdiction can only be exercised when national courts, are unwilling or unable to investigate or prosecute; genocide, war crimes, crimes against humanity and the crime of aggression; the ICC has gained the confidence of a large cross section of the international community.

Mr. President,

After a decade of work, and despite its detractors, it is difficult to deny that the ICC has lived up to its mandate under the Rome Statute as a beacon of hope to all those victims of heinous crimes who are seeking justice against those who commit breaches of international humanitarian law and international human rights law. During this period, the ICC has made significant strides in its investigative, prosecutorial and judicial work.

Trinidad and Tobago also recognizes that in keeping with the relevant provisions of the Rome Statute, the ICC has also assisted the United Nations in bringing to justice, through referrals by the Security Council, individuals who have committed crimes within the jurisdiction of the Court.

At the same time, we also submit that if justice is to be dispensed effectively and impartially, the ICC must be provided with the requisite resources in order to effectively discharge its functions. While we acknowledge the obligations of States Parties to the Statute to finance the operations of the Court, we are also mindful of Article 115, paragraph (b) of the Statute which identifies funds of the Court as including: *"Funds provided by the United Nations subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council."* Now is an opportune moment for the Court and the United Nations to engage in some form of dialogue on this subject in order to address this matter of funding so that the ICC would have the adequate resources to discharge its mandate.

Mr. President,

The ICC is a unique institution in many respects. This situation is partly due to its reliance on the cooperation of States Parties, other States as well as intergovernmental organizations to efficiently carry out its work. Consequently, Trinidad and Tobago is also hopeful that there would be increased cooperation with the Court, especially with regard to the execution of outstanding arrest warrants so that those individuals who continue to evade justice would be brought to trial.

Trinidad and Tobago also recognizes the importance of bringing to justice those individuals who commit the crime of aggression. For this reason, we have ratified the Kampala amendments relating to this crime. Trinidad and Tobago therefore urges all States Parties which have not ratified these amendments to the Rome Statute to do so in order to permit their entry into force.

We also call upon all those States which are not parties to the Rome Statute to accede to this important instrument. Such actions would not only assist in promoting the universality of the Statute, but it would also ensure that the provisions of the Rome Statute are incorporated in the domestic law of these States thereby ensuring that there is prosecution for the most serious crimes of concern to the international community.

Mr. President,

Twenty years after the establishment of the ICTY and ICTR, ten years after the commencement of operations of the ICC, in addition to the creation of other ad hoc and hybrid tribunals, such as the Special Court for Sierra Leone, we have witnessed the enrichment of international criminal jurisprudence. Additionally, several concepts in international criminal law which have not been adjudicated on since the Nuremburg trials have been reinforced or amplified.

The international community has also been able to successfully prosecute many individuals, including former presidents, who were unable to use sovereign immunity as a defense. This is the hallmark of international criminal justice, where no one is deemed to be above the law.

As we move forward to the next era, we must not only preserve the achievements which we have made, but the UN must also continue to be proactive in promoting international criminal justice as means to protect the vulnerable from falling prey to unimaginable atrocities of those who have no regard for the sanctity of human life.

I thank you.



# URUGUAY

INTERVENCIÓN DEL

**Sr. EMBAJADOR JOSÉ LUIS CANCELA**

**REPRESENTANTE PERMANENTE DEL URUGUAY  
ANTE LAS NACIONES UNIDAS**

**DEBATE TEMÁTICO  
SOBRE  
EL ROL DE LA JUSTICIA PENAL INTERNACIONAL  
EN LA RECONCILIACIÓN**

ASAMBLEA GENERAL

*NUEVA YORK, 10 DE ABRIL DE 2013  
(Cotejar con texto leído)*

Sr. Presidente,

En primer lugar, deseo expresar mis felicitaciones al señor Presidente de la Asamblea General por proponer una serie de debates temáticos, en el entendido de que los mismos contribuirán a crear mayor conciencia sobre temas de radical importancia para la comunidad internacional.

En cuanto al debate que nos congrega hoy, señalamos que Uruguay se asocia a la intervención realizada por Costa Rica en nombre de los países parte del Estatuto de Roma de mi región, y en su capacidad nacional quisiera comenzar por reconocer que en los últimos veinte años se ha procedido a avanzar en forma sustantiva en la creación de conciencia en la comunidad internacional, sobre la importancia de la justicia penal internacional y sus efectos en las sociedades actuales.

A su vez, la reconciliación es un valor fundamental sin el cual dichas sociedades no podrían aspirar a una convivencia pacífica sostenible. Esta reconciliación debe estar enfocada en una visión de futuro pero basada en la búsqueda de la verdad y la reparación a través de la justicia y el imperio de la ley.

Señor Presidente,

Es una gran satisfacción para los países como el nuestro que han apostado desde siempre a la primacía del Estado de Derecho en el ámbito nacional e internacional, observar la variedad de tribunales penales *ad hoc* existentes y en particular el salto cualitativo producido en el establecimiento de la Corte Penal Internacional, así como la vitalidad de los instrumentos regionales como la Comisión y la Corte Interamericana de Derechos Humanos. Estos desarrollos, sumados a otros como la aplicación de la protección de civiles y el concepto de responsabilidad de proteger, nos demuestran que la sociedad internacional ha reconocido y asumido que las violaciones graves a los derechos humanos y al derecho internacional humanitario, ya no pueden quedar impunes y constituyen un avance civilizatorio de amplio alcance en la conciencia jurídica y ética de la comunidad internacional.



En tal sentido, el más firme cumplimiento de las normas que rigen los tribunales penales internacionales y las garantías del debido proceso legal, así como los principios del derecho penal internacional, son valores que deben ser seguidos y respetados estrictamente; ya que los mismos garantizan que el sistema de justicia penal internacional se identifique con el valor intrínseco y primordial de la justicia y por ende de la paz entre los pueblos del orbe.

Señor Presidente,

Es en ese contexto que nos permitimos destacar que la cooperación penal internacional desde su aproximación más laxa propuesta unilateral y voluntariamente por las legislaciones nacionales, hasta la convenida a través de los tratados internacionales, ha contribuido a darle viabilidad al sistema penal internacional. Razón por la cual debe ser cumplida y respetada sin que componentes de índole político o de otra clase permitan desatender la misma.

Como país miembro y fundador del Estatuto de Roma que establece la Corte Penal Internacional, abrigamos la esperanza que paulatinamente los tribunales *ad hoc* vayan cumpliendo su cometido y en un futuro no lejano sea la Corte la institución permanente y universalmente reconocida para conocer en los crímenes de su competencia.

Para concluir señor Presidente, me permito señalar que sin dudas la reconciliación es un valor fundamental sin el cual los pueblos y sociedades no podrían aspirar a una convivencia pacífica sostenible. Sin embargo, es importante tener en cuenta que cada sociedad, cada situación, inclusive cada ser humano, concibe la reconciliación a su manera.

Se trata de un concepto que puede albergar diversos significados, pero que necesariamente debe contener algunos componentes básicos, como la búsqueda de la verdad y la aplicación de justicia sin doble raseros, elementos ineludibles sin los cuales difícilmente se puedan cerrar las heridas abiertas por no respetar los derechos más básicos de las personas reconocidos internacionalmente.

Muchas gracias.-



**REPÚBLICA BOLIVARIANA DE VENEZUELA**  
**MISIÓN PERMANENTE ANTE LAS NACIONES UNIDAS**

**EL PAPEL DE LA JUSTICIA PENAL INTERNACIONAL EN LA  
RECONCILIACIÓN**

**DEBATE TEMÁTICO**  
**ASAMBLEA GENERAL DE LAS NACIONES UNIDAS**

**NUEVA YORK, 10 DE ABRIL DE 2013**

**Sr. Presidente,**

La República Bolivariana de Venezuela da la bienvenida a su iniciativa de realizar un debate temático sobre “El papel de la justicia penal internacional en la reconciliación”. Este tema debe ser abordado de manera abierta e inclusiva y con la participación de países de todas las regiones del mundo.

Sr. Presidente,

Los principios que inspiraron los juicios de Nuremberg tuvieron una relevancia fundamental en la conformación del Derecho Penal Internacional.

La resolución 95 (I) de la Asamblea General de las Naciones Unidas, de 11 de diciembre de 1946, reconoció los principios formulados en las sentencias del Tribunal de Núremberg y solicitó la redacción de un "Código Criminal Internacional", que concretara los delitos contra la paz y seguridad de la humanidad. Poco después se planteó la creación de un Tribunal Permanente, pero los trabajos quedaron finalmente paralizados.

La idea del Derecho Penal Internacional se reactivó en la última década del siglo XX. En 1993, el Consejo de Seguridad de las Naciones Unidas acuerda crear un Tribunal Penal Internacional para la ex Yugoslavia y en 1994, el genocidio de Ruanda provocó que se aprobara también la constitución del Tribunal Penal Internacional para Ruanda. En 1998 se firma el Estatuto de Roma, que crea la Corte Penal Internacional (CPI).

La República Bolivariana de Venezuela contribuye con los Tribunales Penales Internacionales y es signataria del Estatuto de Roma. Mi país reconoce el importante trabajo que llevan a cabo estas instituciones en el procesamiento de aquellos individuos culpables de genocidio, crímenes de guerra y crímenes de lesa humanidad, así como a la promoción de la justicia y el desarrollo del derecho internacional, a través de la elaboración de normas jurídicas de derecho penal y procesal penal internacional. Al mismo tiempo, considera que el papel de la justicia penal

internacional, en particular de la Corte Penal Internacional, en la promoción de la reconciliación, puede mejorar.

Sr. Presidente,

La Corte Penal Internacional suscitó grandes expectativas en la comunidad internacional en tanto que un instrumento para el logro de la paz alrededor del mundo. Mi país se encuentra entre aquellos que mantiene fe en esta novedosa institución.

El papel de la Corte como instrumento para la paz y la reconciliación es factible de ser mejorado. La Corte debe lograr conjugar mecanismos como, por ejemplo, comisiones de la verdad, con enjuiciamientos penales, de forma tal que se garantice que la reconciliación nacional al tiempo que se previene la impunidad. Los procesamientos penales y la reconciliación son elementos necesarios, que deben ir de la mano, para alcanzar la paz.

En los últimos veinte años, muchos países que estaban divididos por diferencias étnicas o políticas, han alcanzando la paz a través de la reconciliación.

La reconciliación permite a las sociedades avanzar en el camino de la unidad y abre la posibilidad de que se logre la justicia. Estas consideraciones no disminuyen el importante papel de la Corte Penal Internacional.

Los procesos de reconciliación nacional, concebidos como parte de un proceso global que incluye, entre otros, el conocimiento de los hechos, la reparación a las víctimas y la administración de la justicia, constituyen indudablemente factores positivos para el logro de la paz.

Sr. Presidente,

La Justicia Penal Internacional no debe convertirse en catalizador de divisiones. Ella debe ser ejercida de manera ejemplar, conforme a los más altos estándares de independencia e imparcialidad.

La inhibición de la Corte Penal Internacional, en algunos casos, y la frenética actividad, en otros casos, dependiendo de las circunstancias políticas, debilitan la credibilidad de la justicia penal internacional.

En 2003 Afganistán firmó el Estatuto de Roma, pero lo allí ocurrido no ameritó, a juicio del Fiscal Ocampo, ni siquiera una investigación. Mientras que, en el calor de la invasión a Libia, el mismo Fiscal Ocampo se movió con abismal rapidez para procesar a los líderes políticos libios. En este caso su competencia le había sido otorgada por el Consejo de Seguridad y estaban involucrados los intereses de grandes potencias occidentales. No encontró ninguna razón para siquiera investigar los crímenes de guerra cometidos por las milicias rebeldes a pesar de las abundantes evidencias.

Esta forma de ejercer selectivamente la justicia habla de la necesidad de poder contar con un sistema penal internacional realmente objetivo, y exento de la influencia de las grandes potencias.

Sr. Presidente,

La República Bolivariana de Venezuela reitera su compromiso con los tribunales penales internacionales y la Corte Penal Internacional y deposita en la nueva Fiscal de la Corte, la Dra. Fatou Bensouda de Gambia, sus más sinceras esperanzas de que conducirá sus labores, en consonancia con los más altos estándares de independencia e imparcialidad.

Muchas gracias.