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UN Office of High Commissioner for Human Rights

SEMINAR ON THE PREVENTION OF GENOCIDE

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Opening Remarks
by

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High Commissioner for Human Rights

Excellencies,
Dear Friends and Colleagues,
Ladies and Gentlemen,

Introduction

I am pleased to host this seminar in commemoration of the 60th anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. This expert meeting takes place in the context of the Human Rights Council's request (resolution 7/25) which asked my office to organize a seminar on the prevention of genocide.

The issues of prevention and implementation of the Convention are key priorities of my Office. I welcome Ambassador Erlinda Basilio, the Vice President of the Human Rights Council who is with us today. I also welcome my friend and colleague, Francis Deng, the Secretary-General's Special Advisor on the Prevention of Genocide, as well as the experts and panelists who will contribute to our discussion. I wish to extend my greetings to the representatives of governments and civil society who joined us.

The Genocide Convention was the first human rights treaty adopted by the United Nations on 9 December 1948. Followed one day later by the Universal Declaration of Human Rights, both instruments were a response to the horrors of World War II and the Holocaust. They were adopted with the vision of preventing the most heinous crimes from being perpetrated again.

Legal and Judicial Mechanisms

The first segment of our meeting will focus on the legal and judicial mechanisms for the punishment and prevention of genocide. As you know, "genocide" is a specific crime encompassing certain enumerated acts committed with the intent to destroy, in whole or in part, a group.

The Convention enumerates four discriminatory grounds, namely national, ethnic, racial, or religious. This was appropriate in 1948. In time, however, the shortcomings of the definition became apparent. For instance, political and ideological grounds, which were the feature of the crimes committed by the Cambodian Khmer Rouge, are not covered in the genocide Convention's definition.

Crimes against Humanity

The international community has focused on crimes against humanity as a way of filling the legal gap in the definition of genocide in the Convention, so that the implementation mechanisms could be used in a broader spectrum of cases.

The establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda in 1993 and 1994 by the UN Security Council, and a number of hybrid courts helped to narrow this legal gap, which was finally addressed in full in 1998 with the creation of the International Criminal Court for the prosecution of genocide, crimes against humanity and war crimes.

With these developments in mind, the law establishing the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea in 2004 included not only the crime of genocide, but also crimes against humanity and war crimes in that Court's mandate. This inclusion prevented the characterization of the crimes committed in Cambodia from falling into a legal limbo.

To date, there are 140 State Parties—and 41 States as signatories—to the Convention on the Prevention and Punishment of the Crime of Genocide. I take this opportunity to call on all States that have not done so, to immediately ratify or accede to the Convention. States must also establish an appropriate framework for its implementation.

National Legislation

Under the Convention, the Contracting Parties pledge to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in the Convention. The Convention also requires that persons charged with genocide or any of the other acts it enumerates shall be tried by a competent tribunal of the State in the territory where the act was committed, or by an international penal tribunal. The Convention also underscores that genocide and the other acts it enumerates shall not be considered as political crimes for the purpose of extradition and requires States to grant extradition in accordance with their laws and treaties in force. Significantly, the Convention empowers any Contracting Party to call upon the competent organs of the United Nations to take such action under the Charter of the United Nations, as they consider appropriate, for the prevention and suppression of acts of genocide or any of the other acts enumerated in the Convention.

The Human Rights Approach

The human rights approach to preventing genocide should start with a focus on its primary cause: the systematic de-humanization of communities that leads to discrimination and violence. In this context, it should be recognized that discrimination is one of the major ills of our time. Systematic and harmful discrimination against certain groups lays the ground for their exposure to violence. This in turn, may lead to persecution, mass atrocities and even extermination. Witnesses before the Rwanda Tribunal testified that

discriminatory propaganda against the Tutsi population was like drops of petrol that soon set the whole country alight.

Allow me to underscore, in this context, that prohibited grounds of discrimination are listed in the Universal Declaration of Human Rights, as well as several human rights treaties. These encompass discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. You will note that the prohibited grounds of discrimination are much wider than those envisaged by the genocide Convention and should inform our discussion on prevention of genocide.

Implementation of the Convention

The genocide Convention provides for implementation by way of the exercise of jurisdiction by the International Court of Justice, as well as criminal prosecution through international tribunals.

The ICTY, the ICTR and the ICC represent a solid international judicial system for prosecuting, establishing individual criminal responsibility and punishing genocide, crimes against humanity and war crimes. To date, 108 States have ratified the ICC statute. We need to continue to press for universal ratification and for the full cooperation of States with the Court. Such cooperation is not only indispensible for the effectiveness of the Court, but also to ensure that its potential for deterrence—and thus prevention—is also strengthened. A key measure for the prevention of genocide is to ensure an end to impunity for genocidal acts.

In particular, those in positions of leadership, who were most responsible for genocide, must be made accountable. The International Criminal Tribunal for Rwanda—where I served as a trial judge and President—successfully prosecuted political and military heads: the Prime Minister of the interim government was convicted and sentenced to life imprisonment. Moreover, the Tribunal delivered some 30 judgements against ministers of government, prefects and military leaders. On 18 December 2008, the Trial Chamber convicted three senior army officers in another landmark case.[1]

The *Akayesu Case*[2] decided by the ICTR in 1998 was the first in which an international tribunal was called upon to interpret the definition of genocide under the Convention for the Prevention and Punishment of the Crime of Genocide. Akayesu, Mayor of the city of Taba in 1994, had not personally carried out any acts of killings or rape, but was convicted of ordering Hutu militias to kill and rape the Tutsi ethnic group.

[1] *The Prosecutor v. Théoneste Bagosora et al.,* Case No. ICTR-98-41-T
[2] *The Prosecutor of the Tribunal v. Jean Paul Akayesu, Case No: ICTR-96-4-T*

The case established that rape may constitute genocide if committed with intent to destroy a particular group. In this instance, Tutsi women alone were targeted for rape.

Another significant case decided by the ICTR in 2003 concerns three media executives who were convicted of genocide, incitement to genocide, conspiracy, and extermination and persecution as crimes against humanity. Known as the "*Media Case"*[3] , this was the first judgment since the conviction of Julius Streicher at Nuremberg after World War II in which the role of the media was examined in the context of international criminal justice. In the *Media Case,* the Tribunal considered that "hate speech that expresses ethnic and other forms of discrimination violates the norms of customary international law prohibiting discrimination".

Allow me to conclude this part of my discussion by noting the significant contribution made by the International Criminal Tribunal for the Former Yugoslavia. In April 2004, the ICTY judged that the 1995 Srebrenica massacre was genocide. In the case of Krstić, the Court considered the words "part of the group." Mr. Krstic was alleged to have intended to destroy not the entire national group of Bosnian Muslims, but only a part of that group. The ICTY stated that "the aim of the Genocide Convention is to prevent the intentional destruction of entire human groups, and the part targeted must be significant enough to have an impact on the group as a whole."

The International Court of Justice was able to build on the ICTY jurisprudence when it ruled in February 2007 in the case of Bosnia and Herzegovina v. Serbia and Montenegro over a dispute related to the interpretation, application or fulfillment of the Convention. In its decision, the ICJ determined that Serbia had failed to prevent genocide in Srebrenica. In that landmark judgment, the ICJ established important legal criteria with regard to the duty to prevent genocide. It determined that the obligation to prevent "requires the States parties, inter alia, to employ the means at their disposal… to prevent persons or groups not directly under their authority from committing an act of genocide."

Dear Colleagues,

International tribunals are and should be regarded as mechanisms of last resort. The first recourse must be at the national level. States should establish appropriate legal and judicial systems to prosecute genocide crimes. But when national systems are unable or unwilling to investigate and prosecute international crimes including genocide, international justice must be activated. In this regard, I also wish to emphasize the importance of universal jurisdiction

[3] *The Prosecutor v. Jean-Bosco Barayagwiza, Hassan Ngeze and Ferdinand Nahimana Case no ICTR-99-52-T*

over crimes of genocide.[4] There are several cases, mainly in Europe, where national courts have exercised international jurisdiction in trying genocidaires.

Moreover, many countries around the world have enacted specific legislation to prosecute genocide and other international crimes, [5] particularly in the context of providing a legal framework to ensure the effective implementation of the Rome Statute of the International Criminal Court.

Reparations

An additional crucial element of this discussion concerns the right of victims to seek remedy and reparation. Under international law, gross violations of human rights and serious violations of international humanitarian law, including crimes of genocide, give rise to such a right. The leading opinion in this regard is set out in the often cited judgment of the Permanent Court of International Justice in the Chorzow Factory case.[6] Subsequently, the legal basis for a right to a remedy and reparation became firmly enshrined in the elaborate corpus of international human rights instruments and international criminal law, now widely accepted by States. This process culminated with the adoption by the UN General Assembly on 21 March 2006, of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation For Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law.* These principles and guidelines frame the right to reparation in a broad manner. Its substantive dimension can be translated into the duty to provide redress for harm suffered in the form of restitution, compensation, rehabilitation, satisfaction and, as the case may be, guarantees of non-repetition. Such duties and guarantees should be incorporated into national law and practice.

The Human Rights System in the Prevention of Genocide

Turning now to the second part of our meeting, let me point out that in 2004, the UN Secretary-General outlined a Five Point Action Plan to prevent genocide, which included the following: (a) preventing armed conflict, which usually provides the context for genocide; (b) protecting civilians in armed conflict; (c) ending impunity; (d) early and clear warning of situations that could potentially degenerate into genocide and the development of a United Nation's capacity to analyze and manage information; and (e) undertaking swift and decisive action along a continuum of steps, including military action.

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[4] Every State shall provide for universal jurisdiction over gross violations of human rights and humanitarian law which constitute crimes under international law. (Revised Set of Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law. UN Doc E7CN.4/Sub.2/1996/17 art.5)

[5] e.g. Article 3(2)(c), *International Crimes (Tribunal) Act 1972* of Bangladesh; Article 171, Criminal Code of Bosnia-Herzegovina (2003);

[6] The opinion stated: "*It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form."* (1927, (P.C.I.J. (Ser. A) No. 9 at p. 21.).

Subsequently, the Secretary-General appointed Francis Deng as his a special advisor on the prevention of genocide.

Concerning the early warning aspect of the Action Plan, I wish to underscore that the UN human rights system, particularly the UN treaty bodies and the Special Procedures, can and do provide useful information for the prevention of genocide. Let me take this opportunity to thank the Members of the Treaty Bodies and the Special Rapporteurs who are present here today. Their presence is testimony to their important contribution to the prevention of genocide.

I believe that a strong normative framework of international human rights law has been established and must inform our preventive strategies. Implementation, however, lags behind. It is important that there is dialogue amongst Member States in the context of the UN Human Rights Council regarding concrete measures that should be put in place to enhance protection. This dialogue should address the concerns identified by the independent experts of treaty bodies and Special Procedures who monitor States' human rights obligations and identify patterns of massive, serious and systematic violation of human rights. These experts can issue an early warning regarding human rights violations which carry the potential of leading to genocide. That was indeed the case when the former Special Rapporteur on summary and arbitrary executions foresaw mass killings in Rwanda before the genocide actually occurred.

Similarly, the committees established to monitor the implementation of the core human rights treaties are of fundamental importance to early warning. These treaty bodies' practice of periodically reviewing reports by States parties permits the continued monitoring of implementation of human rights standards. Furthermore, treaty bodies' recommendations provide useful guidance to States, UN agencies, civil society and other stakeholders. Some treaty bodies conduct field missions and offer mechanisms through which individual complaints of human rights violations may be made. The Concluding Observations of treaty bodies provide a fundamental link between the goals defined in international treaties and the evolving human rights situation in States Parties.

However, gaps in such monitoring result from a failure of some States parties to comply with their reporting obligations. In the absence of a report, treaty bodies strive to address such gaps through follow-up procedures and on the basis of information from other sources. In addition, one treaty body—the committee on the Elimination of Racial Discrimination—has developed an early warning and urgent action procedure for the prevention of gross violations that are brought to its attention.

This said, let me add that there is a clear need to make better use of UN human rights mechanisms. For example, they should be brought closer to the human

rights reality at a national level. In addition, their reports, conclusions and recommendations should inform more effectively and systematically relevant policies and decision-making structures at the national, regional and international levels. A coherent and collective approach to early warning would benefit from greater participation of these mechanisms. Greater advantage should be taken of their analyses, views and recommendations. Such an approach could also include the proactive engagement with Special Procedures and other, ad-hoc fact-finding mechanisms (such as those set up by the Human Rights Council) to ensure that emerging issues and early warning signs are duly taken into account and acted upon.

It is worth noting that the Outcome Document of the 2005 World Summit includes a section entitled, "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity". Under this heading, Member States stated that "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (paragraph 138). Member States recognized that the international community, through the United Nations, also has a responsibility to assist States to meet their protection obligations and to respond in cases of manifest failure (paragraph 139). Both paragraphs emphasize early warning, prevention and support from the international community in helping States to build their capacity to protect.

Distinguished Participants,

Let me conclude by underscoring again the need to attack genocide at its root-causes which often stem not so much from identity differences, but from structures and policies of marginalization, exclusion, and discrimination, as well as a denial of human rights, including economic, social and cultural rights.

I believe that we must all work together to achieve an environment of respect for equality and non-discrimination. This environment supported and bolstered by effective institutions of governance and judicial systems, can help to prevent genocide.

Thank you.