

**Security Council Open Debate on Security Council Open Debate on The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security and the Role of the ICC, October 17th 2012, Security Council Chamber**

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Allow me to start by thanking you, Sir, the Guatemalan presidency and the Security Council for convening this very important meeting, the first of its kind. This meeting comes at a very opportune time as the International Criminal Court (ICC) celebrates 10 years of existence. I would also like to convey, on behalf of the Prosecutor, Ms. Fatou Bensouda, her greetings and her apologies for not being here today.

The Office of the Prosecutor considers today's exchange with the Council to be crucial, given that both the Council and the Office of the Prosecutor are committed to preventing mass atrocities, which can constitute a threat to international peace and security. Indeed, this debate offers an opportunity to reflect on issues of mutual concern and interest between our two bodies. The Office of the Prosecutor welcome the concept note (S/2012/731, annex) circulated by the Guatemalan presidency in preparation for this meeting. The note clearly articulates some of the key principles regarding the relationship between the Security Council and the Court, and raises important points for discussion.

The respective mandates of the two bodies — the pursuit of individual criminal accountability and the pursuit of international peace and security — are at the heart of the relationship.

The significance of today's debate can thus not be overstated. As President Song has already mentioned, the Office of the Prosecutor is currently working on two situations referred by the Security Council to the Office of the Prosecutor — the situations in Darfur and in Libya.

We investigate war crimes, crimes against humanity and genocide in a number of countries that also have the close attention of the Security Council. At the same time, the Security Council is working on many issues that relate to the mandate of the Office of the Prosecutor, including, for instance, efforts to end the use of child soldiers, as was recently taken up by the Security Council in its open debate on children and armed conflict (S/PV.6838) and resolution 2068 (2012) adopted at that meeting, under the auspices of the German presidency. Those efforts coincide with the completion of the first ICC trial and its verdict on the use of child soldiers. Furthermore, the Security Council discusses issues of peace and security and authorizes peacekeeping missions in situations where the Office of the Prosecutor is operating. The Council is also addressing the link between sexual violence and conflict, and is monitoring new situations involving the alleged commission of massive crimes.

It is evident from the foregoing that the relationship between the Office of the Prosecutor and the Council could be nurtured and strengthened by extending our interaction beyond specific situations referred by the Council to the Prosecutor and by creating space for open discussions on thematic issues. Such dialogue is crucial, as both the Security Council and the Office of the Prosecutor are committed to preventing mass atrocities which constitute a threat to international peace and security.

The evolving relationship between the Council and the Court is not without complexities, given our different mandates and organizational structures. Allow me to highlight three areas, looking at them from the Office of the Prosecutor's perspective.

First, a key difference between our two organs is that the Security Council is a political body within the United Nations system, while the Office of the Prosecutor is an independent organ within an independent judicial institution, which has to adhere to clear legal criteria and jurisdictional boundaries at all times in order

to maintain its legitimacy and credibility. We are all too familiar with frequently raised concerns about the politics of case selection as a result of Security Council referrals. Incidentally, the same concerns can be raised with regard to State referrals.

What many forget or overlook is that for both types of referrals, the Rome Statute provides clear guidelines that protect the independence of the judicial process. The Rome Statute provides for a legal process for the preliminary examination, investigation and prosecution of situations referred by States or the Security Council, as well as for judicial review, during which situations may be rejected if they fail to satisfy statutory legal criteria for opening an investigation. Simply put, the Council may unilaterally trigger, but cannot impose acceptance of jurisdiction by the Office of the Prosecutor. Perceived or real political selectivity on the participation of the Council is further constrained because referrals encompass a situation rather than one or several particular suspects or groups.

It is important to underscore the need to respect the Office of the Prosecutor's independence at all times. Once the Security Council decides to refer a situation to the Prosecutor, the judicial process has been triggered and the matter is fully in the hands of the Prosecutor and the Judges. The only way to stop the procedure is by legal means, namely, by invoking article 16 of the Rome Statute. Efforts to interfere with the independent exercise of the Office's mandate would only serve to undermine the legitimacy and credibility of the judicial process, thus giving credence to allegations of politicization of the process.

The second area I would like to highlight involves what we have in common. First, there is the matter of our respective mandates. While the Security Council 12-55207 7 S/PV.6849 has been given the primary responsibility to maintain international peace and security, the mandate of the Office of the Prosecutor is to ensure accountability for the most serious crimes of concern to the international community as a whole. Some might construe that as a source of tension between the two organs. In our view, the respective mandates link us together.

The fight against impunity, to which both organs are committed, is an essential contribution to the quest for world's peace and security. That is also recognized in the Rome Statute's preamble, which notes that "such grave crimes threaten the peace, security and wellbeing of the world". Indeed, the Security Council was instrumental in ushering in what the Secretary-General has called "the age of accountability".

Next year, we will celebrate the twentieth anniversary of the creation of the International Criminal Tribunal for the Former Yugoslavia by the Council. It was in 1993 that the Council revived the notion of international criminal justice, after a long silence following the Nuremberg and Tokyo trials. The Council was thus a source of inspiration for the establishment of the ICC.

Secondly, both the Council and the Office of the Prosecutor have a role to play in strengthening the complementary relationship between peace and justice. From the Office of the Prosecutor's perspective, there is no dilemma or contradiction between peace and justice. In most situations before the Court, conflict management and, often, specific peace negotiations were under way while investigations and prosecutions were proceeding.

The role of the ICC has never precluded or put an end to such processes; in some cases, it has even encouraged them. The policy of the Office is to pursue its independent mandate to investigate and prosecute those few most responsible and to do so in a manner that respects the mandates of others and seeks to maximize the positive impact of the joint efforts of all. To pursue its judicial mandate and preserve its impartiality, the Office cannot participate in peace initiatives, but it will inform the political actors of its actions in advance so that they can factor investigations into their activities.

Finally, both the Security Council and the Office of the Prosecutor have a clear preventive mandate. Prevention is key to all our efforts. For the Office, the preventive role is foreseen in the Rome Statute preamble and reinforced in the Office's prosecutorial strategies. In fact, the preamble makes clear that prevention is a shared responsibility in that it provides that States parties are "determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

The Office of the Prosecutor will make public statements referring to its mandate when violence escalates in situations under its jurisdiction. It will visit situation countries to remind leaders of the Court's jurisdiction. It will also use its preliminary examinations activities to encourage genuine national proceedings, and thereby attempt to prevent the recurrence of violence. Given that the commission of massive crimes can threaten international peace and security, the Security Council can complement the Office's preventive efforts.

Let me now briefly look forward to how the relationship between the Security Council and the Office of the Prosecutor can be strengthened.

The Council has already referred two situations involving the commission of massive crimes to the Prosecutor, and the Prosecutor regularly reports back to the Council on those matters. The Council and the Office should together seek more constructive strategies for attaining their mutual goals. We are encouraged by recent efforts of regional organizations, and would like to mention in particular the multilateral efforts to bring to justice the leaders of the Lord's Resistance Army, including Joseph Kony. Those efforts must be replicated in other situations. The failure of States to implement ICC arrest warrants is also reflected in the failure to implement Security Council resolutions relating to cessation of violence, disarming parties to a conflict, ensuring an end to impunity through local initiatives, and other relevant obligations.

The relationship between those two obligations must be explored further. True peace and justice rely on the acceptance of Security Council resolutions as the binding legal obligations that they are. Increasing the political and diplomatic support of the Council for the Court is essential, and the Council can do so through its declaratory statements recalling the need to observe applicable norms of international law and stressing the importance of accountability for those most responsible for serious violations of the rules. Additionally, such tools as avoiding all non-essential contacts with ICC suspects in order to achieve the arrest of these individuals need to be further explored and deepened.

A new chapter should be added to our relationship. The Office of the Prosecutor can make a substantial contribution by proactively collecting information and monitoring situations under preliminary examination, and by investigating and prosecuting those most responsible for serious crimes. But once its judicial process has resulted in requests for and the issuance of arrest warrants by the Court's judges, it is up to the international community, through the Council, to act.

We must find the necessary consensus to show that we are serious about the threat that these serious crimes pose to international peace and security and that we have and will use the tools necessary to put those crimes to an end.