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# General Assembly

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Sixty-seventh General Assembly  
Thematic Debate on International  
Criminal Justice (AM & PM)

### **ROBUST INTERNATIONAL CRIMINAL JUSTICE SYSTEM, GIVES 'MUCH-NEEDED VOICE TO VICTIMS'**

### **OF SERIOUS CRIMES, SECRETARY-GENERAL TELLS GENERAL ASSEMBLY**

#### **Opening First-ever Thematic Debate on Global Criminal Justice, President says Reconciliation Requires Each Side to Accept Responsibility**

States could not expect to attain the goals of peace, development and respect for human rights without supporting a robust international criminal justice system, which gave a much-needed voice to the victims of the world's most serious crimes and held to account the elusive perpetrators, Secretary-General Ban Ki-moon said today during the General Assembly's first-ever high-level thematic debate on the role of global judicial bodies in fostering rapprochement.

During the thematic debate on the "Role of International Criminal Justice in Reconciliation", Heads of State, Justice Ministers and other Government officials shared their experiences with integrating international criminal justice standards and practices into national contexts that, at times, were wrought with political tension following conflict. Two afternoon panel discussions on "Justice" and "Reconciliation" examined the relationship between international and domestic criminal law through those respective lenses.

"The advance of international criminal justice is arguably the most positive development in international relations of the past generation," Mr. Ban said, recalling that it was launched two decades ago, almost 50 years after the Nuremberg trials against Nazi war criminals, "in the face of horrendous acts that, at times, summoned up those very ghosts". It also had given a voice to victims and witnesses. "Where once they might have gone unheard, left to suffer in silence, today they have a platform," he said, especially through truth commissions and similar mechanisms that had been an immense value.

The establishment of the International Criminal Court, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon had ushered in "an age of accountability", he said, building on the work of the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY) over almost two decades. The Tribunals had transferred cases to national jurisdictions, facilitating the creation of strong, independent domestic legal systems.

In the end, States bore the primary responsibility to prosecute international crimes, he stated, underscoring that a strengthened international justice system was a shared responsibility. "It is also our common interest," he continued, noting that support for the Tribunals and Courts meant not calling into question their independence, impartiality and integrity. Reconciliation was among the "great essentials" of the United Nations' work in post-crisis healing. The growing reach of international criminal justice was a

hopeful trend for upholding our common humanity.

“The paramount question is how international criminal justice can help reconcile former adversaries in post-conflict, transitioning societies,” Vuk Jeremić, President of the General Assembly, said in opening remarks. Today’s topic was of enormous significance and immense sensitivity, as it often involved delicate questions sovereignty and impartiality. However, “there should be no forbidden subjects in the General Assembly”, he asserted.

He also emphasized that efforts to achieve justice and reconciliation should reinforce each other and be bound by what they aimed to accomplish: an end to hatred. Reconciliation required each side to accept responsibility. Divorced from that concept, international criminal justice could easily be perceived as an instrument of vengeance, which would harm efforts to strengthen the rule of law, for no legal tradition recognized the guilt or innocence of an entire nation.

“It is critically important to ensure that atrocities are neither denied nor bizarrely celebrated as national triumphs,” he continued, noting that reconciliation was, in its essence, about the future, there to ensure yesterday’s tragedies were not allowed to circumscribe the ability of people to work together for a better, more inclusive future. It was critical to remember the possible dangers posed by its absence.

During the high-level segment, some speakers took a different view on the gains made by criminal justice institutions.

Nebojša Radmanović, Chairman of the Presidency of Bosnia and Herzegovina, noted a widespread perception — among the public and Republic of Srpska officials — that the International Criminal Tribunal for the Former Yugoslavia discriminated against Serbs. Some verdicts had engendered a sense that Serbs had been victims, not only of the war, but of the Tribunal. On the Bosniak side, there was a “growing dissatisfaction” with high sentences rendered in war crimes cases. The most common complaints centred on the handing down of disproportionate sentences, double criteria used for the same offences, selectivity towards the indicted and negative attitudes towards the plea agreement on admission of guilt.

Tomislav Nikolić, President of Serbia, said the Tribunal’s work was perceived in his country as partial, which “certain international quarters” viewed as a result of a nationalist approach and a desire to downplay the seriousness of crimes committed. To such claims, he said that no Croatian, Bosniak or ethnic-Albanian political figure, nor any senior official of the Croatian army, of the former Bosnia and Herzegovina army or the “so-called KLA” (Kosovo Liberation Army) had been indicted or convicted of crimes against Serbs. Following the acquittal of Ante Gotovina and Mladen Markač, among others, Serbia now cooperated only on a technical level.

“International criminal justice is in a crisis with regard to fostering national reconciliation in post-conflict situations,” said Tharcisse Karugarama, Attorney-General and Minister for Justice of Rwanda. Neither the Tribunals nor the application of universal jurisdiction had succeeded in that objective.

Other than the Special Court for Sierra Leone, courts and tribunals were housed outside the countries where atrocities had been committed, he said. As such, they were viewed as detached and had contributed very little to national reconciliation processes. In Rwanda, most of the master planners of the 1994 genocide were still at large, and those who had benefitted the most from the Rwandan Tribunal were its technocrats, not the survivors, orphans or widows.

Utoni Nujoma, Minister of Justice of Namibia, said the selective application of international criminal justice in the Security Council’s referrals to the International Criminal Court showed that “political interests enjoyed priority over the pursuit of justice”. He also worried about the trend whereby only the victor of a warring situation enjoyed justice, while the defeated party faced the Court’s prosecution. To be objective, investigations must be conducted on both sides and culprits should be prosecuted “without fear or favour”.

Throughout the debate, delegates reviewed how the establishment of national and international

criminal tribunals had dramatically changed the judicial landscape. Citing gains, some said the International Criminal Court filled an important gap in human rights law as the standard-setting body that guaranteed an effective strategy for prosecuting the most serious crimes. They also pointed out that non-States parties to the Rome Statute — its founding treaty — were now cooperating with the Court, showing that the fight against impunity was being universally embraced.

Other speakers observed that the international criminal justice system faced numerous challenges, including in ensuring consistent cooperation with the Court. How successful the Court would be in organically inserting itself into the defence of peace remained to be seen, said the representative of the Russian Federation, as it was often criticized on a regional basis. Because of that, it had been hard for the Court to strike a balance in achieving both justice and peace. Determining criminal guilt must be nationally oriented, except in cases where a country was not able to do so.

During the panel on “Justice”, delegates examined why international criminal law had expanded so profoundly in such a short amount of time, especially when so little had preceded it. They also took up the relationship between international and domestic criminal law. During the second panel — on “Reconciliation” — they looked at why rapprochement was so difficult to measure. Several problems existed, including knowledge gaps about the role of reconciliation, as well as constitutional obstacles.

Also speaking in the thematic debate were the representatives of Croatia, Turkey, Suriname, Costa Rica, China and Argentina.

The representative of the European Union also spoke, as did the representative of the Observer State of Palestine.

The General Assembly will reconvene at 10:00 a.m. on Thursday, 11 April, to continue and conclude its high-level thematic debate on the “Role of International Criminal Justice in Reconciliation”.

### Background

The General Assembly met today for a one-day, high-level thematic debate entitled, “Role of International Criminal Justice in Reconciliation”, which would feature two afternoon panel discussions on, respectively, “Justice” and “Reconciliation”. Throughout the day, Governments were expected to share experiences on the relations between national and international criminal justice procedures, as well as on the impact of international criminal justice on reconciliation.

### High-level Segment

NEBOJŠA RADMANOVIĆ, Chairman of the Presidency of Bosnia and Herzegovina, said the International Criminal Tribunal for the Former Yugoslavia (ICTY) had been created to prosecute the perpetrators of the worst war crimes and prevent recurrence of such events, with a “clear and resolute” message that such actions would be punished consistently and without exception. It aimed to determine the guilt of all perpetrators of the most serious crimes. “The whole nation cannot be blamed for the crimes committed by some individuals,” he said. The international priority should be the simultaneous exercise of justice — by punishing war criminals — and satisfying victims’ rights, which should contribute to reconciliation.

He said that he could not give a clear answer to questions about whether the Tribunal had fulfilled its Security Council duties or if its rulings had led to reconciliation. Its work and effects on reconciliation were ongoing, burdened by increasing political tension and inter-ethnic mistrust. As Chairman of the tripartite Presidency, he could say that all three constituent peoples had different opinions, which were related to their perceptions of certain verdicts. Generally, people were dissatisfied with the Tribunal’s work. They felt their victims had not been treated fairly and that only perpetrators from their own communities had been punished.

There was, he noted, a widespread perception by the public and Republic of Srpska officials that the Tribunal had been selective and discriminatory against Serbs convicted before the Court. Some verdicts had engendered a sense among Serbs in Bosnia and Herzegovina that Serbs had been victims, not only of the war, but of the Tribunal, as well as members of other peoples in Bosnia. The biggest paradox was that the majority of Serbs believed the Tribunal had only tried Serb people, while on the Bosniak side, there was a "growing dissatisfaction" with high sentences rendered in war crimes cases. The most common complaints centred on the handing down of disproportionate sentences, double criteria used for the same offences, selectivity towards the indicted, negative attitudes towards the plea agreement on the admission of guilt, and the overruling of sentences for people who had received long-term sentences.

For various reasons, all people found the Tribunal's "proportionality strategy" unacceptable, he said, showing that "we are still far from a unified opinion and view of what happened in our recent past". One way to help prevent conflict and promote reconciliation was to provide researchers and experts access to Tribunal archives, which would provide an overall impression of what had happened. In addition, an open, honest dialogue among the various actors — Government structures, civil society groups, and victims and veterans associations included — must be held at all levels to overcome the difficult legacy of the past. Whether the Tribunal succeeded in punishing the worst crimes depended on the international community and individual countries alike.

TOMISLAV NIKOLIĆ, President of Serbia, said an essential question for many "small and defenceless" countries, such as his own, centred on whether justice — as epitomized in laws, heritage and equality — had disappeared. Twenty years ago, the ICTY had been created to foster reconciliation, as well as the return and maintenance of peace in "special circumstances". In a desire to achieve those goals, Serbia had been among the first countries to support the Tribunal and continued to cooperate with it to the present day. However, he said his country now felt it had unfairly legitimized the Tribunal in the hope that, by applying the same benchmarks, justice would be served for all victims of conflict.

Unfortunately, he said, Serbs felt no satisfaction that there had been justice, as the Tribunal's bias had opened old wounds. Justice had not been done since the end of the Second World War, when 700,000 Serbs had been murdered in the Jasenovac camp, creating a "gap of mistrust" that would burden future generations. "The ICTY cannot be an instrument of prosecution," he said. It was an independent body which impartially weighed arguments of the prosecutor and defendant as equal parties. Yet, the Hague trials had shown from the start there was no even-handedness. Citing numerous examples, he went on to say that Serbs had coined the phrase "Hague justice" to explain the unjust legal decisions that had been based on "untruths" and rendered under political pressure.

That view was not politically motivated, he said. Nor had Serbia's cooperation with the Tribunal been politically conditioned. The Tribunal's work was, however, viewed in Serbia as partial, a position viewed in "certain international quarters" as the result of a nationalist approach and a desire to downplay the seriousness of the crimes committed. However, the Tribunal's practices had not met the standards applied by the Serbian justice system. Cooperation stemmed from a sincere desire to contribute to reconciliation. His Government condemned the crimes that Serbs had committed during the war, and expected the same from States in whose name horrible crimes had been committed against the Serbian people. All perpetrators of crimes should stand trial, but the Tribunal did not share that view.

In that context, he said no Croatian, Bosniak or ethnic-Albanian political figure, nor any senior official of the Croatian army, of the former Bosnia and Herzegovina army or the "so-called KLA" (Kosovo Liberation Army) had been indicted or convicted of crimes against Serbs. Serbia had given the Tribunal more than any other country, but, following the acquittal of Ante Gotovina, Mladen Markač, Naser Orić and Ramush Haradinaj, it had decided to cooperate only on a technical level. Urging States to support Serbia in its efforts to unveil the truth, he stated "it is never too late for reconciliation", noting that Serbians were not prepared to wait 70 years to reconcile with their neighbours, or those with whom they lived in the same country — in Kosovo and Metohija. The Tribunal had done nothing to help that process. For truth and reconciliation, all three sides must be equally satisfied. He advocated for punishing the guilty and fostering

reconciliation, emphasizing that selective justice did not foster those aims. Only equal treatment in equal circumstances would show the world where crimes had been committed.

UTONI NUJOMA, Minister of Justice of Namibia, said that reconciliation after conflict was necessary, and must be preceded by the political will to build and sustain peace in any jurisdiction. The goal of criminal justice was to deliver justice to all, and administering justice required that all parties to conflict were heard and treated fairly, in accordance with rules and procedures. After attaining independence from the then-apartheid South African regime in 1990, Namibia repealed discriminatory laws and embraced reconciliation by choosing not to "open old wounds" for atrocities committed prior to independence.

"This policy has served Namibia well," he said, pointing out that his country enjoyed peace, stability and democracy. Reconciliation could be enhanced by domesticating the Rome Statute, which would ensure that complementarity be observed, and thus, afford national courts the primary jurisdiction to prosecute international crimes. Namibia supported the exploration of indigenous and traditional African and religious approaches to justice and reconciliation, underlining the importance of understanding the values, beliefs, fears and needs of communities affected by international legal bodies, including the Court. Such approaches could help people better understand the Court's role.

Indeed, criminal justice played a significant role in reconciliation, he said, noting that it sought individual accountability for international crimes, while recognizing victims' rights, promoting trust and strengthening the rule of law. However, administering international criminal justice was an expensive exercise, especially in developing countries which had limited adequate fiscal and human resources. In that regard, he reiterated the call to ensure that global institutions, like the Court, were not used to advance the interests of certain States to the disadvantage of others. He voiced concern about the selective application of international criminal justice in the Security Council's referrals to the Court, which showed that "political interests enjoyed priority over the pursuit of justice".

He also expressed concern about a trend within international criminal justice where only the victor of a warring situation enjoyed justice, while the defeated party faced the Court's prosecution. In any conflict situation, atrocities were committed on both sides. Hence, to be objective, Court investigations must be conducted on both sides and, with sufficient evidence of grave human rights violations, the culprits should be prosecuted "without fear or favour". He fully supported the potential rights granted to victims by the Court, underscoring that they included the right to participate in proceedings, to be kept informed of developments during the trial, the right to obtain reparations for injury and to be protected during Court appearances. He condemned the use of drones against any person, saying such tactics undermined efforts towards international peace and security, the rule of law, development and human rights. The use of force should be a last resort.

THARCISSE KARUGARAMA, Attorney-General and Minister for Justice of Rwanda, opened the high-level segment, stating that "international criminal justice is in a crisis with regard to fostering national reconciliation in post-conflict situations". Neither the Tribunals set up to address that issue, nor had the application of the principle of universal jurisdiction succeeded in that objective. It was important to assess whether the international justice system could, by its nature, enhance reconciliation and whether it had best practices or benchmarks to boast of. Other than the Special Court for Sierra Leone, all other courts and tribunals were housed outside the countries where the atrocities had been committed; as a result, they were viewed as foreign and detached, and contributed very little to national reconciliation processes. Indeed, they served legal and academic interests more than peacebuilding and national reconciliation.

In Rwanda, in particular, those objectives had not been achieved, he said. Most of the master planners of the 1994 genocide against the Tutsi were still at large, and the largest beneficiaries of the International Criminal Tribunal for Rwanda (ICTR) had not been Rwandan survivors, orphans or widows, but rather the "technocrats" running the Tribunal. The right to host the convicted perpetrators of the genocide had been denied to Rwanda, and instead perpetrators had been sent to distant countries, frustrating survivors. The Tribunal had also denied Rwandans the right to host the archives, which constituted an integral part of the country's history. Also citing the slow pace and high cost of trials by the Tribunal, he

stressed that, as illustrated by his country's experience, such international tribunals did not necessarily foster national reconciliation in post-conflict situations. On the contrary, national jurisdictions, if facilitated, could lead to better results.

He went on to say that the International Criminal Court, as well, had not measured up to the challenge of acting independently of political interference. The Court had been selective in its method of investigating and prosecuting perpetrators of serious international crimes, in that it had so far failed to accept the glaring truth that similar crimes had been committed in other parts of the world with impunity. A major challenge facing the Court, in that regard, was that some members of the Security Council — which referred cases to the Court — enjoyed veto powers and would block any move to refer their own nationals to the Court.

The principle of universal jurisdiction was exercised abusively by some national jurisdictions, he said, stressing that his delegation rejected political manipulations and double standards. There was a need to strike the right balance to end the culture of impunity while at the same time establishing safeguards against the potential abuse of the principle of universal jurisdiction. Indeed, 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. International arrest warrants should enjoy a "blessing" by the International Criminal Police Organization (INTERPOL) in order to avoid partisan political manipulation, he added; where such a blessing had not been issued, no State should feel obliged to respect arrest warrants issued by individual judges from any United Nations Member State.

### Statements

RANKO VILOVIĆ ( Croatia) said that almost 68 years ago, international criminal justice had, for the first time, been embodied in the Nuremberg and Tokyo processes. While imperfect, those events, led by a sense of justice and moral responsibility, clearly demonstrated the will to prosecute and punish crimes. The subsequent Geneva Conventions and their Additional Protocols substantially broadened the notions of fairness. Another breakthrough came with the 1993 creation of the ICTY and the ICTR. However, they were temporary and their preventive roles limited. The 1998 establishment of the International Criminal Court ranked among the most important achievements of the last century. Croatia supported the creation of the ICTY and, having been a victim of aggression, realized that international engagement offered the best chance to pursue justice and punish perpetrators.

He went on to say that, while not always pleased with the rulings, Croatia had always cooperated with the Tribunal and respected its decisions. "Too often we have seen that neither justice without peace, nor peace without justice is sustainable," he stated, noting that the impact of the Tribunals on the ground was what really mattered. Reconciliation could not be carried out by international tribunals alone. Societies must question whether their actions were right. In that vein, he regretted that "many elements" in the preparation of today's debate — including non-transparency, as well as the selection of panellists, some of them with questionable ethical and professional profiles — led him to conclude that truth, justice and reconciliation were not the values by which today's debate had been organized.

LEVENT ELER ( Turkey) said that in the aftermath of conflicts in which grave violations of human rights had occurred, it was extremely important to bring justice to victims. Indeed, peace without justice, he underscored, would leave victims "empty handed", limiting the chances of genuine transition and the healing of society. In addition, prosecuting the individuals responsible helped create respect for the rule of law, as well as act as a deterrent for future crimes. The Security Council had established the Tribunals as a matter that fell under Chapter VII with the goal of the maintenance of international peace and security. Those suspected of crimes against humanity could now be called to account. Prosecutions could also help to ensure that societies were not labelled as "collectively responsible."

He went on to say that, although the former Yugoslavia had long been dubbed the most vulnerable region of Europe, he was glad that that reputation was changing. Positive steps were being taken towards stronger neighbourly relations. Turkey, a Balkan country itself, had contributed to trilateral talks between

Turkey-Bosnia and Herzegovina-Serbia and Turkey-Bosnia and Herzegovina-Croatia. Indeed, the image of the region was transitioning into one of peace and stability, he said, adding that all parties should avoid any action that would cast a shadow over that goal.

HENRY MACDONALD ( Suriname) said the Rome Statute, which established the International Criminal Court, filled one of the most important gaps in human rights law as the standard-setting instrument that guaranteed an effective strategy for prosecuting the most serious crimes, and ensuring justice was a durable element of lasting peace. At the same time, the Court had faced significant challenges since its inception, including how to fully apply its provisions when parties were engaged in conflict-resolution processes. The Court should be mindful of the implications of its investigations on such processes, which themselves should focus mainly on peace and reconciliation.

The question to be answered, he stressed, was on how justice, impartiality, and both international and regional conflict-resolution processes should work together in order to attain a lasting settlement of national and international conflicts. All such disputes should end in peace so that victims could live in peace. Seeking justice should be the Court's main goal and it was critical its efforts not undermine ongoing peace processes. Further, every solution should work in tandem with national laws, as well as local and traditional cultures and the Court's interventions should not negatively impact those solutions. The challenge was how to use the Rome Statute — and its legal framework — to apply international criminal law in such a way that justice, peace and reconciliation were mutually reinforcing. "It should be all about justice," he stressed.

EDUARDO ULIBARRI ( Costa Rica), on behalf of Latin American and Caribbean States (CELAC), said that under international law, including those contained in the Rome Statute, States had the primary responsibility to investigate and prosecute those crimes, based on the principle of complementarity and supplemented by the efforts of the international community. He stressed the commitment of the CELAC countries in the fight against impunity, noting that a large number had ratified or acceded to the Agreement on the Privileges and Immunities of the International Criminal Court, and that in several of those countries, the Kampala amendments were under consideration. "We live in an era of accountability," he stated, where peace and justice were no longer competing objectives, but complementary ones. Moreover, experience had shown that there could be no lasting peace without justice.

He commended the International Criminal Tribunals for Rwanda and the Former Yugoslavia for their historic contributions. Regarding the Rwanda Tribunal, he urged the cooperation of all Member States in the detention of the nine remaining fugitives. Although the Court also had achieved important progress, he deeply regretted that repeated instances of non-cooperation had allowed certain individuals to elude justice. Even non-States parties were obliged to arrest and surrender anyone with pending arrest warrants issued by the Court. Another concern was the coherence of United Nations' policies and actions in relation to the Court. He underscored that the responsibility of the Security Council, which permitted the Council to refer situations to the Court, should "never be tainted by political biases". Also of concern were repeated instances of "non-essential" contacts between United Nations personnel and individuals with pending arrest warrants, and he urged the Secretary-General to investigate those incidents.

VITALY CHURKIN ( Russian Federation), commenting on how some considered justice critical for victims and an important element in efforts to prevent threats to peace and security, said that he could not accept the principle of retribution "at any cost". Prosecutions could only be successfully achieved if the process was impartial and depoliticized. Although there were both positive and negative examples in that regard, he pointed out that the ICTY was a negative one, with a legacy that could not be seen as a success story, and whose existence had been unjustly extended "for an absurd length of time". Such extensions had resulted in a number of key officials dying before they could be prosecuted. The question was whether such a judicial body — whose very existence seemed to cultivate the notion of guilt on one side of the conflict — could really bring about peace and justice. The Security Council must take decisive steps to help that body extricate itself from the "systemic dead end" in which it was entrenched.

Fortunately, he went on to say, the international criminal justice system was not limited to the ICTY,

noting that the International Criminal Court had won its place at the centre of international criminal justice. Still, how successful the Court would be in organically inserting itself into the defence of peace remained to be seen, as it was often subject to criticism of a regional basis. Because of that, it had been hard for the Court to strike a balance in achieving both justice and peace, and in becoming the universal body for criminal justice. A key principle of the Court was the complementarity of its jurisdiction with national courts. "Where criminal justice can be effectiveness administered in national courts, this should not be opposed," he said. Indeed, determining criminal guilt must be nationally oriented, except in cases where the country in question was not able to do so. Candid discussions on the challenges facing international criminal justice must continue, he added.

RIYAD MANSOUR, Permanent Observer of the State of Palestine to the United Nations, said that efforts to hold perpetrators of horrific crimes accountable and to achieve justice for the victims were too often undermined by political expediency, selective application of the law, and the helplessness of the international community in the face of political protection accorded some of the worst abusers. Thus, impunity was bolstered, peaceful solutions were obstructed and conflicts were prolonged. The question of Palestine was a prime example where the application of international, humanitarian, human rights and criminal law would have long ago facilitated a solution to the Israeli-Palestinian conflict and a genuine co-existence between the two peoples. Yet, the rights of the Palestinian people remained violated by Israel, the occupying Power, in an unjust situation that had been exacerbated by the international community's failure to hold Israel accountable for its crimes.

He said that double standards and political protections thwarted respect for the law and fostered Israeli impunity. The price for the failure of international justice was paid by innocent civilians, who were forced to endure severe hardships and suffering. Still, the Palestinian people and their leadership maintained a deep conviction in the primacy of international law and continued to look to the United Nations, as well as to the International Court of Justice and International Criminal Court to uphold the law, fulfil their responsibilities, and aid the Palestinian people in the exercise of their inalienable rights and a solution that would end the Israeli occupation, ensure the independence of the State of Palestine, with East Jerusalem as its capital, and address a just solution for the Palestinian refugees. Concluding, he said: "The core question 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?"

IOANNIS VRILAS, Head of the European Union delegation, briefly reviewed how the establishment of various national and international criminal tribunals had, in a short period of time, dramatically changed the landscape of international criminal justice, and how such ad hoc international tribunals had helped to pave the way for the creation of the International Criminal Court. Today, non-States Parties were also cooperating with the Court, as illustrated by the recent surrender of the alleged Congolese war criminal Bosco Ntaganda to the Court. Indeed, the Rome Statute's core message of fighting impunity was being embraced universally. It embodied a system in which national and international courts worked together in an interdependent manner. In addition, the Court constituted a major achievement for victims of international crimes, who had the right to participate in the judicial process and have access to possible reparations, among other support.

The Security Council also fulfilled an important role with regard to the Court, he added, welcoming the October 2012 open debate on peace and justice, with a focus on the Court. He called on the Council to continue to seek ways to further support international criminal justice efforts within its mandate, inter alia, by holding regular debates on cooperation with the Court, referring situations to the Court when appropriate and ensuring proper follow-up mechanisms. However, the international criminal justice system faced a number of main challenges, including, among others, the universality of the Rome Statute, and the ensuring of consistent cooperation with the Court, particularly on to how to react quickly, collectively and consistently to instances of non-cooperation of States which were in violation of their legal obligations.

Accountability and full cooperation with the Court were principles to which all European Union Member States were fully committed, he said, adding that the bloc also expected such commitments from all those who wished to join the European Union family. Turning to the exchange of views by delegations on the topic during the afternoon session of panels, he commented that such panel discussions would normally



be expected to include a range of issues addressing international criminal justice in a balanced manner. However, he remarked, "it is not clear to us that will be the case today". It was essential, he stressed, that all views expressed fully respected the principle central to the rule of law, of independence and impartiality of the Courts, Tribunals and their judges. "We owe it to the victims," he said.

LI BAODONG ( China) said that political, economic and social issues must be incorporated into efforts to strengthen the rule of law. Indeed, criminal justice represented universally recognized principles. Strengthening the rule of law was needed for peaceful conflict resolution, in both conflict and post-conflict regions. That was a legal question, because it was closely interwoven with various social, political and economic issues. Post-conflict reconstruction should be a holistic process that contributed to stability and economic development. Underlining the importance of adherence to international humanitarian law, he said China condemned all violations of such law in conflict areas.

He went on to support United Nations efforts to establish individual accountability for genocide, war crimes and crimes against humanity in order to restore the rule of law and order. International efforts targeting criminal activities, thus, should not interfere with ongoing peace processes or efforts to achieve national reconciliation. Criminal justice should not be attained at the expense of peace. Rather, criminal justice and peace should promote each other. However, in cases where they clashed, criminal justice should not be confined to individual criminality. The goal should be to bring about social order. Finally, the judicial activities of international judicial organs should be guided by the principles of justice and independence. Those organs should follow the principles of international law outlined in the Charter of the United Nations.

MARIA CRISTINA PERCEVAL ( Argentina) noted that while the Court was now "steady and mature", there were a number of challenges going forward. One was the issue of the crucial cooperation by all States, in particular with regard to arrest warrants issued by the Court. Regarding the Security Council, she underscored the responsibility of the Council, stating that when making a referral to the Court in accordance with Chapter VII, the Council acted on behalf of the international community as a whole. It must, therefore, respect the integrity of the Rome Statute, the Relationship Agreement between the Court and the United Nations and the Charter. In that context, the Council could not create exemptions to the jurisdiction of the Court not provided for by the Rome Statute. In referrals, the Council must clearly state the obligation of all Member States to cooperate with the Court.

She said that the clause that the United Nations would not defray the costs of a referral to the Court contradicted the Rome Statute and the Relationship Agreement, and encroached upon the power assigned by the Charter. "The Court must have the financial resources necessary to fulfil its functions," she stressed. In addition, follow-up to the referrals of the Court was essential. Her delegation supported the inclusion in the relevant Presidential Statement of this year on the protection of civilians, a commitment to that follow-up on Council decisions regarding the Court and other tribunals. It was urgent that the Council put that commitment into practice through the establishment of a subsidiary organ for the Court or at the Working Group on International Tribunals. Finally, there was the challenge of non-essential contacts with persons with arrest warrants issued by the Court. That policy required the commitment of different parts of the Secretariat, and should now be made applicable to peacekeeping forces.

### Panel I

The Assembly held two panel discussions in the afternoon session, the first of which focused on the topic "Justice". Moderated by Matthew Parish, Partner at Holman Fenwick Willan, Geneva, it featured four panellists: Charles Jalloh, Professor at the University of Pittsburgh School of Law; Lewis MacKenzie, Major-General (retired), First Commander of Sector Sarajevo; John Ciorciari, Professor at the University of Michigan; and Savo Strbac, of the Information and Documentation Centre of "Veritas", Belgrade.

Mr. PARISH began the discussion, sharing with delegations that his family had been the victim of war crimes. His wife and her family had been living in a village in what had been Yugoslavia. There, her mother, along with others had been assassinated by militia, and although everyone knew who those militia

members were, they never were tried or punished. "This is an all too familiar pattern" in the many civil wars that plagued the world today, he said. The question before the panels was what could be done to prevent such crimes and what could contribute to reconciliation. "We are working in the area of the utmost controversy," he stressed, adding that all debates on the subject were, therefore, of the utmost importance.

Noting that the area of international criminal law had not existed some 25 years ago, he raised a number of relevant questions: 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"? In addition, what was the relationship between international and domestic criminal law? He also remarked that the language of international law was often dressed in terms of intense moral outrage.

Another question was that of the politics of international criminal law, he said, asking specific questions about conviction rates, funding and other matters. Turning to concerns about the expense and delay, he said that any tolerable system of criminal justice enshrined the right to a fair and reasonably speedy trial. Yet, some tribunals had had suspects in custody for more than a decade. Why were the budgets of those tribunals so high, when their caseloads were so relatively low? He also inquired about the impacts of international criminal law on the victims of the conflict, and if, in fact, it contributed to reconciliation.

Before turning the discussion over to the panellists, he asked: "Is international criminal law stealing ground from historians?" Commenting that "the truth is always murky", he pointed out that there were always many angles to every debate. Historians would often interpret and reinterpret events for decades, while international law purported to give institutional finality to such debates. Was that really the purpose of international law, and, if so, was it beneficial in any regard?

Mr. JALLOH, the first panellist, discussed 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 to the African Union's rejection of the International Criminal Court, in fact, the project would complement the work of the Court if States could address some of its fundamental problems. "The view that the African Union is not entitled to look for other possibilities" in the search for criminal justice was incorrect, as the Court was never intended to be the sole body for criminal justice.

Offering arguments in favour of the proposal, he urged all Member States to engage in the debate over the creation of the chamber, even though "we are all in favour of the ICC". States had a responsibility to investigate crimes that took place in their territory, which suggested that one must at least have an open mind to consider the African Union proposal. In Africa, the logic of non-intervention had given way to the logic of "non-indifference", which gave African States the responsibility to step in on cases of grave violations of human rights. The chamber might also be able to improve accountability in the cases of other crimes that did not fall within the jurisdiction of the Court, such as transnational organized crime. Finally, a particularly unique feature of the draft statute of the proposed chamber would address individual and corporate criminal responsibility for aiding and abetting serious crimes.

General MACKENZIE said that during his tenure leading the Sarajevo Sector of the United Nations Protection Force in the former Yugoslavia, he had pointed out the inadequacies of the United Nations system. He had long dealt with United Nations "naïveté" and was sympathetic with the United States' reluctance to join the Rome Statute. He himself had been accused of war crimes, including the rape of Muslim women in the former Yugoslavia. While it had been proven that those accusations were "over the top" and ludicrous — he had been in Canada during the time those crimes had allegedly been committed — the story had gone viral, and was "still out there" today.

He also said that he personally had a problem with the ITCY. When a British judge, from a country that had played a role against the ill-fated North Atlantic Treaty Organization (NATO) bombing campaign in 1999, presided over the Mladić case, there was clearly a perception of winner's justice. Fairness in justice was important, he stressed, adding that if it did not appear to be fair, justice was counterproductive to

reconciliation.

Taking the floor, Mr. CIORCIARI, who was an expert in 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 had a role to play in prosecuting crimes against humanity in Cambodia between 1975 and 1979. The Extraordinary Chambers had been charged with prosecuting individuals from a regime which had been 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 to 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, he 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 where there might be differences of opinion between national and international players. The Extraordinary Chambers experience showed that reliance on local rules could be problematic; one of the benefits of the development of a body of international criminal law was that specific rules had been developed for international crimes, and those should be used.

Mr. STRBAC, saying that he also had family ties to victims of the “bloody civil war” in the former Yugoslavia in the 1990s, shared some of the staggering numbers of casualties of war and genocide in the region. Not counting the victims of the NATO aggression, there had been 130,000 victims in total. On the Serbian side, civilian victims had been portrayed as military ones. Forced migrations of population had also been seen in all areas. During the 20 years of the ICTY, a total of 161 persons had been indicted; until today, 82 accused were convicted. Of the accused, 68 per cent were Serbs. Twelve indictees remained. He also shared some of the results of the trial and appeals chambers of the International Criminal Tribunal for the Former Yugoslavia.

He said that the Serbs had been fiercely opposed to the establishment of the International Criminal Tribunal for the Former Yugoslavia, fearing that the Tribunal would see Serbs as criminals and oppressors. Unlike most Serbs, he had wished to cooperate with the Tribunal, 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 his fellow citizens had been “quite right” in that the Tribunal would be guided by selective, politicized justice. The Tribunal did not fulfil any of the goals for which it was founded. It had not contributed to conciliation. “Do not allow for a similar tribunal as the International Criminal Tribunal for the Former Yugoslavia to happen anywhere else,” he warned.

“Isn't international criminal justice a terrible mess?”, commented Mr. PARISH, pointing out that it had been a mess everywhere it had been tried. The Tribunals and the International Criminal Court were biased, with the latter “only indicting black people”. He again posed several questions, asking if those innately politicized institutions were destined, ultimately, for the garbage, or, if, in fact, they could be saved? Further, could the international community really strive to improve tribunals or would they always be besieged with folly, waste and bias? In that respect, he invited comments from the floor.

In the ensuing dialogue, a number of speakers stressed that international criminal justice, as a relatively new concept, needed to be enhanced and improved. The Republic of Congo's delegate pointed out that “privileges and immunities” — which were not permitted under article 27 of the Rome Statute — were, in fact, clearly established under international law, while Cuba's delegate asked General MacKenzie, specifically, why NATO had used force in the former Yugoslavia. Meanwhile, the representative of Nigeria highlighted the issue of finances for the African criminal chamber, asking the panellists how they felt the

chamber should be funded.

Responding, General MACKENZIE said that the bombing campaign against Kosovo had emerged from a number of confluent circumstances. There was debate in the international community about whether or not that campaign had been legal.

On the conflict stemming from discussions of immunity, Mr. JALLOH described a number of differing academic positions. However, the Court's ruling so far had been that, if there was a referral by the Security Council, immunities were displaced and there was a responsibility of all States to cooperate. To Nigeria, he said that African States "must put their money where their mouths are" to bring the chamber to reality.

## Panel II

The second panel, focusing on the topic "Reconciliation", was moderated by John Schindler, National Security Affairs, United States Naval War College, and Senior Fellow at Boston University. The four panellists were William Schabas, Professor at the 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.

Before opening the panel, Mr. SCHINDLER underscored that he was not representing the United States, which had chosen to not attend the proceedings, but there as a private citizen. He then introduced Mr. SCHABAS, who remarked that many of the comments in the day-long meeting had been "too extreme and too harsh" in their assessment of the Tribunals and of international criminal justice more generally. It was easy to sit and talk about the shortcoming of those institutions, he said, quoting Winston Churchill that "democracy was the worst system, except for all the others".

He said that reconciliation was only one of the pieces of the Tribunal's objectives. In fact, reconciliation had not been expressly mentioned in the statute of the ICTY. In his view, the objectives of international criminal justice mechanisms were peace, deterrence, justice for victims and reconciliation. There was relative peace in the former Yugoslavia; however, it could neither be proven nor disproven that the ICTY had had a role in establishing that peace. Further, a measure of justice had been delivered to the victims of the atrocities addressed by the tribunals.

Turning to reconciliation specifically, he said it was the most difficult element to measure. The problem, he noted, was that "it's too soon to know the answer" as to whether reconciliation had been accomplished. True reconciliation took generations. However, to suggest that the Tribunals had failed because they hadn't achieved some perfect reconciliation was not accurate. Pointing to the Nuremberg Trial, he said that it was not necessarily true that the failure to prosecute both sides of the conflict in an "even-handed" manner precluded peace and reconciliation. He shuddered to think, he said in closing, what even-handed prosecution would have looked like in the post-Second World War context.

Next, Mr. ANTIC said that the ICTY did not proclaim reconciliation as one of its goals. However, it had been represented as one of the mission's aims on several occasions. Over 70 per cent of the citizens of Serbia had a negative perception of the Tribunal. That negative attitude was the firm foundation of his strong belief that the Tribunal had not advanced reconciliation in the region. In that context, he discussed the range and effects of the Tribunal's actions.

In the case of the ICTY, he went on to say, it seemed that the Tribunal saw war crimes by others as individual incidents, while such crimes by Serbs were seen as institutional events caused by "Serbian evil". A whole people had been taken to account, he said in that regard, adding that it was obvious that the Tribunal supported and enlarged the feud between the former republics of the former Yugoslavia. After the recent sentences and historians' opinions that Serbs were "some kind of criminals", there was a significant amount of self-hatred in Serbian society.

Ms. CLARK said that there was no doubt that, in societies that had suffered from war crimes, courts had an important role to play. But, while the normative value of those courts was not in doubt, their effects on the ground could be questioned. Several problems existed, including major gaps in knowledge about the actual role of reconciliation. Prominent figures within the ICTY had consistently argued that reconciliation was linked to the maintenance of peace. "This is not what a court is about," she said, asking whether the courts should even be expected to contribute to reconciliation.

She called the nexus between justice and reconciliation "problematic", saying that there was large dissatisfaction on the part of victims on all sides with the ICTY. "People are happy that it exists, but they are dissatisfied with the way it is working," she observed. The sentences were not seen as adequate, and there was extreme dissatisfaction with the contentious issue of plea bargains.

Courts had to be selective, as they could not prosecute everyone, she continued. However, that often did not make sense to communities on the ground. "It is a no-win situation," she said, citing several examples. If there was no clear prosecution strategy, it was inevitably going to invite allegations of bias, and if a court was not seen as fair, it could certainly not contribute to reconciliation. Courts could harden "ethnic narratives" of what had happened during the conflict and polarize communities, instead of reconciling them. If courts were going to help reconciliation, they had to be understood by communities on the ground, she stated, noting that, 20 years after the ICTY's creation, it was still not very well understood.

Mr. LAUGHLAND, remarking that his view was a radical one, said that "the project of international criminal justice is doomed to failure". There were numerous constitutional obstacles. First, the international Tribunals had been illegally created, as criminal tribunals set up by a political organ were not legitimate. The Court's decision to indict citizens of non-States parties was unconstitutional. However, the most important obstacle was that the legal right to prosecute and punish criminals was one of the definitive characteristics of Statehood. That was known as the "social contract", and it was systematically broken by international criminal tribunals. There was a fundamental disconnect in that they wielded power without bearing responsibility to the people.

There was a decline in the understanding in the role of the State following the end of the Cold War, he continued. A view that States were less and less relevant had corrupted the common understanding of war and peace. "Warfare remains, above all, a State act," he said, adding that anti-State ideology corroded understandings of both war and peace. Amnesty clauses — an integral part of peacemaking for hundreds of years — had disappeared abruptly in 1918 with the Treaty of Versailles, and the tradition of peacemaking was "blown apart" by the First and Second World Wars. For those reasons, rather than trying to fix a system of international criminal justice that was irredeemably broken, he urged Member States to return to the primacy of States and to rediscover the art of peace.

Following those interventions, delegates raised a number of particular questions related to the panellists' areas of expertise, including about best practices or ways forward for the International Criminal Court. The representative of Serbia raised the question of human organ trafficking, which he said was one of the major obstacles to reconciliation in the region. He wondered why the ICTY had ignored the issue in its activities.

Cuba's delegate again asked the panellists, and Mr. Laughland in particular, if they that felt the use of force by NATO in the former Yugoslavia should be considered as falling under the jurisdiction of the ICTY.

Mr. LAUGHLAND said that the NATO campaign had been illegal and constituted a crime. While the ICTY "should not exist", the bombing certainly fell under the Tribunal's jurisdiction. The fact that it had not been prosecuted showed that the Tribunal was partial and biased. Indeed, he suspected that human organ trafficking had not been prosecuted for similar reasons.

Regarding organ trafficking, Mr. ANTIC responded that the Marty report showed that the powerful countries behind the ICTY "were not impartial". Recalling a specific case of such trafficking, Ms. CLARK said that there had been a wish on the part of the Tribunal to move forward with the case, but that it could

not find witnesses willing to come forward. That showed that the Tribunals were extremely dependent on States and on communities in order to fulfil their mandates.

More generally, Mr. SCHABAS added that it was unrealistic to measure the success of a tribunal by whether or not reconciliation had been achieved, and that it was too early to see contributions of the Tribunals to reconciliation.

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