

BERTRAND RAMCHARAN: Thank you very much, Mr. Prosecutor.

Congratulations on your swearing in on Monday. And I wanted, as acting High Commissioner for Human Rights at the United Nations, very much to be here on Monday, but as Morten knows, I couldn't be here for a rather good reason. But I did want to come and bear witness, if I could, to witness in support and witness in complementarity of your activities.

When the United Nations started the drafting of the Universal Declaration of Human Rights, the Australia representative, Colonel Hudson, he made a proposal that there should be an international court of human rights. Of course, we didn't have the court, but I think we should go back to those records and see what were Hudson's hopes at the time and link it with the genesis of an idea.

Sometimes in the drafting of a covenant there is an idea that there should be referral to the International Court of Justice. They were difficult times and people were not willing to do this as well. And for a number of years, as a young human rights officer, I would see the then German foreign minister coming to the General Assembly and making the proposal for an international criminal court.

To cut a long story short, here we are, in the precincts of The Hague Academy. You have been sworn in, and the institution comes into existence.

Ladies and gentlemen, at The Hague Peace Conference in 1899 when they started this business of assembling the basic rules of international law into some consolidated form, the representative of Argentina, and you can read this in two volumes collected by James Brown Scott in The Hague Peace Conference of 1899, He said:

"We may not bring much to this assembly, but we bring by our presence, we bring to it the character of universality and the voice of human kind."

One of the speakers earlier was speaking about the importance of the universal span of the Court and the interests of the Court. Mr. Prosecutor, it is this notion of complementarity and mutual support that I bring to you here today. And as the United Nations acting High Commissioner of Human Rights, I'm deeply encouraged by the rapid progress being made towards the full functioning of the Court, and I extend to you once again my congratulations. As you know, I issued a public statement on Monday congratulating you.

I'm glad to note that we have begun these very fruitful discussions, and I was touched by some of the remarks that I heard here. I will try to study some of those remarks. As you know, Mr. Prosecutor, we were very pleased to have you during your recent visit to Geneva, and then we took the occasion to express to you and to demonstrate that we want to support you in every possible way we could.

We are here to discuss policy questions facing your Office, as you start your work. My colleagues have studied this policy paper and the draft Regulations and we should come back to you with some technical comments. Today, as I said, my purpose was to bear witness and to express solidarity to you.

Let me say, if I may, a few words about the relationship between the Office of the High Commissioner and the Office of the Prosecutor.

My colleagues have had a look at this, subsequent to your visit, and we think there are many areas in which there is room for cooperation. We both have mandates to ensure, in broad terms, that human rights and human dignity are steadfastly protected. We are directly responsible for monitoring and fact-finding through our field offices and missions of inquiry. We provide a secretariat role to the numerous special procedures that engage in investigative work, and some international commissions of inquiry. And we're responsible for mainstreaming human

rights in the UN system. And we may have to come to you on occasion to say, Mr. Prosecutor, please take into account mainstream in your work. The one thing that we have is the voice and we can use the voice whenever it is necessary to do so for protection.

With these roles in mind, we see three areas for possible cooperation between us and your Office: information sharing, prevention, and technical cooperation.

As regards information sharing, the Office of the High Commissioner undertakes visits to conflict zones, and we have field presences in a number of countries, seven of which have ratified the ICC Statute and more than 20 other countries where we have field presences that may well ratify in the future.

Our desk officers in Geneva and elsewhere monitor human rights in every nation in the world. Don't misunderstand me. I'm not saying that we're perfect at this, but we're trying to do it. We have expertise in commissions of inquiries and into gross violations of human rights, as well as some expertise in investigating mass grave sites. And we've done some work on this in Afghanistan and in the Democratic Republic of the Congo. We have done some work in the area of the protection of witnesses and we have a developing code in this, and we have testified before the International Criminal Tribunal for the former Yugoslavia. Some of these may be relevant as the cooperation develops between us.

Another development that is note-worthy is that the Security Council is increasingly receiving reports from the Office of the High Commissioner, as in the case of massacres in the Democratic Republic of the Congo and the situation in Ivory Coast.

Let me just digress here for a moment and tell you that in December of last week during the Christmas week, I went to Ivory Coast at the request of the Security Council to look at the situation there. And

I was told that there were some mass graves here and there, and then later I was taken to one of these mass graves and I was accompanied by a forensic anthropologist. But, how should I say, the idea that one will be able to conduct a systematic investigation of a grave site is a very serious thing, and you can really easily be spun around by those on the ground.

Going back to the issue of the Security Council and its receptivity to fact-finding reports possibly could indicate how the Council's referral powers under the ICC Statute might influence at least in the near term. In some States Parties to the ICC Statute, the Commission of Human Rights has appointed experts to examine and report on the human rights situation in those countries. They include Afghanistan, Cambodia and the Democratic Republic of the Congo.

Additionally, the findings of our mechanisms, schematic mechanisms, of the Commission might be of interest to you; for example, the special rapporteurs or mechanisms on enforced disappearances, extrajudicial executions, torture, internally displaced persons, racism and xenophobia, children in armed conflict, the independence of judges and lawyers, and violence against women.

Please don't misunderstand me. I know that the crimes you have to deal with are very defined crimes, but I've been in this terrain for a while and I've accompanied some of these enquiries, and you know sometimes. If you let me say so, as a young officer I worked in the investigations in the southern corner of Latin America. At that point in time the political currents were against one, and at that point in time the governments were against one. But nevertheless the task, as you know very well, having used some of this material in your previous capacity, the task of assembling the information, documenting the information, and bringing in leads can be important.

I was speaking in a video conference with the Executive Committee on Peace and Security earlier this week about the situation in Liberia. The Special Prosecutor for Sierra Leone called me when he unsealed his indictment against Charles Taylor and he said, "Would you come out in support of me?" and I said I would. And it was a bit more than that, but I issued the public statement expressing solidarity for him. And when we were discussing this week the situation in Liberia, I found myself asking the question: Right now, whatever happened in the past, and whatever Charles Taylor was indicted for vis-a-vis Sierra Leone, Liberia doesn't have an investigative mechanism. The United Nations team is not there, we're not documenting the crimes taking place there right now, and we need to find a way to document these crimes. And the thought occurred to me that perhaps we should consider empaneling a commission of inquiry just to gather the information.

So in mentioning these various mechanisms, I'm not for a moment suggesting that the range of their concern should be your concerns, but I'm saying that they could be very good leads. I had to work for a while in setting up two exercises attempting to look into grave sites in Afghanistan before the fall of the Taliban, and setting up these exercises, let us say, takes some doing.

But continuing on the areas of cooperation, States Parties to the ICC Statute, they are also parties to human rights treaties, and they report to our treaty monitoring bodies. The treaty bodies provide important assessments on the strengths and weaknesses of domestic legal systems, and their reports may be an important source of information, in broad terms, for those who will be engaged in the task of giving life to the new court.

With regard to prevention, the mere existence of an effective international criminal justice regime could serve to deter those who plan

to commit genocide, war crimes, or crimes against humanity. Let me just say, if I may, that I spent three and a half years in the Yugoslav peace negotiations and I criss-crossed the former Yugoslavia. And when we took Radovan Karadzic and all of the leaders to New York for a period of time of negotiations, the Centre for Constitutional Rights filed a lawsuit against Radovan Karadzic as he was then in New York. From that moment onwards, he never went anywhere without being accompanied by a high-brass lawyer. So the preventive effect on, let us say, some of these leaders can be important.

Prevention, as I said, is a key priority for the Office of the High Commissioner, and indeed your notion, Mr. Prosecutor, of national systems -- in the importance of the development of national protection systems anchored in the rule of law and the protection of the judiciary and partner institutions is something that finds expression at this stage in the international human rights movement. One can say that we have drafted the international norms, and on the basis of the international norms we are beckoning States to establish national protection systems that reflect these norms. And the Secretary-General, in his second reform report, has said, I want more attention to be paid to enhancing and strengthening the national protection systems in countries.

And we, this very week, will send out a questionnaire to Member States saying, Please summarise for us, in a few pages, what you consider to be the broad elements of your national protection system. And we want to put this before a group of experts for general comments, but we want to foster the notion of a dialogue with States; that we're interested in what your national protection system is and we want to work with you on the national protection system.

Under the complementarity principle, the operation of the ICC Statute is interrelated with the capacity of states to conduct national

prosecutions through their domestic legal systems. Governments need assistance to ensure that legislation and judicial processes enable them to carry out, in a genuine manner, these national prosecutions in a manner consistent with the terms of the Statute and in conformity with international human rights law. Our office, Mr. Prosecutor, is willing to work with you to explore how best to assist States in adapting their laws and practices to the requirements of the ICC Statute.

As you noted in your speech to the Assembly of States Parties in New York, the first task of your Office is to make the best effort to help national jurisdictions fulfil their missions.

I don't know if Bill Pace is still here, and I didn't hear him yesterday, and I can understand the speaker who said that Bill was peevish, perhaps, about the overemphasis on this. But if he is in the room, Bill -- he is in the room. Bill, I say to you that without necessarily coming in on the degree of emphasis, I think that the line of reasoning has to be a valid line of reasoning; namely, that we have -- allow me to say, sir, that I am the secretary drafter of the first draft of the Geneva piece. And so I have kind of walked this journey a little bit intellectually for the last decade, and the more I think about it, the more I think that prevention of conflicts or prevention of gross violations of human rights is best done through national action.

So the strategic centrality of this concept, of the national protection system and of the national arrangements, is valid even though, in the conditions of today's world, it may well be right for you to say, Okay, national protection systems in the long haul, but now let's go after bad people who have committed these crimes. So I would just kind of make this nuance in terms of the sense of direction and the emphasis.

My colleagues and you will know that there are some situations where prosecution might not necessarily be the best solution, as in the

case of juveniles. The prosecutor for Sierra Leone -- for the Sierra Leone tribunal, for example, has announced that he will not prosecute those under 18; instead, Sierra Leone's Truth and Reconciliation Commission, which we're supporting actively, addresses juvenile justice. We support the work of that Commission and we also support national prosecutions of war crimes and crimes against humanity in the Balkans, in Cambodia, Columbia, and Haiti.

Let me turn from areas of cooperation briefly to some of the challenges in cooperation as we see them. In various circumstances one or more human rights actors could be present in situations of interest to the ICC, conducting fact-finding missions, monitoring the situation, or even investigating situations. Country or thematic rapporteurs, special commissions of inquiry are some of the bodies that may be monitoring situations of unrest, possibly even conducting country visits. A country may host one of our field offices with a protection mandate, as does Columbia right now. A peace operation may be monitoring a cease-fire under Chapter VII, and similar kinds of cases.

In these situations it may well happen that UN staff or UN-mandated individual experts come across evidence or information that may be of direct relevance for future action by you, Mr. Prosecutor. As we know, often the only way to preserve crucial evidence is to gather it at once. In order to be consistent with this position on impunity, we have the duty to ensure that information is collected and handled in a professional manner so as not to destroy its legal value before a court of law.

Even as I say this, I'm aware that this is not an easy thing that I'm speaking about. I've been turning over in my mind that it is the situation in Europe, there is the authority that is present, there is a special representative of the Secretary-General, and there are these mass



grave sites. Some governments are acting bilaterally vis-a-vis these sites. And an international community via an office such as yours is moving very little resources. And so how to at least demonstrate an interest and call for protection of the sites is something that I've been thinking about rather much recently, and I hope that via our High Commissioner, who is a special representative on the ground there now, that we will be able to least bring a presence to bear on this issue.

Finally, techniques used in human rights monitoring, fact-finding and investigations are not designed to match the more stringent requirements of investigations of a criminal nature. But experiences show that human rights work is potentially complementary with enquiries of a criminal nature. The time is right to work out an easier interface between these two fields. Making human rights data-gathering and management techniques fully compatible with criminal standards is an achievable goal. This moment is highly propitious. Our office will need to develop, possibly in collaboration with the ICC, protocols for monitoring fact-finding and investigation. This has important implications and we must both address it.

As I mentioned to you when you came to Geneva, when there was the exodus from Kosovo, the then High Commissioner, Mary Robinson, took the decision to put monitors around Yugoslavia into where the people had moved. And our monitors were collecting evidence and the question arose how would we share this evidence with the prosecutor of the Yugoslav tribunal. And so we took the view that in order to establish the discipline of this, we would let our people send the evidence to us and we would share it.

There were some instances where the prosecutor's staff on the ground wanted to have the information first hand, and we made the information available. There was one moment where evidence about

systematic rape was particularly patchy and the prosecutor's office signalled to us, Please see if you people can actually develop some information on this.

To conclude, Mr. Prosecutor, distinguished participants, ladies and gentlemen, our office is studying various ways of cooperating between -- in a framework of cooperation between your Office, Mr. Prosecutor, and our office. I wanted to be here today to recall Colonel Hudson; I wanted to be here to recall the vision of the International Bill of Human Rights with three parts: the declaration, the treaties, and measures of implementation. And I wanted to say to you today, if I may, that great ideas have a way of vindicating themselves in the long haul, and the difficulties in anchoring an idea in the short term are not necessarily decisive of the validity of an idea in the long haul. And we have seen historically that every time we make an advance forward in an arrangement for the protection of human rights, the mechanism wins out in the end.

So it is the young generation and the future generations that will vindicate the institutions. I sometimes think that we have to develop more of this notion of inter-generational justice, that justice is not time-bound, and one generation's concept of justice will be influenced by its experiences. So as a witness, Mr. Prosecutor, today I say to you that future generations will vindicate the validity of the Court.

I thank you, sir.