



Fatou Bensouda
Prosecutor of the International Criminal Court

*The 65th Anniversary of the Genocide Convention: the Contribution of the
Office of the Prosecutor of the International Criminal Court*

The World in the Age of Genocide

Speech

New York
12 December 2013

Excellencies,
Ladies and Gentlemen,

I am honoured to be with you today on the occasion of the 65th anniversary of the Convention for the Prevention and Punishment of the Crime of Genocide. Today, we also pay tribute to Raphael Lemkin, for his indefatigable pioneering work and ultimate success for the adoption of the Genocide Convention.

My sincere thanks go to the Permanent Mission of the Republic of Poland to the United Nations and His Excellency, Ambassador Sarkowicz for organizing this important seminar, and for affording me the opportunity to share with you some reflections on this special occasion.

As you may know, the definition of the crime of genocide contained in Article 2 of the Convention has been adopted verbatim into the Rome Statute, the founding treaty of the International Criminal Court, endowing the Court with jurisdiction to investigate and prosecute those responsible for committing this heinous crime.

But the contribution of the Genocide Convention drafters to the ICC Statute is even greater.

The adoption of the Genocide Convention was the first expression of a worldwide consensus that crimes of this nature and magnitude should no longer go unpunished; in addition, the drafters recognized that, for the law to be effectively enforced, an independent judicial enforcement mechanism would be required.

To that end, Article 6 of the Convention refers to the authorities with jurisdiction over the crime as “a competent tribunal of the State in the territory of which the act was committed, or by [an] international penal tribunal [...]”

The reference to an international penal tribunal was a revolutionary novelty in international law. That idea, and the lessons learnt from the political hesitations that allowed genocides such as the ones shamefully witnessed in Srebrenica and Rwanda, laid the foundations for the International Criminal Court.

Indeed, and even prior to the creation of the ICC, international *ad hoc* tribunals had been created by the UN Security Council to ensure accountability for the crime of genocide committed in the former Yugoslavia and in Rwanda.

Case law from the *ad hoc* tribunals is a good reference point for the Court in many areas of law including genocide. It is particularly noteworthy that since the mid- 90's, great strides have been made in defining how rape and other acts of sexual violence could be used in a campaign of genocide. This has contributed to the expanded understanding of sexual or gender violence, as well as to the multi-faceted dimensions of genocide.

Perhaps the most groundbreaking decision worldwide in that sense came from the Trial Chamber of the UN International Criminal Tribunal for Rwanda, on 2 September 1998, through the Akayesu judgment. For the first time in history, rape was explicitly recognized as an instrument of genocide. As described by the ICTR in the Akayesu case, rape is used to "kill the will, the spirit, and life itself." Since time immemorial, rape had been considered a trophy to be won in war. The ICTR exposed this antediluvian custom for what it really is: a most heinous crime.

This pivotal decision would not have been possible without the legal standards established by the Genocide Convention fifty years earlier.

And in turn, without the Convention and the development of jurisprudence by international and national tribunals ever since, my Office would not have been able to bring charges against those it believes are the most responsible for these crimes.

Indeed, in July 2008, the Office of the Prosecutor of the ICC charged Sudanese President Omar Al-Bashir of committing genocide in Darfur, *inter alia*, based on the fact that thousands of civilian women, belonging primarily to the Fur, Masalit and Zaghawa groups, were subjected to rape by Sudanese forces.

Excellencies,

Ladies and Gentlemen,

Thanks to Raphael Lemkin and the drafters of the Genocide Convention, as well as to the drafters of the Rome Statute, the world today, 65 years after the adoption of the Convention, has an international system of criminal justice with “teeth to defeat genocide,” to borrow the expression coined by General Roméo Dallaire and Senator Hugh Segal of Canada.

The ICC will do – as is doing – its judicial work, sometimes in very complex and sensitive situations, where many interests are at play.

The work of the Court can have a global impact. Even before any ruling in our first case against Thomas Lubanga for the use of child soldiers, the issue of child recruitment gained new momentum, triggered debates in remote countries like Colombia or Sri Lanka and child soldiers were released in Nepal. The then Special representative of the UN Secretary-General on children in armed conflicts Radhika Coomaraswamy factored in such potential and used this as a tool to campaign around the world, and secure even more releases. This is an example of how the law can be effectively employed to prevent crimes and to constructively alter conduct.

This is the way forward. The ICC can only deal with a few cases at one time, but the impact of its cases and rulings extends to at least 122 States, which are Parties to the Rome Statute and even beyond reaching non-States Parties. This is what the UN Secretary-General has called “the shadow of the Court.” The Court’s potential for prevention and deterrence is certainly there. The support and tangible cooperation from the international community and the Court’s States Parties only enhance the potency of the Court’s deterrent effect.

We have come far in these last 65 years; but enforcement is still precarious. Much still needs to be done to transform “Never Again” from a promise, into reality. The strong and consistent commitment and support of a wide range of actors is needed in order to ensure that the promises and the hopes contained in the Genocide Convention are truly enforced in this new century.

As Général Dallaire and Senator Segal have eloquently put it:

“[W]hen genocide is not confronted, insanity soon follows. And with the unthinkable come the knock-on effects from the commission of mass atrocities in distant lands, to which we are closely connected in a globalized world: pandemics, terrorism, piracy, organized crime, human trafficking, uncontrolled migration, diminished access to strategic raw materials, and the eventual erosion of social cohesion at home when expatriate or diaspora populations seek action that is not forthcoming from their own host governments. The transnational chaos that genocides produce renders it imperative that we put this item higher on our list of foreign policy priorities.”

Excellencies,

Ladies and Gentlemen,

Not unlike 1948, today much is at stake. It is not enough to merely adopt international legal instruments on paper to deal with unspeakable atrocities. These instruments need to be supported, and they need to be effectively enforced.

I call on all our partners, on all persons concerned, to continue and strengthen their support and cooperation with the International Criminal Court, and to join our fight against this heinous crime, which concerns us all. The wheels of international criminal justice may at times be slow, but turn they will, and they can generate important judicial outcomes, and in so doing, bring necessary vindication to the victims of mass atrocities.

When the ICC benefits from full cooperation of the international community and finally achieves universality, it is when we have collectively ensured -- without exception or limits of jurisdiction -- that the génocidaires of this world are either deterred from acting out their monstrosity or held accountable for their crimes. Raphael Lemkin and other likeminded have begun that crucial process for us. It's our duty and pledge to humanity to continue that honourable path and guarantee its full realization.

Allow me to conclude by commending the efforts of the Polish authorities, and in particular His Excellency Minister Sikorski, for celebrating and remembering the work of Raphael Lemkin through the Raphael Lemkin International Award. This is a noble initiative, which is to be commended and celebrated.

I look forward to our discussions, and thank you for your attention.