

Justice, Reconciliation and the Role of ICC in Post-Conflict Peace-Building process

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Thank you, Chairperson. We deal, in this session, with justice and reconciliation in post-conflict peace-building process and the ICC's role in this context.

The enhancement of the "rule of law" in international community has long been the earnest hope of human kind. I believe that the establishment of the ICC has been a big step in that direction. And I also believe that we should endeavor to realize the "rule of law," especially in the course of conflict resolution and post-conflict peace-building process.

Up until now, the trial of crimes committed during conflicts has taken place in various frameworks, depending on the characters of the specific conflict areas. Those frameworks are determined to a great extent by the political situation at the time of conclusion of each conflict, particularly the power relationship between the parties to the conflict. But now the international community has the Rome Statute of the ICC as a principle to observe. In other words, the Rome Statute now fulfills the function of "the law" to rule, both substantially and procedurally, for the international community to solve the conflict. In the future, the Rome Statute will become the international standard of post-conflict justice, even in cases which the ICC does not take up directly. But this will not come about, if we sit still and do nothing. To realize the worldwide standardization of the Rome Statute, the international community must come together to exercise the commitment in order not to allow the local power relationships to wield undoing influence on post-conflict justice.

Now I proceed to the reconciliation. The image of reconciliation that seems to predominate now is that of the South African Truth and Reconciliation Commission that dealt with the crimes committed under the apartheid regime. Reconciliation here entailed granting pardon in exchange for a confession of the truth. Now, this is considered incompatible with justice of international standards. Crimes against humanity are entitled neither to be immune from prosecution nor to be subject to any prescriptive limitations. These are now considered as legal principles. Granting immunity is not the same as reconciliation. After many experiences, we have reached the point today where reconciliation is seen as taking place within a certain set of limits and in such a way as not to prejudice justice. Thus, reconciliation has become not just a case of the parties to the conflict merely agreeing to stop their dispute, which is something not sustainable, but must be based, substantially and procedurally, upon the principle of justice, in other words, upon "the law."

Well, as I myself am familiar with the conflict and peace-building process in East Timor, I would like to discuss the theme of this session in terms of the case of East Timor.

East Timor achieved independence in 2002 after twenty-four years of Indonesian occupation. The conflict ended in 1999, but the ICC was then still at the stage of increasing the number of member countries who have acceded to the treaty, and so its jurisdiction could not cover the East Timor case. However, the existence of the Rome Statute that was agreed on in 1998

exercised undeniable influence to decide the shape that post-conflict justice and reconciliation took in East Timor.

After the resolution of the East Timor conflict, two legal processes and one reconciliation process were conceived to deal with the violations of human rights during the conflict. The two legal processes were a serious crimes trial process in East Timor and an ad-hoc human rights court in Indonesia. A unified legal process, an international tribunal, was not set up. And so, the whole process was split into two, being conducted under differing legal systems by different bodies.

The serious crimes trial process in East Timor indicted 440 persons on charge of serious crimes, including crimes against humanity, during the violence in 1999. Of these, 84 were found guilty. The United Nations appointed international staffs to both the prosecution and the panel of judges, and the trials were conducted according to international standards. The problem was that because most of the individuals indicted lived in Indonesia, outside East Timor's jurisdiction, it was in fact impossible to bring them to trial in East Timor. Thus more than 330 are yet to be brought to trial.

On the other hand, the ad-hoc human rights court in Indonesia, set up under strong pressure from the international community, was a strictly domestic process and received absolutely no assistance from the United Nations. This court was subject to Indonesian domestic law, which is of a rather high standard in keeping with the Rome Statute standards. However the reality is that, of the 18 persons indicted, only one, a militia leader, was found guilty, and everyone else was declared not guilty. The international community regards this process a failure.

Given the failure of the Indonesian domestic law process, the international community is at present considering what to do next. As it stands now, even the serious crimes process in East Timor has been able to bring only low-level militia to trial. The ring leaders of the violence in the military and among the militia group, taking refuge in Indonesia, will not be brought to trial in either country. This has come about because the international community has failed to take a united stand on the issue.

Now I mention on the reconciliation process. The Commission for Reception, Truth, and Reconciliation (CAVR), set up in East Timor in 2002, carried out a process of community reconciliation. This was a process laid down by law, whereby perpetrators of non-serious crimes could, by confessing the truth, admitting their crime, asking forgiveness and making some kind of restitution, be reaccepted into the community. Through this process, former militia men who had been cut off from the community were restored to society again. And when their reintegration was completed, they were given a promise by the Attorney General's Office that they would not be prosecuted on charge of those crimes. One may call this a kind of trade-off. But this is something completely different from immunity. The perpetrator admits that he has done something wrong, apologizes for it, and makes restitution.

This community reconciliation process (CRP) deals only with crimes like battery, theft, and destruction of property, which do not fall under the category of serious crimes. It excludes perpetrators of serious crimes like murder, torture, rape, and deportation. Furthermore, this process neither takes place if the perpetrator himself does not apply for reconciliation, nor is reconciliation considered to have been achieved unless the victim agrees that it has been achieved. So what this process does is to provide, within limits consistent with principles of justice, space for both perpetrator and victim to directly face each other and to facilitate them to take the first step to approach each other. It has attainable goals, and the rate of success of this process in fact has turned out to be extremely high.

East Timor's reconciliation programme was planned from 2000 to 2001. At the time, the Rome Statute already had an established position as a standard, and it was firmly held that serious crimes are not subject to immunity.

However there is one unique aspect in this community reconciliation programme. This is the partial adoption of a traditional method in East Timorese society of conflict resolution in the form of mediation.

The community reconciliation programme was originally conceived in order to deal with the many non-serious crimes, which were too numerous for a serious crimes process to handle without burdening the fragile judiciary. The reconciliation programme took the form of community meetings, of which village leaders were quite influential members. If no other device had not added to this, this would not have assured a uniform standard of law and might have lead the conclusion to arbitrariness. So, it was designed for CAVR to supervise the reconciliation meetings, and in reality this was done. Furthermore, the entire process was under the supervision of the Attorney General's Office, and without its permission for each case, reconciliation was not allowed to go ahead. Thus, while the community reconciliation program made use of traditional law, the standard was very strict, and it had a mechanism that called for supervision by CAVR and the Attorney General's Office. Thus, "the rule of law" prevailed.

There are a number of things that we can learn from the experience of East Timor. The first is that justice and reconciliation are in a complementary relationship. Next is that reconciliation is not immunity, but one form of the rule of law. And reconciliation cannot take place unless the two parties agree to shake hands with each other, with admission of guilt, apology and retribution on the part of the perpetrator, and with forgiveness on the part of the victim. And here, the extremely important first step exists on the part of the perpetrator. It is the willingness to confess the truth and to seek pardon.

When reconciliation is turned merely into a moral slogan, the victim, caught between human emotions and morals, only suffers lonely. And of course, forced reconciliation does not last long. In fact, it damages peoples' trust in the legal order and prevents society from getting over its painful past. Now that we have the Rome Statute as a standard of justice, I am sure it is getting more possible and more important for the international community to carry out post-conflict justice and reconciliation in a balanced way abiding by "the rule of law."

Thank you.