

# **Project of a new Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of Crimes of genocide, crimes against humanity and war crimes**

**Strategic meeting 21 October 2013 – The Hague**

## **Keynote Address by Mr. Adama Dieng, United Nations Under Secretary-General and Special Adviser to the UN Secretary-General on the Prevention of Genocide**

**Mr. Chairman,  
Invited guests,  
Dear friends,**

I would like to express my gratitude to Argentina, Belgium, Slovenia and the Netherlands for inviting me to participate in this key strategic meeting relating to a project for new multilateral treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of Crimes of genocide, crimes against humanity and war crimes (which I will refer to in brief as atrocity crimes).

In my previous role as Registrar of the International Criminal Tribunal for Rwanda, I was privileged to be part of an institution that was confronted with the task of bringing to justice persons accused of most serious and heinous international crimes that in some cases defy human comprehension. While discharging my functions, I gained firsthand experience of the necessity of an international judicial institution like ICTR to create and maintain effective judicial cooperation with member States. As we all know, ICTR does not have its own police as such cooperation with member states is crucial to ensure that those indicted by the Tribunal were arrested and transferred to the premise of the Court to face justice.

However, it was evident that the Tribunal would not have enjoyed such cooperation with member states without an adequate legal framework. Obviously political will and national structures are important but without adequate legal framework to guide this cooperation, it would have been difficult to ensure fair trial for the accused and victims alike. It is therefore this experience I had while at ICTR, that I consider state cooperation key in any efforts to successfully investigate and prosecute atrocity crimes.

My Office is aware of the initiative to open negotiation for a new treaty reinforcing interstate judicial cooperation for the prosecution of atrocity crimes. I am convinced that fighting impunity and establishing a credible framework that the perpetrators of crimes of genocide and related crimes will be held accountable is a key element which can significantly contribute to a culture of prevention and peaceful settlement of disputes.

With the progressive development of international law and international criminal law in particular, today it's a settled law that States have inherent obligation to investigate and prosecute atrocity crimes. This responsibility was recently reaffirmed by the adoption and eventual entry into force of the Rome Statute of the International Criminal Court. As we all know, the Rome Statute is underpinned by the complementarity principle which requires states to conduct investigation and prosecution at domestic level of persons responsible for atrocity crimes. This obligation, stems from the reality that these crimes are committed at the national level

and it is therefore national authorities which should take lead to prevent and punish them. And international community can only intervene when national authorities are manifestly unable or unwilling to discharge this duty.

Despite the need and indeed desirability for domestic prosecution, it is evident that without a formal international legal framework agreed upon by states, some key elements such as mutual legal assistance and in some cases extradition can hardly be achieved. Experience has shown that the effectiveness of the judicial interstate cooperation broadly depends on the existence of an applicable international MLA and extradition treaty. For example, a reply to a request for assistance can be obtained much sooner and more efficiently when there is a formal legal basis for it. By concluding an international agreement, states reaffirm their commitment to establish a direct channel of communication and cooperation among one another to ensure that request for legal assistance, exchange of information in criminal matters or request of particular expertise is dealt with expeditiously.

During an expert meeting organized by Belgium, the Netherlands and Slovenia, in The Hague in 2011, practitioners and legal experts from nineteen countries rightly concluded that the international procedural legal framework for mutual legal assistance and extradition for international crimes is incomplete and outdated. This conclusion was based on the reality that time and context has evolved since when existing instruments were adopted. For example, the UN Convention on the Prevention and Punishment of the Crime of Genocide (1948) only mentions that genocide is not considered a political crime for the purpose of extradition. However, a closer scrutiny would indicate that the Convention is silent on matters related to mutual legal assistance between States in case of domestic prosecution. It is this kind of discrepancies that provide a compelling need to devote our efforts to create a legal regime that reflects and address pertinent challenges of our time.

It is on the basis of this reality that I applaud the efforts and leadership of Argentina, Belgium, Slovenia and the Netherlands who have proposed to open negotiations for a modern multilateral treaty regime to facilitate better practical cooperation between States investigating and prosecuting these crimes. A new multilateral instrument would fill this legal *lacunae* and offer practical solutions. Such an instrument would benefit States in their investigation and prosecution of atrocity crimes whether at a national or an international level.

I am pleased to note that an increasing number of like-minded States share the views of these countries that I have just mentioned. Indeed, I should emphasize that to achieve this objective we don't need to reinvent the wheel. The international community could draft the new treaty by duplicating the most modern procedural provisions adopted in recent treaties on mutual legal assistance dealing with other international or transnational crimes – such as the UN Convention against Transnational Organized Crime (UNTOC), and the UN Convention against Corruption.

Concerning a place to open the negotiations, I share the analysis of those who have supported this initiative, that the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) is a suitable forum. This forum possesses the necessary technical expertise and its mandate leaves sufficient room to reviewing a treaty on MLA and extradition provisions especially when it concerns international crimes.

In concluding my remarks, I would like to reiterate my belief that I personally consider the negotiation of a **multilateral** treaty regime of fundamental importance and therefore be dealt with as a matter of priority by the international community. As I have consistently reminded states whenever I have had such an opportunity, atrocity crimes, are the most serious crimes of international concern and all States have the obligation to investigate and prosecute them effectively. It therefore goes without saying that the adoption of a new treaty regime will enhance state cooperation and capability to effectively prevent and punish these crimes. Indeed, if states have an efficient and effective legal framework to punish these crimes, will certainly go a long way in reaffirming the complementarity principle which underpins the Rome Statute establishing the international Criminal Court.

I thank you for your attention.