

# The international legal order and human rights

## Introduction

256. As the nineteenth century gave way to the twentieth, Peace Conferences held at The Hague in 1899 and 1907 sought to humanize our world and to introduce rules to mitigate human suffering during armed conflict. The quest for the peaceful settlement of disputes had as its *raison d'être* the reduction of human suffering wrought by war. The efforts of the League of Nations and the United Nations to codify and progressively develop international law have seen their greatest vindication in the twentieth century in the international legal regime for the protection of human rights.

257. Today, declarations, conventions, treaties, bodies of principles and codes of conduct cover almost every conceivable aspect of the relationship between the individual and the State. Legal instruments exist to protect the rights of the child, to protect the rights of women to equality of treatment, to spell out the duties of Governments in respect of the observance of civil and political rights and economic, social and cultural rights, to proscribe racial discrimination, to prevent torture, to protect minorities and to promote and protect cultural diversity. We enter the new millennium with an international code of human rights that is one of the great accomplishments of the twentieth century.

258. Alas, human rights are flouted wantonly across the globe. Genocide, mass killings, arbitrary and summary executions, torture, disappearances, enslavement, dis-

crimination, widespread debilitating poverty and the persecution of minorities still have to be stamped out. Institutions and mechanisms have been established at the United Nations to eradicate these blights on our civilization. They include the working groups and special rapporteurs of the Commission on Human Rights, the institutions and mechanisms established to promote the realization of economic, social and cultural rights and the right to development, and the Office of the United Nations High Commissioner for Human Rights.

259. When we face egregious violations of human rights, documenting and exposing them has been, and will remain, of the utmost importance. In the future, it is our hope that the International Criminal Court, building on the examples set by the International Tribunals already established, will not only bring criminal despots and tyrants to justice but also act as a deterrent against gross violations of human rights everywhere.

260. The agreement reached to establish the International Criminal Court is a watershed in the history of international cooperation for the promotion of human welfare and for the universal realization of human rights. Developments in this area are of such great potential import for the international legal order that they warrant detailed attention.

## The International Criminal Court

261. Eighty-four States have now signed the Rome Statute of the International Criminal Court. Four have ratified the statute, which will enter into force after ratification by 60 States. At the request of the General Assembly in December 1998, I convened the Preparatory Commission for

the International Criminal Court established by the Rome Conference. The Commission held its first session in February 1999 and its second in July-August. A third session will be held in November-December.

262. The Preparatory Commission has made some progress in drafting the Rules of Procedure and Evidence and the Elements of Crimes for the future Court, but much remains to be done if the deadline of 30 June 2000 set by the Rome Conference is to be met. In the meantime, I urge Member States to ratify the statute and take the necessary steps for its implementation.

## The International Tribunals

263. At the request of the General Assembly in December 1998, I appointed five independent experts to review all aspects of the functioning of the two International Tribunals. The review is general in scope but will focus on judicial management, especially case management in the pre-trial phase. Its aim will be to ascertain whether resources can be deployed more efficiently. The review team is to report to the General Assembly towards the end of 1999.

264. The judgements of the two Tribunals have continued to clarify key aspects of international humanitarian law. These include the scope of grave breaches of the Geneva Conventions of 1949; the application of, and the distinction between, the concepts of international and non-international armed conflict; the rules of international humanitarian law which are applicable in armed conflict of a non-international character; the meaning and scope of crimes against humanity, including their relation to armed conflict; the definition of torture in international humani-

tarian law; the definition of rape in international criminal law; the criminality of the planning and preparation of violations of international humanitarian law; the meaning and scope of command responsibility; the legitimacy of duress as a defence against charges of war crimes and crimes against humanity; and elements of the offence of aiding and abetting in the planning, preparation or execution of a crime under international law.

265. Two main challenges confront the Tribunals. First, further steps must be taken to reduce the time the accused are held in custody awaiting trial and the time taken to conduct the trials themselves. Second, the Tribunal for the Former Yugoslavia faces the additional, and immense, task of investigating crimes committed in Kosovo.

#### *International Tribunal for the Former Yugoslavia*

266. In the past year, the International Tribunal for the Former Yugoslavia issued four indictments against nine individuals including, most notably, Slobodan Milosevic, President of the Federal Republic of Yugoslavia. Since its inception, the Tribunal has issued 27 public indictments against 90 individuals.

267. At the time this report was being prepared, the Tribunal was holding 30 people in custody. Five of those were awaiting appeals; 10 were being tried; 15 were awaiting trial. During the past year, the trials of eight accused were commenced, while judgements were handed down in respect of six accused, bringing the total of those subjected to judgement to seven. Five of the accused were found guilty of at least some of the charges against them; the other was found not guilty on all counts. In addition, the appeal of one accused against conviction and sentence

was rejected by the Appeals Chamber, which at the same time allowed appeals by the Prosecutor against his acquittal on certain counts.

268. During the year, the President of the Tribunal wrote four times to the President of the Security Council protesting at the failure of the Federal Republic of Yugoslavia to cooperate with the Tribunal, its continuing failure to arrest and transfer three persons indicted by the Tribunal and its persistent refusal to permit the Prosecutor and her investigators to enter Kosovo.

269. As a consequence of events in Kosovo, the Office of the Prosecutor established temporary operational bases in Albania and the former Yugoslav Republic of Macedonia. The Prosecutor also received my authorization to recruit up to 300 type-II gratis personnel from Member States to undertake specialized forensic work in Kosovo as soon as international forces were deployed. To date, 11 States have finalized agreements with the Organization to provide experts for this purpose.

270. Austria and Sweden concluded agreements on enforcing the sentences of the Tribunal, bringing to five the number of those agreements concluded to date. Negotiations are under way with other States to secure similar agreements.

271. On 16 October 1998, the General Assembly elected three judges to staff a new, third Trial Chamber. They took up their duties on 16 November 1998. Judge Gabrielle Kirk McDonald announced her resignation from the Tribunal, with effect from 17 November 1999. Following consultations with the Presidents of the Security Council and the General Assembly, I appointed Patricia McGowan Wald, a national of the United States of America, to serve out the remainder of Judge McDonald's term of office, which ends in November 2001. The Prosecutor of

the two Tribunals, Louise Arbour, announced her resignation with effect from 15 September 1999. On 11 August 1999, the Security Council appointed my nominee, Carla Del Ponte, a national of Switzerland, as Prosecutor of both Tribunals, effective 15 September 1999.

### *International Tribunal for Rwanda*

272. During the past year, the International Tribunal for Rwanda issued two indictments against five individuals. Since its inception, it has served 28 indictments on 48 people. Thirty-eight people are currently in custody under the authority of the Tribunal; 5 accused are waiting for appeals to be heard; 3 are being tried; and 30 are awaiting trial. Five accused have already been found, or pleaded, guilty on counts involving genocide. All five have been sentenced. Appeals are pending from all of these judgements or sentences.

273. Mali became the first State to conclude an agreement on enforcing the sentences of the Tribunal. Negotiations are under way with other States for the conclusion of further such agreements.

274. On 3 November 1998, the General Assembly elected nine judges to the Tribunal's Trial Chambers. At the Tribunal's plenary session in June 1999, Judge Navanethem Pillay was elected President of the Tribunal, replacing Judge Laity Kama, who was ineligible for re-election to that post.

## The way forward

275. Throughout this report, I have sought to emphasize that peace, development and human rights are

interrelated. I have also noted that the combination of underdevelopment, globalization and rapid change poses particular challenges to the international human rights regime. This makes it doubly important that we insist on the responsibility of Governments to uphold human rights regardless of their political, economic, social or cultural systems and notwithstanding their economic and social situation. Stated simply: the pursuit of development, the engagement with globalization, and the management of change must all yield to human rights imperatives rather than the reverse.

276. Respect for human rights, as proclaimed in the international instruments, is central to our mandate. If we lose sight of this fundamental truth, all else will fail.