

“From the Court Room to the Classroom”

Keynote Address – Under-Secretary-General and Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, at the IRMCT Second Judicial Colloquium: The New Face of Atrocity Crime Proceedings: Internationalization of Standards, Regional Dialogues on Procedural and Cooperation Matters, and Use of New Technologies

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President, International Residual Mechanism for Criminal Tribunals, President East African Court of Justice,

President, African Court on Human and People’s Rights.

Excellencies,

Ladies and gentlemen

I am honored to join you today for the Second Judicial Colloquium of the International Residual Mechanism for Criminal Tribunals on a topic very close to my mandate, namely: *the New Face of Atrocity Crime Proceedings: Internationalization of Standards, Regional Dialogues on Procedural and Cooperation Matters, and Use of New Technologies*.

Let me start with the obvious of why this matters: By enhancing our ability to conduct atrocity crimes proceedings – to which indeed internationalization of standards, regional cooperation and use of new technologies contribute – we advance justice. With this, we honor the victims, determine the facts of what has happened, and – by doing so and by bringing perpetrators to justice – we build solid foundations for prevention.

As the Special Adviser to the United Nations Secretary-General on the Prevention of Genocide, my mandate is to monitor, raise alarm and alert the Secretary-General over situations across the world where there is a risk of genocide or related crimes, by which I mean war crimes and crimes against humanity. I am also mandated to raise awareness on the causes and dynamics of these crimes and to strengthen the capacity of Member States, regional organizations and civil society to prevent them.

My mandate is on prevention, not on adjudication. I often must emphasize to many who ask that I pronounce whether a genocide has occurred or is occurring that I do not have the mandate to make a determination if a particular situation amounts to genocide or other related crimes. This is

the mandate of judicial institutions with the relevant jurisdiction, including of course the Residual Mechanism.

However, the connection between accountability for genocide and related crimes and their prevention is indisputable.

Genocide was codified in international law through the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Convention created the dual obligation on State parties to both prevent and punish this crime.

Last year, we marked 75 years since the adoption of this landmark Convention. I am grateful that many of you were present in this commemoration at United Nations Headquarters in New York, in December. On that occasion, we honored the tireless work of Raphael Lemkin in giving the crime a name, genocide, challenged by the fact of the existence of a name for the crime of killing one person, – murder – and none for the killing, based on identity, of a group of people. Lemkin also led efforts in codifying the crime and making the adoption of this Convention a reality.

At the 75th commemoration, we also emphasized the legacy of this pillar of international law and the many ways in which it has contributed to the international criminal law framework we have in place today, as well as to the prevention and punishment of genocide at the international, regional and national levels.

Indeed, the statutes for international and hybrid tribunals set up to prosecute the most serious crimes, in Rwanda, in the former Yugoslavia, in Cambodia and in other places, have been based – as it could not be otherwise – on the definition of the crime of genocide as set out in the Genocide Convention. The work of these tribunals has in turn helped us have a stronger understanding of the scope of this crime, its devastating impact on victims as well as the rights that victims have, including to reparations.

In addition, pioneering as it was, already in 1948, the Genocide Convention in article six envisaged the possibility of an international penal tribunal that may have jurisdiction for the crime of genocide in the future. This took many decades, as the path towards justice is sound but slow. But in 2002, as we know, the International Criminal Court became operational with jurisdiction over the crime of genocide – based on the definition as set out in the Convention. The 1948 Convention has also enabled the adoption and implementation of domestic legislation across the world making genocide punishable in domestic jurisdictions.

While acknowledging these achievements, we know that the Convention has not entirely fulfilled the noble aspirations envisaged at its adoption. While 153 States have ratified this text, 41 have yet to do so. And far too often, States fail to implement the obligations of the Convention and to fulfil the commitment of ‘never again’, with horrific consequences for victims. The tribunals for Rwanda and the former Yugoslavia were both established by the Security Council because of the failure to prevent the crimes in the first place.

Today we know the warning sign of genocide and related crimes. We know the risk factors. It is not the lack of information about violations of rights that may lead to a genocide that is hampering prevention efforts – it is the lack of action.

In our Office we have developed a *Framework of Analysis for Atrocity Crimes* which sets out these risk factors. This is the methodology we use to assess situations across the world and on which we base our early warning. This Framework was developed based on extensive consultations and thorough research of the elements that were present in past instances of commission of such crimes. The verdicts by international tribunals, including analysis of the crime of genocide, were among the resources used to identify these risk factors.

This demonstrates just one of the many ways in which accountability for these crimes can help inform and enhance prevention efforts. But there are many more. Let me address two, which are part of the themes for the discussion of this Colloquium. Namely, the importance of cooperation for accountability purposes, facilitated by internationalization of standards, and the use of new technologies.

Increasing cooperation for accountability is crucial to ensure that the safeguarding of the significant steps towards justice and accountability for past crimes that have been achieved by the ICTR, ICTY and the Residual Mechanisms and also that perpetrators are brought to account. We follow closely the progress of the Mechanism and I always issue statements in support of the arrests. We do know that many indicted people are still at large, in countries that are Member States of the UN. Undoubtedly, this impunity undermines what my Office stands for. It is therefore incumbent on my Office to join hands with the Residual Mechanism and all parties seeking accountability for perpetrators of atrocity crimes as well as to help provide a strong deterrence to would-be perpetrators of atrocity crimes.

The success of judicial institutions in ensuring accountability is often dependent on such cooperation. This includes with domestic judicial systems, which must play a leading role. As my friend Prosecutor IRMCT Serge Brammertz states repeatedly, national prosecutions are not optional; they are essential. The success of regional cooperation is less a matter of technical coordination and more a matter of political will. It is important that all UN Member States extend cooperation to the Office of the Prosecutor of the IRMCT to apprehend and bring to justice genocide perpetrators and fugitives living in their territories and I acknowledge the good efforts of the Member States who have done so.

Without cooperation, justice cannot fully be served to victims, it is critical for them and society more broadly to heal. This is because justice is not only about the past, it is also – very centrally – about the future.

Without such cooperation, plain and simple, many perpetrators will not see their day in court. We also know that justice for the gravest crimes cannot depend only on the work of international tribunals. While high level cases have been successfully prosecuted at this level, and all of you

here are living testimony of this, many serious allegations are left unaddressed simply because there is no sufficient capacity to prosecute all cases. Cooperation based on international standards therefore becomes paramount to expand the wings of justice and to bring it to all affected victims and communities, so that they can heal and move forward. This too is essential for prevention.

Ladies and gentlemen,

Let me now turn to the use of new technologies. The rapidly changing technological landscape we are seeing all around us presents many opportunities to enhance our work on prevention and accountability for international crimes. New technologies allow for collection of evidence in ways that years ago was inconceivable. I have seen the importance of this in the good work of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh, the UNITAD mission in Iraq, for example. New technologies allow efficient ways to preserve, store and manage evidence, to facilitate connection with witnesses and to allow parties to participate in proceedings remotely. But they are of course not without challenges. New technologies can support judicial proceedings enormously, but they are also part of the problem in enhancing the risk of international crimes in the first place.

Which takes me to hate speech. My Office is the UN systemwide focal point on hate speech, and we see firsthand through our work on tackling hate speech the severe negative impact of social media, and the algorithms that they are based on, in accelerating hate and incitement at unprecedented speeds.

Hate speech, in particular when it reaches the threshold of incitement, is one of the indicators of risk of genocide and related crimes that my Office looks at. We know from history that hate speech and dehumanization of the other has preceded the commission of genocide. The role of hate speech and incitement on the commission of genocide has also been highlighted through the judgments of the International Criminal Tribunal for Rwanda in what was called the media case. Similar tactics were used in the lead up to the Holocaust and in many other situations. Today, we see such tactics being put in place through the use of social media. This allowing hate to disseminate much faster, and to a much wider audience. And hatred expressed with words does not stay at the level of discourse. It constitutes a call to act and to kill. We have seen this in the lead up to the violence against the Rohingya in Myanmar in 2017, against the Yazidi in Iraq in 2014, or against the Masalit in West Darfur, Sudan, today.

At the United Nations, in view of these challenges, the Secretary-General launched a systemwide *Strategy and Plan of Action on Countering and Addressing Hate Speech* in 2019. My Office, as the designated global system wide United Nations focal point on hate speech, leads implementation of the Strategy and we support efforts by Member States, United Nations field offices and civil society to do precisely this, including with the development of action plans aimed at this purpose.

We also engage directly with tech and social media companies. Last year, we published a policy guidance, “*Countering and addressing online hate speech: A Guide for Policy Makers and Practitioners*” on tackling online hate speech, setting out key recommendations arising from consultations with a range of relevant interlocutors from tech and social media companies. This followed my October 2021 brief to the Security Council on the topic of *social media and hate speech in conflict contexts* to which we invited Google, You Tube, Twitter and Facebook as co-briefers. We have since expanded our engagement with smaller tech companies such as Slack, Twitch, Zoom, and Reddit. We are now engaging with tech and social media companies with limited content moderation policies that are however highly utilized in several contexts to spread hate.

Also, in 2023 the Secretary-General published a dedicated report to the Human Rights Council on the impact of new technologies on genocide prevention. The report calls on States and tech and social media companies to apply a genocide prevention lens in their efforts to address online harms, including hate speech; to ensure that legislation and regulations also prohibit public and direct incitement to genocide, in line with the genocide Convention; and for companies to signal patterns of hate and to take action so that online platforms are not utilized for incitement or planning of genocide and related crimes. Companies are also asked to preserve potential evidence of crimes, including materials removed.

In addressing new technologies, we cannot ignore the reach and influence of artificial intelligence (AI). We are yet to fully understand how AI can be effectively used to support actions to prevent international crimes. On the opposite direction, we also need to fully understand how AI can be instrumentalized to incite hate speech and the commission of such crimes. But we have many reasons to be seriously concerned.

To better understand the integration of AI into our lives and to foster a globally inclusive approach to this new technology, the Secretary-General recently convened an AI Advisory Board. In assessing the risks of AI, the Board pointed out that some risks of AI are more a product of humans than AI itself, and brought examples of deep fakes and hostile information campaigns that resort to technologies for malevolent ends.

I am sharing all of this with you today because I think that the exponential spread of hatred through the use of new technologies will be at the core of future criminal proceedings addressing allegations of international crimes. The words that preceded genocide in the past can now be propagated exponentially and, with the support of artificial intelligence, to an unlimited audience and through unlimited means. This is a rapidly evolving issue that we need to take into account when considering the new face of criminal proceedings for international crimes.

Ladies and gentlemen,

Unfortunately, we see similar trends when it comes to Holocaust and genocide denial. Denial or distorting the facts of the Holocaust, and the genocides against the Tutsi in Rwanda and in

Srebrenica, Bosnia-Herzegovina, coming in the form of hate speech or not, constitutes an indicator of risk for the commission of genocide. Despite the International Criminal Tribunal in the Former Yugoslavia and the International Criminal Tribunal for Rwanda having proved, repeatedly, conclusively, in lengthy legal processes, and applying international fair trial standards and the standard of proof beyond reasonable doubt, that the genocide against the Tutsi in Rwanda and against Bosniak Muslims in Srebrenica happened, revisionists and genocide deniers continue to ignore judicial decisions.

These trends are particularly worrisome as we are marking this year the 30th commemoration of the genocide against the Tutsi in Rwanda and, next year, the 30th anniversary of the Srebrenica genocide. This time should be spent honoring and commemorating victims, remembering, and learning from the past. Instead, we are faced with the challenge of addressing growing trends of denial and distortion of these tragedies. Social media, similarly to hate speech, is helping to spread and amplify denial at alarming rates. Genocide denial impacts directly on victims who are retraumatized and faced with the burden of having to justify and explain the crimes they endured, despite the courts having conclusively determined that the crimes occurred. Denial has a serious detrimental impact on healing and reconciliation. I have seen this firsthand in Bosnia and Herzegovina. In my meetings with Ms. Munira Subasic, President of the Association of Mothers of Srebrenica, who I greatly respect and admire, she confided the strong disappointment by so many victims that genocide denial continues happening almost on a daily basis and with no consequences. I heard this too in Rwanda, over, and over again. Victims understand very well that genocide denial refers to the past, but that its impact is felt in the present and will be felt in the future. They do not want the young generations to experience what they have experienced.

With the aim of addressing this problem, in 2022 in partnership my Office published a policy paper titled: *Combating Holocaust and Genocide Denial, Protecting Survivors, Preserving Memory and Promoting Prevention*. This policy paper, based on expert consultations sets out recommendations for Member States, the United Nations, tech and social media companies as well as civil society.

I believe that the work of the Tribunals and the Residual Mechanism is crucial in these efforts. We will never manage to fully eradicate denial, but we must do our best to limit its damaging impact. The judgments, archives and records of the courts provide a starting point for educating societies about genocides, and the past, to learn from and address the root causes that led to their commission in the first place. They also provide the undisputable evidence that these crimes occurred. This is, and will continue to be, an important legacy of the tribunals. We need to continue our partnership with the Residual Mechanism and build such awareness. This is an area where we can use the positive potential of new technologies to reach new audiences and to package messaging on what are inherently complex and difficult topics into something that society at large, including the younger generations, can connect to and engage with.

We can also partner to provide such education on genocide and related crimes in a formal setting, here in Arusha through dedicated educational programs on the different aspects of the work of the tribunals and on their connection to the prevention of genocide. Many academic and research institutions, universities and institutions of higher learning do not have specific academic programmes on genocide studies. Most of the studies relating to genocide or other atrocity crimes are established as sub-programmes or optional courses within over-arching disciplines.

A Centre for Genocide Awareness and Prevention here in Arusha can be part of the legacy of the ICTY, ICTR and the Residual Mechanism that we, together, can work to preserve. Such programs could be taught in a dedicated space, through regular courses and targeting different sets of academic and professional audiences. This is an idea that I would be ready to discuss with all of you - as the work done by the ICTY, ICTR and the Residual Mechanism, creates for us, and especially my Office, an imperative to ensure a continuous academic engagement of a factual understanding of the past, on how genocides happen, and therefore how they can be prevented. In Bosnia Herzegovina, they constantly say that its time for the knowledge to move “from the courtroom to the classroom”.

In addition, a lot more needs to be taught. Normative and institutional frameworks for the prevention of genocide continue to be developed. For example, on this continent, the Constitutive Act of the African Union (AU) requires the regional organization not only to prevent violent conflicts but also to intervene in its Member States to prevent genocide, war crimes and crimes against humanity (atrocity crimes). The AU elaborated an African Peace and Security Architecture (APSA), and developed an early warning mechanism for conflict prevention, known as the Continental Early Warning System (CEWS), including an African Stand-by Force to intervene in situations that are at risk of atrocity crimes.

In 2006, Member States of the International Conference on the Great Lakes Region (ICGLR) adopted a Protocol for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes against Humanity and all Forms of Discrimination. Under the Protocol, Member States are required to domesticate and enforce its provisions by putting in place laws that will prevent and punish genocide, war crimes and crimes against humanity; measures that will eliminate discrimination; teach and encourage tolerance among national, racial and ethnic groups; combat impunity and extradite criminals. My Office assisted ICGLR to establish the Regional Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all Forms of Discrimination. In addition, the ICGLR Protocol mandates each Member State to establish a National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all Forms of Discrimination. So far, with the support of my Office, all the countries in the region, including Tanzania, have national committees.

At sub-regional level, regional economic communities have elaborated and advanced early warning mechanisms based on the CEWS model, but there are limitations in terms of their ability to trigger an effective response to preventing genocide and related crimes.

The Republic of Zambia is the latest UN Member State to become party to the Genocide Convention with the Convention successfully entering into force on 19 July 2022. Zambia has also become the latest Member State of the ICGLR to set up a National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all Forms of Discrimination and not only invited my Office for the launch next month on March 22nd, but also requested for capacity enhancement of the new committee. These, and other numerous requests my Office gets daily, drive home the need for the additional dimension to the prevention of genocide that can be introduced by the role and function of a *Centre for Genocide Awareness and Prevention* here in Arusha. From the court room to the classroom.

Ladies and gentlemen,

Let me conclude by highlighting the importance, in all of this, of putting front and center the voices, views and concerns of victims and survivors. Rights of victims and survivors have evolved tremendously over the last few decades and through the work of international tribunals, but more needs to be done. We know the pivotal role played by victims. In both the cases of Rwanda and Bosnia and Herzegovina, it was the victims who advocated for justice, for their stories to be heard and for perpetrators to be brought to account. Had it not been for their testimonies, reliving their trauma, accountability may not have been possible.

In Rwanda, had it not been for the bravery of women highlighting the pervasive use of rape and sexual violence as part of the genocide against the Tutsi, and testifying before the courts to these horrific crimes, despite the stigma that remains attached to them, we may not have had landmark rulings such as the Akayesu case, ruling that rape and other forms of sexual violence could constitute genocide.

Dear colleagues,

Victims and survivors have committed to fight for truth and justice. In the words of my admired Ms. Munira, this commitment will endure as long as they live, as long as they are in good health, as long as they can speak up and remember, and as long as they can breathe. We cannot do any less. Their perseverance is our driving force, their voices remain our guidance, and their needs our call to action. Let us continue working together to serve them as they deserve.

Thank you very much.