

FOREWORD

The Genocide Convention constitutes a milestone. To this day, it continues to be the principal legal instrument dealing with genocide. Motivated by the horrifying impressions left by the Holocaust, in 1948 the international community put the might of the law above the right of the mighty: For the first time, genocide was condemned in a binding document. And it was the first time that an international treaty provided for the establishment of an international criminal court.

The United Nations started preparations for the planned international criminal court as early as 1948. But the time was not yet ripe. During the first part of the 20th Century, state sovereignty in international relations meant almost everything. Consequently, it took almost 50 years before the first proceedings for genocide took place and the first sentences for genocide were passed at international level: In September 1998, for the first time, the Criminal Tribunal for Rwanda found an individual guilty of genocide. A further nine years later, the United Nations Tribunal for the first time pronounced a state guilty of violating the Genocide Convention.

It was the work of the *ad hoc* criminal tribunals for the former Yugoslavia and for Rwanda that paved the way for the establishment of the permanent International Criminal Court. It commenced work five and a half years ago now and its inception marked the beginning of a new chapter in the history of international criminal law. Crimes of the most serious nature which affect the international community as a whole can now be tried by an independent body.

Germany vigorously supported the establishment of the International Criminal Court right from the beginning. We played an active role in the drafting of the Rome Statute and joined forces with the group of like-minded states to fight for a well-functioning and thus reliable international court.

In future, too, the federal government will continue to do everything in its power to ensure that the Court can work effectively and that the support it receives from the international community is as widely based as possible – as we are convinced that it can make a substantial contribution in the struggle for peace and justice. At the Review Conference to be held in 2010, Germany will advocate establishing the crime of aggression, the details of which are currently the subject of intense debate among the Assembly of States Parties to the Rome Statute. Unfortunately, the political environment remains difficult. It appears unlikely under the Obama administration, as well, that the United States will accede to the Rome Statute any time in the foreseeable future.

The development of international criminal law as well as the establishment of the International Criminal Court have always been accompanied by a fundamental doubt: Can the law, and especially criminal prosecution, actually make any contri-

bution to ensuring peace? Isn't it the case that punishments are more a source of disruption to new beginnings in society?

In my opinion, the answer is clearly no! Serious human rights violations must not go unpunished. Nobody should be allowed to place themselves above the law, and no perpetrator should be allowed to hide behind the protective shield of state sovereignty. This is not a question of retribution or revenge, but a question of prevention and of protection of legal interests. International criminal law and the prosecution of the most serious crimes without exception serve as a warning to all warmongers. In this way, international criminal law makes an important contribution towards asserting human rights and securing peace. I can't see any equivalent alternatives.

Amnesties, at any rate, are not a suitable means of conflict resolution. They don't resolve conflicts; at best they merely postpone them. The Spanish Amnesty Law of 1977 is a striking example of this. It meant that the crimes committed during the Franco dictatorship were prevented from being investigated for decades. This in no way contributed to any reconciliation between victims and perpetrators – as the current discussions make clear.

So-called 'truth and reconciliation commissions' can constitute a useful complement to the international criminal law system; however, they cannot replace it. Let us recall the much-cited example of the South-African Truth and Reconciliation Commission. Its successes are due to being closely interlinked with criminal prosecution. The Commission did not function outside international criminal law, but instead utilised the threat of criminal law sanctions for the purpose of carrying out its work. As a result of its authority to dispense with a criminal sanction, it was linked to the criminal procedure. And it was in fact this threat of criminal prosecution that led many members of the South-African security forces to co-operate with the Truth Commission.

Resolute criminal prosecution of serious crimes also serves another purpose that is very important to me: it gives victims a face. When a newspaper reports that someone, somewhere, has become a victim of a war crime, the human tragedy often gets almost completely lost. In a trial, however, a victim doesn't just have a name. They can also be certain that their individual view of the events, their pain and their suffering will become part of that which the international community condemns and prosecutes.

And, ultimately, establishing the facts of what happened by means of criminal proceedings also ensures that events are not ignored or forgotten.

Resolute criminal prosecution can, of course, only constitute one part of the effort to secure peace and justice. In addition to the process of coming to terms with what has happened in the past, it is essential that reconciliation takes place. Given the degree of suffering sustained, this does not always prove to be possible.

This is why it is all the more important to identify and combat the causes of such serious crimes as genocide. The United Nations have engaged a special adviser on this issue for the 'Responsibility to Protect.' It is Professor Edward Luck whom the federal government will be actively supporting.

I would like to end by quoting Kofi Annan, who said: ‘There can be no healing without peace; there can be no peace without justice; there can be no justice without respect for human rights and the rule of law.’ The Genocide Convention has subjected the world’s most powerful to the rule of law. The anniversary of its existence is truly an occasion to celebrate.

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