

**Remarks to the UN Security Council by Ambassador Gert Rosenthal, Permanent Representative of Guatemala to the United Nations relating to briefings on the work of subsidiary bodies of the UN Security Council**

**9 December 2013**

I want to thank you, Mr. President, for giving me this opportunity to brief the Security Council on my reflections as Chair of both the Security Council Committee established pursuant to resolution 1572 concerning Côte d'Ivoire as well as the Council's Informal Working Group on International Tribunals.

The first thing I can point out is how different these two subsidiary bodies are. One is a typical sanctions committee, especially to implement articles 40 and 41 of the Charter; the other can be viewed as a consultation and consensus-building mechanism to further the work of the Security Council, especially in the realm of international criminal justice. Therefore, my personal observations based on these two very different types of bodies have to be presented separately.

I will divide my presentation in two parts, each one, in turn, divided in a very brief balances of the work achieved during our two-year tenure, followed by my assessments. The reason for brevity is clear: we have informed this Council on the 1572 committee's work when the Council considered mid-term reports and mandate renewals of the original resolution, and we have also maintained the Council apprised of the work of the ad hoc working group on international tribunals.

I will move on, then, to the first part, regarding the Council Committee established pursuant to resolution 1572 concerning Côte d'Ivoire. By the end of this month, the Committee will have held a total of seven informal consultations over the past two years, the majority of which were devoted to exchanging views with the Group of Experts in connection with the Group's midterm and final reports, and to taking decisions on various recommendations of the Group in the form of draft letters, notes verbale or press releases which were approved by the Committee. In terms of other consultations, the Committee held an exchange of views with the Special Representative of INTERPOL which led to an agreement between both regarding sharing information. The Committee also met on two occasions with the Chairs of the Kimberley Process, mostly regarding implementation of paragraph 6 of Resolution 2101 (2013). Beyond its informal consultations, the Committee has received, on a monthly basis, three reports from UNOCI: media monitoring, embargo monitoring and human rights reports.

In balance, I believe that the implementation of the arms embargo, diamond embargo and the assets freeze and travel ban have played the desired role in moving towards a lasting political solution in Côte d'Ivoire, but there is still a considerable way to go to meet the full potential of these instruments.

What lessons can I transmit to the Council? I would make the following brief points, some of which are probably also relevant to other sanctions committees:

First, the sanctions committees are certainly flawed mechanisms, but, like the Security Council itself, fulfil an important role. Among the main problems we detected is the lack of compliance of stakeholders of the different types of sanctions adopted by the Council. Certainly this is true of non-state actors, but it also applies to many state actors, especially in the area of arms embargoes. Improvement is still necessary in matters of transparency and provision of detailed information, particularly the importance that notifications and exemption requests contain the purpose of the use and end user, the technical specifications and quantity of the equipment to be shipped, and, when applicable, the supplier, the proposed date of delivery, mode of transportation and itinerary shipments.

Second, although communications with the host Government was generally good, both with the New York-based Mission and in Capital, problems did arise on occasion, especially in providing timely information and receiving feed-back regarding the sanctions regime. A permanent tension was present regarding the pace of dismantling the sanctions, with the Government understandably pushing for rapid dismantling and many member states seeking a more conservative approach.

Third, the interaction between experts and members of the Committee was generally good, but, again, led to some tensions, including the selections process of the experts and differing views on their performance. This is an area of interaction between the Secretariat and member states that is particularly sensitive, given the very real consequences on the ground that stem from following or not the experts' recommendations.

Fourth, the sanctions committees appear to function as independent units, with relatively little interaction and coordination between them. I do, however, wish to acknowledge the cooperation and information sharing practiced between the Group of Experts in Côte d'Ivoire and the Group of Experts in Liberia, established pursuant to resolution 1521 (2003).

Still, in balance, and as stated, we will hand-over the Chair to our successor of a reasonably well-functioning sanctions committee, in a country that is moving in the right direction to attain peace, stability, democratic governance and development.

I now move on to the second part of my remarks, regarding the Informal Working Group on International Tribunals. The Working Group held several meetings, drafted four resolutions and experts are in this very moment in the process of negotiating a fifth one. In addition, two press statements were issued concerning the contribution of International Criminal Tribunals in the fight against impunity. In order to facilitate the completion strategies of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Working Group considered various requests by the Presidents of the Tribunals, including the extension of the judges' terms of office. By maintaining a flexible

programme of work over the reporting period the Working Group successfully accommodated the views and concerns of all delegations.

During our Chairmanship, the Working Group supported the setting up and commencement of functioning of the Arusha and Hague Branches of the Residual Mechanism and to ensuring a smooth transition from the Tribunals to the Residual Mechanism.

Mechanisms dealing with residual functions are a unique feature of an increasing number of contemporary international tribunals. The establishment of the Residual Mechanism ensures that the closure of ICTR and ICTY does not leave the door open to impunity for the remaining fugitives and for those whose trials or appeals that have not been completed. I believe the Residual Mechanism is exemplary as it strikes a balance between two sets of potentially conflicting requirements: on the one hand the need to respect ‘due process’ and ‘fairness’, and on the other the demands for ‘efficiency’ and ‘cost-effectiveness’.

In addition, the value added by the Working Group is the platform that it has provided for enhanced cooperation between the Tribunals and the Security Council. I also believe that the discussions of the Working Group have enriched the debates of this Council during the crucial phases of the Tribunals’ lifespan and that of the Mechanism.

In balance, allow me to recognize the achievements of the Tribunals, in particular through signalling that leaders who commit crimes will be held to account regardless of their official position, in bringing justice to victims, and in strengthening the rule of law by working in partnership with domestic courts in the region. The Tribunals have inspired the creation of other courts, including the International Criminal Court; their legacy must now be preserved.

As to my personal reflections (which are actually my team’s reflections as well), I have to say, first of all, how pleased we were to preside the working group. We took a strategic decision even before being elected to the Council that we would try and carve out a “niche” for our tenure in the general area of peace and justice. This, as a reflection of our own domestic experience during the transition from conflict to peace, and from authoritarian to democratic governance. I would say that the respect for the rule of law was our “brand” during our tenure, and certainly during our Presidency of the Council, and chairing the working group was functional to this purpose.

A second personal reflection is the satisfaction of dealing with what has become a genuinely cross-cutting issue for the Security Council. Questions of accountability, consolidating the rule of law and judicial systems appear in probably the majority of our resolutions.

A third personal reflection has to do with the cost-benefit calculations of the International Tribunals. When I had the honour to preside the Fifth Committee, I must confess that I harboured doubts regarding the very high financial cost undertaken to submit a relatively small number of perpetrators to justice. But of course the application of justice cannot be measured

solely in monetary terms. Indeed, the rule of law is priceless, and the impact of the tribunals cannot be measured in metrics such as the number of people judged, but in their dissuasive effect of knowing that the international community counts with mechanisms to make justice prevail, especially in paradigmatic terms.

Then there are relatively minor reflections. For example, the tribunals still face important challenges, large and small. Staff retention is essential for the timely completion of the work of the Tribunals. I also regret that we could not do more to address the urgent situation of those persons acquitted or those that have served their sentences living in safe houses in Arusha. I am confident this will remain a priority and that the Security Council will support the ICTR in resolving this matter before its completion.

On another note, I would like to acknowledge the invaluable role that State cooperation has played in allowing the Tribunals to fulfil their mandates. It is praiseworthy that twenty years after the establishment of the ICTY, all persons indicted by this Tribunal have appeared before it. With regard to ICTR it should be noted that while the transfer of cases to national jurisdictions has facilitated the early conclusion of its work, this will only really be done when all of its fugitives have been arrested and brought to justice, whether at the Residual Mechanism or in national courts.

My final reflection is that in order to keep the momentum that has been generated, the Working Group should continue holding regular meetings and briefings, maintaining a regular dialogue with the Tribunals and close contacts with the affected countries and host countries of the Tribunals and the Mechanism, as well as continuing the close cooperation with the Office of Legal Affairs. As the importance and relevance of the Working Group continues to increase, delegations should give serious consideration to finding a forum for experts to discuss ICC matters, so as to institutionalize cooperation of the Council with the ICC.

In closing, I strongly urge the Security Council to continue to play its essential role in the fight against impunity.

Thank you.