

Keynote Address

*Ambassador Clint Williamson**

Thank you. It is a privilege to be here at Seton Hall this morning and to have this opportunity to speak with you. As Randy indicated, I am the Ambassador-at-Large for War Crimes Issues, and for those of you who are unfamiliar with this position, I will give you a brief overview of my responsibilities. I report directly to the Secretary of State and advise her on issues relating to potential violations of international humanitarian law. My position is unique in the world in that the United States is the only government that maintains a position at the ambassadorial level focusing exclusively on war crimes issues. My office has responsibility within the State Department for monitoring atrocities globally, as well as for monitoring transitional justice mechanisms, such as international, hybrid, and domestic war crimes courts.

In relation to ongoing crises, or to accountability processes, we have lead responsibility for formulating U.S. government policies, which we obviously do in conjunction with other components at the State Department and with the U.S. government as a whole. And, as my title suggests, I have a diplomatic role, engaging other governments on our policies and generally advocating for greater accountability for war crimes.

As Randy mentioned, my educational and work background is primarily in the justice sector, having served as a State Prosecutor in New Orleans, a Federal Prosecutor in Washington, and then for seven years at the International Criminal Tribunal for the Former Yugoslavia (ICTY). I have also spent years working in the area of post-conflict stabilization and reconstruction, with a focus on rule of law and security issues. I served in field assignments in Iraq, in Kosovo and in other places throughout the Balkans, and then at the National Security Council (NSC). My portfolio encompassed these issues, first as Director for Stability Operations, and then in my last job, as Special Assistant to the President, and Senior Director for Relief, Stabilization, and Development. And it is from this combined justice

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sector, reconstruction, stabilization perspective that I want to speak to you today, highlighting the integral role of rule of law in post-conflict reconstruction and stabilization efforts.

As we have seen time and time again, the establishment of rule of law and a secure environment is critical to the success of any post-conflict intervention effort. Without a secure environment, everything else fails; it is impossible to educate children, to foster an economy, to deliver health care, to reliably provide essential services like water and electricity, and most significantly, perhaps, to establish stable political institutions.

Everyone is familiar with the challenges that the United States has faced in Iraq, where creation of a secure environment has been elusive. While the scale of the problems in Iraq is daunting, the challenges faced there are not unique. We have seen similar challenges on almost every continent and in every post-conflict or peacekeeping mission in the last fifteen years. The lesson is the same: if we do not get rule of law and security right, nothing else will work.

To focus on this, I will talk a little bit today about my personal experiences working in the field, highlighting how the failure to plan or to act has hampered stabilization efforts. I want to then lay out for you some of the thinking on how the U.S. government, and in fact the broader international community, might approach these issues in the future.

As I mentioned a moment ago, after working as a prosecutor in the United States, I was posted by the Department of Justice to the ICTY. As a trial attorney there, I supervised investigations, drafted indictments, and then tried cases in court. I also was tasked with a fair amount of pseudo-diplomatic responsibilities, acting as an interlocutor on behalf of the ICTY with political figures, military leaders, and security services in the Balkans.

In carrying out these duties and in supervising investigations, I spent approximately half of my time at the ICTY on the ground in the region. Starting in 1994, while the war was still in full swing in Bosnia, through the Kosovo conflict in 1999, and on to 2001, I had the opportunity to be there both in the periods of ongoing conflict and as the various post-conflict missions were established. During the last year of the U.N. peacekeeping mission in Bosnia, in 1995, there was little support for the ICTY's work, and absolutely no willingness by U.N. forces to arrest indicted war criminals, who admittedly were few in number at that time.

When the NATO Mission was deployed to Bosnia, at the beginning of 1996 in the aftermath of the Dayton Accords, we at the ICTY

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hoped that there would be a more robust approach by peacekeepers toward war criminals, who were moving around freely throughout the country. For the first year and a half when NATO was on the ground, though, they refused to undertake any arrests. The most oft-cited reason for not acting was that it was not in NATO's mandate to effect arrests. Fundamentally, though, it boiled down to concerns about force protection—that arrests would generate retaliatory attacks against NATO troops. The result was that many of those who had triggered the war in the first place, and who had been responsible for the worst atrocities, continued to be active, if not fully in the open, then barely under the surface. This was obviously counter-productive to the international efforts to stabilize Bosnia, and it sent a clear message that rule of law was a secondary concern.

Another peacekeeping mission was established in Eastern Croatia simultaneously to the one set up in Bosnia, and this one was headed by an American diplomat named Jacques Klein, who made clear to the ICTY that he would order forces under his command to arrest any indicted war criminals found in the area he controlled. I had coordinated investigations in this region of Croatia, so I worked closely with Klein to execute the arrest of one of the individuals I had indicted. He had, by that time, moved to Serbia, so we hatched an elaborate plan to lure him back across the border, at which time he was arrested by Polish troops. We bundled him onto a Belgian Air Force plane and flew him to The Hague. It soon became clear that the much-feared reaction from the population was not going to materialize. There were a few incendiary news articles, and the Milosevic government declared me and two investigators *persona non grata* for our role in the kidnapping, but that was basically it.

Three weeks later, British NATO troops in Bosnia undertook the first arrest there. In one operation the suspect was killed in a shootout. Yet even that failed to ignite retaliatory actions against NATO forces, or even any significant unrest. Soon other arrests followed, and it quickly became a standard practice for NATO to detain indicted subjects. The result was that many of these spoilers—those disruptive to the stabilization efforts—either ended up in prison or had to go underground to evade capture. This made a very positive impact on the overall political dynamic in Bosnia, but it came a year and a half later than it should have because key actors in the stabilization and reconstruction efforts thought we could get by without confronting these issues head on.

NATO and the U.N. worked diligently to apply lessons learned in Bosnia to their planning for the Kosovo Missions, which were es-

tablished in the aftermath of the bombing campaign in June 1999. I was involved in certain aspects of this planning as the ICTY representative. NATO and the U.N. were fully committed from the outset to arresting war criminals in Kosovo, although we thought it very unlikely that any of the senior Serbian officials indicted by the ICTY would be found there.

We at the ICTY were much more concerned about the preservation of evidence and securing mass graves, objectives that NATO shared and committed to try to achieve. I spent much of the war in Albania, running the ICTY Operations in Tirana, and then went in with NATO troops on June 12, 1999. Within days, despite all of our advanced planning, we were completely overwhelmed as reports of mass graves and other evidentiary sites proliferated.

As to the mass graves, we had lined up forensic teams from a number of countries to do exhumations, but it would take weeks to get them on the ground. In the meantime, we needed NATO troops to secure the sites. There simply were not enough troops to do this, nor to keep the troves of documents from being pilfered.

The inability, despite the best of intentions, to support the ICTY's work was only the tip of the iceberg. U.N. advance elements that entered Kosovo with NATO had no operational law enforcement personnel, so NATO troops were doing all policing. There were no functioning courts. So again, NATO took on responsibility for this to the extent they could, having military lawyers review the circumstances of detentions made by troops in the field. Most of those detained were caught red-handed looting or committing acts of violence. But very soon NATO soldiers were getting approached by people throughout Kosovo who wanted to identify individuals in their communities who had committed war crimes during the course of the bombing campaign—a very different, and more complex, policing challenge.

I got pulled into this exercise by NATO, asked to review all of these complaints. Pretty soon, we were getting hundreds of such complaints. I started every day in Kosovo at the NATO Force Commander's staff meeting, which was also attended by the incoming U.N. Police Commissioner, who was at that point a police force of one. The NATO Commander harangued him every day about when U.N. civilian police would start arriving. In the end, it took several months for any appreciable U.N. police presence to get deployed, throughout which time NATO troops continued to perform virtually all law enforcement functions, diverting them from virtually every other responsibility they had.

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For the remainder of 1999, the international community remained focused on getting police on the ground, paying little attention to the other components of the justice system: the courts and the prisons. It is a mistake that has been repeated time and time again in post-conflict settings with disastrous results. For if a justice system is to be effective, the three principle components of that system—police, courts, and prisons—must be developed simultaneously and at the same rate. If the police are arresting fifty people on a given day, you must have a prison system that is capable of processing fifty new prisoners and a court system that is capable of handling fifty new cases. An analogy that I have often used is that it is like a three-legged stool. If any one of the legs is shorter than the others, the stool will collapse.

In Kosovo, as in many other settings, everyone focused on getting civilian police on the streets in order to relieve the military of law enforcement responsibilities. But without a truly functioning court system, and with only rudimentary prison facilities, any good work the police did was lost when it came time to move to the next stage of the criminal justice process. Although the U.N. Mission in Kosovo (UNMIK) was set up in 1999, these problems were still not rectified in late 2001, when having left the ICTY, I returned to Pristina as the Director of the UNMIK Department of Justice, the functional Minister of Justice for the U.N.-administered province.

What I found when I took this position was that the Department of Justice was really a hodge-podge of different offices, including the courts, the prosecutors' offices, missing persons, forensic operations, and the prison system. They had all been set up in an ad hoc fashion over the preceding two years, as needed to deal with issues as they arose. There was no strategic thinking behind the creation of the various components. There was no coherent structure which defined it as a unified entity, and there was no top-down coordination of its diverse functions. My highest priority then became transforming this mess into a coherent, functioning ministry of justice that could eventually be turned over to local Kosovar control.

My efforts in this regard were the first attempts to do something like this in the two years that UNMIK had been running Kosovo. Throughout that time, the police were a well organized entity, with a clear chain of command and clear operational protocols. Although one could argue how effective UNMIK police were, at least there was a recognizable structure there, and the police functioned in a manner roughly consistent with other forces throughout the world. The

same could not be said for the other justice components, which were still barely recognizable as such.

The fact that it took two years to address this fundamental shortcoming shows the extent to which people simply did not understand the concept of rule of law. Getting bad actors off the street is a priority, but it is not an end in and of itself. To his credit, Ambassador Menzies, when he became U.S. Chief of Mission in Kosovo, saw fixing this as a high priority, and he played a pivotal role in pushing for the changes that were needed. Other NATO governments got squarely behind this initiative as well, because they too came to recognize that unless something was done about the instability in Kosovo, their troops would be stuck there for a very long time. The only viable solution to this problem was a robust, comprehensive justice system.

During my tenure in Kosovo, we initiated the first war crimes and organized crime prosecutions to be brought in local courts. Using international judges and prosecutors working alongside Kosovar jurors, we were able to make some progress, at least signaling that there would be no impunity and we would go after even the most senior figures. I do not want to overstate the achievement here. We certainly did not eradicate organized crime in Kosovo, but we made a start.

The bottom line is that, in order to stabilize a country or region in the aftermath of conflict and to establish effective rule of law, it takes a sustained effort. There is a constant turnover of people in missions like this. Some of my successors as Director of Justice pursued the same path aggressively and launched prosecutions. Some of the Police Commissioners were very interested in this; others were not. So it was a mixed bag. But when a country's institutions have been totally destroyed, when criminals have been given free reign, when the concepts of what is right and what is wrong have been turned upside down, it cannot be repaired overnight. It highlights one of the most difficult challenges of any international intervention in a crisis zone. The nature of these missions is such that very few people are there for the duration of time it takes to mount a sustained effort to stabilize. Like me, many come for one year; some for even less. By the time I took the job in Kosovo, I had already spent seven years in the Balkans. I had been working in post-conflict environments throughout that whole time period, so I knew how to operate in this environment. I had a very small learning curve.

Most who went there had to learn about a place they had never been, and whose culture was completely alien to them, not to mention the difficulty of transferring their experience and skills from

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domestic jobs into the supercharged post-conflict crisis environment in which they found themselves now working. By the time they would finally learn about the place and how to do their jobs there, it was almost always time for them to rotate out. With this ongoing dynamic, it is extremely difficult to mount and sustain a stabilization effort, but it is what we encounter every time we enter into one of these scenarios.

The problem has been compounded by the fact that over and over post-conflict stabilization and reconstruction operations have been organized in an ad hoc fashion. I once heard Senator Biden describe it like this: every time we go into a post-conflict or peacekeeping situation, we do it like it is the first time it has ever happened, and when we shut it down, we act as if it is never going to happen again. This has been true, not only of the United States, but to an extent of the international community at large. Even the United Nations, with its sizeable Department of Peacekeeping Operations (DPKO), has very few standing resources that can be applied to any given crisis. They have to be assembled as each situation presents itself, particularly in the security and rule of law sectors.

I left Kosovo at the end of 2002 with these lessons fresh in my mind, coming back to Washington and posting at the White House on the National Security Council staff. When I first started at the NSC and was going through my entry interviews with Dr. Rice, who was then the National Security Advisor, and her Deputy, Steve Hadley, they picked up on my post-conflict work and asked me to look at how we, the U.S. government, could do a better job of preparing for and fielding civilian responses to post-conflict or crisis situations.

My general approach was to suggest sort of a U.S. government equivalent of U.N. DPKO that could enhance U.S. participation in U.N. peacekeeping missions, NATO missions, or interventions by the United States and other interested states. Because of my direct experience, I felt strongly that the most robust component of a standing civilian response mechanism should be in the rule of law area. The proposal that I worked on, combined with the work of many others, eventually led to the creation of the Office of the Coordinator for Reconstruction and Stabilization, known by its acronym, S/CRS.

My good friend John Herbst is here, who is the Coordinator, and I am sure you will be hearing much more about this later today. While S/CRS has experienced a rather bumpy start, particularly in terms of funding and the growing pains of any new office fighting for bureaucratic turf, it is moving forward with plans for development of a civilian reserve. Composed of on-call experts in many fields who

can be readily deployed to a crisis zone, this would provide the U.S. with a standing response capability that thus far we have only had on the military side. Simply getting people into crisis zones who have had experience working in these types of environments will be a huge help. Significantly, the initial tranche of the reserve would be in the rule of law and security sectors.

U.S. efforts to create this sort of capability have not gone on in isolation. A number of other governments, including the United Kingdom, Germany, and Canada, have launched similar initiatives over the last few years and have, in some instances, advanced beyond the United States in implementation of their plans. Likewise, the United Nations has undertaken reforms to improve civilian peace-keeping capabilities and to build in a more dependable rule of law and policing component. The European Union is also engaged in similar efforts.

My experiences in Bosnia and Kosovo and later in Iraq were not unique. The frustrations I encountered in rule of law field operations were shared by many others from other governments and from the United Nations in a myriad of post-conflict settings. Like me, they came out of these situations with a determination that the whole approach could be improved significantly. They have gone back to their respective countries and international organizations pressing for change.

So, the more governments that do this, the better. It is also vitally important that these types of undertakings not be limited just to North America and Europe. Having strong regional actors in Latin America, Asia, and particularly Africa, will strengthen any framework that is created, and the more robust a framework there is for response, and the more diverse it is, the more it will benefit all of us.

My comments thus far have focused on the difficulties associated with establishing rule of law in post-conflict environments, with anecdotes about what can go wrong when it is not established. In a very general sense, I have laid out the prescription that the international community seems to have adopted: better pre-planning, more robust standing capabilities, and development of a pool of experts who can apply their experience to contingencies as they arise around the world. These changes will not fix all of the problems; the challenges are too complex and vary too much from situation to situation. But these measures will help all of us do a better job responding and increasing the odds of long-term success.

A key indicator of success will be how we deal with transitional justice issues, the generic term used most often to describe mecha-

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nisms for addressing war crimes and other large-scale atrocities. This is the specific area in which I now focus as Ambassador for War Crimes Issues. In the time left to me, I would like to turn to this specialized area within the broader rule of law world and discuss the United States's perspective on this issue.

In general, I think it is fair to say that it is necessary to focus resources on transitional justice for years following a conflict. What I am talking about here is confronting those crimes that were at the core of a given conflict—the ethnically driven murders, the large-scale massacres, the political assassinations. The legacy of these crimes hangs over countries long after the fighting has stopped.

To cite a specific example in Bosnia, following the International Court of Justice verdict in the Bosnia-Serbia genocide case, nationalist rhetoric briefly returned to a height not seen in several years. The situation has remained tense since then, and we now see Bosnia perhaps at its most fragile point since the Dayton Accords were signed in 1995. The verdict, once again, brought to the fore old grievances that had never been addressed adequately.

Recognizing that a prior violent conflict is one of the strongest indicators of risk for future conflict, dealing with these grievances is not only a factor for short-term stabilization, it is also a key preventative measure for renewed hostilities. One key element of this approach is the establishment of judicial or non-judicial mechanisms for dealing with those who may have committed atrocities. I believe that this is an essential tool because it contributes to the overall stability of a post-conflict society. It decreases the likelihood that small incidents will escalate into broader patterns of violence, and it creates a deterrent effect. If done successfully, it imbues in the local community a sense of confidence that the judiciary—i.e., non-violent means—can set things straight, and can mete out justice without resort to retaliation or settling of scores.

Firmly setting the precedent that people are held to account for atrocities they have committed is a valuable tool to have when invariably something goes wrong. Going back to my example of Bosnia, if an individual or small group commits an inter-ethnic hate crime, there is a smaller chance of escalation into a larger conflict if the affected population feels that it can turn to some judicial system, be it local or international, and successfully seek redress.

To a lesser extent, but certainly not an insignificant one, successfully prosecuting war criminals deters potential perpetrators. While it is difficult for practical reasons to cite specific cases of individuals who are deterred from committing crimes, it is relatively simple to

point out instances in which a strong record of accountability might have had a partial deterrent effect. And as I mentioned earlier, it also removes certain individuals from active participation in the political process, thus diminishing their ability to act as spoilers in the overall stabilization and reconstruction effort.

In an aftermath of a conflict or crisis in which crimes were committed on a massive scale, the United States's first preference will always be for the domestic justice system to handle cases that arise. If the system is robust enough, it may only require financial assistance, technical support, or international advisors. But if this sort of assistance would enable the domestic system to work effectively, it is to everyone's benefit to let justice be addressed through existing structures.

We recognize, however, that in many situations the domestic system will be so weak, or so affected by recent events, that it cannot dispense justice fairly. In those circumstances our next preference would be to create some sort of hybrid system, mixing domestic and international capabilities. This could manifest itself along the lines of the Kosovo model I discussed a few minutes ago, one in which international judges and prosecutors are inserted into existing domestic courts, serving alongside local jurists.

Another model with the hybrid approach is to create a stand-alone court, made up of mixed international and local actors, perhaps even with a different substantive and procedural law governing it. This is the approach that was taken with the Special Court for Sierra Leone, the Khmer Rouge Tribunal in Cambodia, and now with the Hariri Lebanon tribunal.

The final option, if a domestic or hybrid court is not feasible, is a purely international court. This could come in the form of the ICTY or the ICTR, the Rwanda tribunal—ad hoc international tribunals created by the Security Council. Frankly though, I think it is very unlikely that with the establishment of the International Criminal Court, the ICC, that we will see other purely international courts established. So that really leaves the ICC as the international court of last resort.

As I am sure most people know, the United States has had some reservations about the ICC, and has chosen not to join the Court. We do, nevertheless, recognize that the ICC has a prominent role in the sphere of international justice, and in certain situations it will be the most appropriate venue for handling particular war crimes cases. Darfur is such a situation, and that is why the United States con-

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curred in the decision to refer that matter to the ICC for investigation and prosecution.

Interestingly, the U.S. approach I have just outlined is very much consistent with the ICC's own approach, in which domestic courts are seen as the preferable first option, then hybrid courts, which are theoretically less expensive and more efficient than purely international ones. In the ICC's own eyes, they see themselves as the court of last resort. And as I said a moment ago, when other options are not viable, then we too will support cases going to the ICC.

As to the U.S. role in this process, we will continue to actively support domestic, hybrid, and international courts with financial and technical assistance, with substantive expertise, with information sharing, and with diplomatic engagement. We are by far the single biggest donor for war crimes courts around the world, having contributed to the ICTY and ICTR alone over \$500,000,000. Where the ICC is concerned, we will support referrals of cases and information sharing, where appropriate, but we are constrained by law from providing financial or substantive support to the court. Whether this will change at some point in the future, I cannot say, but in any event, such a change is not imminent.

The concept of international justice and accountability for war crimes was virtually non-existent as recently as fourteen years ago. Since then, we have witnessed the establishment of the ICTY and ICTR, the creation of hybrid war crimes courts, and finally, the birth of a permanent international court, the ICC. We have seen Slobodan Milosevic, Saddam Hussein, and now Charles Taylor brought to trial. While it is still not completely the norm that heads of state be held accountable, it is no longer an inconceivable notion, and in fact trial now seems like a more likely outcome for such people than does an exalted exile in some third country. I think this reflects the fact that there is now a widespread recognition that impunity is a destabilizing influence, either in the context of heinous war crimes or common street crimes. Both have to be confronted if we hope to succeed in future attempts to stabilize and reconstruct war torn countries. The responses that we apply to these challenges are varied, and they have to be because of the wide variety of situations we face.

Every conflict, every crisis, every country is unique, and thus there is never going to be a one-size-fits-all solution. Yet we can learn from our experiences over the last fifteen years and do a much better job of preparing for and fashioning our responses to the next crisis that presents itself. Because if anything is certain, there will be a next time. Thank you.