

Thankyou Mr Chairman.

Allow me first of all, on behalf of the UNESCO chair for teaching, research and education in human rights established at the University of Oran in Algeria, to express my profound gratitude to the organisers who did me the honour of inviting me to participate in these distinguished proceedings. May I assure them of our support for the campaign so that the diplomatic conference of the plenipotentiaries for the establishment of the court be convocated in 1998, as well as for the mandate of the preliminary committee required to finalise the statute of the court to ensure that all be set for the immediate arrest and submission to justice of persons pursued and accused of crimes against humanity, war crimes and genocide by ad hoc tribunals.

The preliminary committee having the task of concluding a convention for the creation of an international criminal court must be congratulated and encouraged. The Armenian, Bosnian, Kurdish, Cambodian genocides are not the only ones: massacres have been carried out elsewhere by fundamentalist terrorist groups, particularly in my country of origin, Algeria. It seems that one cannot combat terrorism with white gloves, and with the Universal Declaration of Human Rights (on which the statute of the international Criminal Court is based) in hand. These issues, are regularly brought up by numerous politicians and militants for human rights in Algeria. If you allow me to talk about my country, since it was referred to yesterday, I would like to mention the escalation of horror which is engaged into by, on the one hand, muslim extremist groups and, on the other hand, forces of repression: on both sides, passion and hatred have reached barbaric proportions.

As you all know, Algeria is living a conflict where the settlement of dues, rivalry, and divergences follow one another and where one is called upon to take sides at the mercy of one's own life. Let us however express what a number of these democrats and militants

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for human rights think. They refrain from denouncing the violence of either side and recognise the necessity for pluralism, tolerance and dialogue as upheld by educators in human rights. These terrorist groups have executed men and women who were carriers of culture, members of the clergy, muslim or non-muslim, young and old, their throats slit. They also killed religious persons of denominations other than Islam, most notably the Archbishop of Algiers and the six monks. This constitutes the best example, the best proof of religious intolerance.

Nevertheless, human rights are indivisible; in the face of particularly despicable manifestations of Islamist terrorism, the Algerian authorities have sometimes responded with reprisals. Politicians from both sides are usually of equal ferocity. In a country where the culture of human rights and democracy is absent, the discourse pertaining to justice, peace and human rights, as vehicles for a democratic conscience, is greeted with scepticism similar to a camouflaged defensive of one or the other side.

Hence the inevitable contradiction between the exigencies of justice and the impunity of these horrendous crimes. Consequently, for the massacre of populations, not victims of civil war but rather victims of wars waged against civilians, the fact that the authors of such crimes remain unpunished is unacceptable. An international criminal court must therefore be created.

Indeed, since human rights are indivisible and universal, the centrality of man may not be conceived without a centralised mechanism of constraints. The international criminal court has however remained the poor child of international public law. I also share the opinion expressed yesterday that creating an international criminal court is not sufficient. It is necessary for an awareness-raising campaign on the culture of human values to accompany this institution. It is with this in mind, Mr Chairman, that upon our own initiative, the UNESCO chair for teaching, research and education of human rights, democracy and peace, in partnership with the national observatory of human rights, UNESCO and the University of Oran was created. This chair has been created so as to contribute to the enhanced promotion of human rights in Algeria, in the Maghreb countries, in the Arab world and in Africa, according to principles of multilaterality and interdisciplinarity recommended by UNESCO. This teaching and research unit stems from the realisation that one of the greatest weaknesses of human rights resides in lack of knowledge, not to say ignorance, upheld by individuals towards it, and attempts to remedy the situation. It

provides for the training of specialists, researchers, and teachers, as well as professionals, members of the police corps and the military and lawyers directly concerned by problems of the state of law on a day to day basis. The chair will also provide consultancy services and expertise in matters related to human rights to international institutions, the United Nations and UNESCO. One of its experts, has just been nominated member of the sub-committee of the United Nations against racial discrimination and the protection of ethnic minorities.

It is surprising that the issue of the establishment of the international criminal court was not raised by the inter-sessional group on impunity during the 49th session of the sub-committee. To mark our participation in the campaign on the establishment of the international criminal court, I would like to suggest placing on the draft agenda of the 50th session of the sub-committee, the aim of raising the awareness of experts hoping for a resolution by the end of the proceedings of this sub-committee. In addition, so as to promote a universal approach based on the comparativity between doctrinary viewpoints pertaining to different legal cultures, the UNESCO chair has undertaken the translation from Russian into Arabic and from Russian into French of a publication devoted to the topic currently under discussion in this room. This work, written by the Rector of the Free University of Moscow, and his colleague, both of whom belong to a generation of lawyers of the ex-USSR, develops interesting viewpoints at the heart of the democratic transition, familiar to their country and to the rest of the world affected by bipolarisation of previous times.

As regards my comments relating to the international criminal court, there is no doubt that the questions linked to the material codification, i.e. the code of international crime and the code of international procedure, i.e. the statute of the international criminal court, are intimately related. In principle they are to be implemented at the same time, but due to the specificities of the normative process in international law, their actions might not be entirely synchronised. The codified texts have little chance of covering all aspects of the issue at hand; if one refers to the draft code of 1991 this excluded the subjects of international crime, both moral persons and States, whereas procedural law is first and foremost a law of action. The codification of procedural matters is related in that the condemnation for international crimes must go through the International Criminal Court which, from the start must represent a force which is sufficiently independent of the States which participate in the case.

In this way, States will no longer have the means at their disposal to avoid material norms. Naturally, the conventional resolution of problems relating to procedure, which at the moment are the only possibility, represents a little less than half the solution to the problems posed by material rights. It is for this purpose that in the projection of a judicial mechanism with all its elements of suing and accusation, various factors must be taken into consideration so as to create a trustworthy, effective and durable institution. Firstly, the factor relating to the State's involvement. It is on its own will that will depend the necessity of creating either a mechanism which will function according to the wish of the participating actors within the State, or an international criminal court which will act independently of the wishes of the guilty party. It is obvious that the first of the two models is today more plausible than the second in the establishment of this court. The second necessitates a radical restructuring of the system of contemporary international relations at a time when this restructuring has become mature.

To this effect, I would like to raise a matter which has not been raised up to now, a matter relating to the international criminal court which is supposed to be a body reporting to the Security Council and therefore dependant on the Security Council. In order to remain independent, the rules governing the Security Council, a political body safeguarding international security and peace, are not applicable in terms of its current composition. By virtue of the democratisation of United Nations institutions, I question the right of Russia to the veto, when the country is not the entity it once was. I am rather preoccupied by this matter which risks seeing the above-mentioned body dependent on a force which might not necessarily be democratic. Amongst the recommendations which I might put forward on this independence, is one which calls upon the Security Council to provide an example by opening itself democratically.

Thus to conclude, I would say, that in conformity with the Resolution of the General Assembly of the United Nations of 1989 declaring the period from 1990 to 1999 as the decade of international law of the United Nations, that the principal aim of the decade is progress respecting the principles of international law, the promotion of the progressive development of international law and its codification. The creation of the international criminal court, in general terms and in particular relating to the drafting of the statute of the international criminal court by the international law commission can provide an important contribution in the achievement of the principal objectives of the decade.