

Draft speech of procurator-general Marc van Nimwegen on the occasion of the 10th European Regional IAP Conference, The Hague, March 4th 2010.

Ladies and gentlemen,

On behalf of the Dutch public prosecution service I would like to bid you all a very warm welcome in The Hague. Not only is The Hague the seat of the Dutch government, the city also claims to be the legal capital of the world. And with some right, I might say. The Hague harbours more than 150 different organisations in the field of international law and international law enforcement.

You all know the Permanent Court of Arbitration, the International Court of Justice, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia and the Appeals Chamber of the International Criminal Tribunal for Rwanda and for the former Yugoslavia. Furthermore, EU organisations like Eurojust and Europol can be found within the city borders.

The fact that The Hague has become the legal capital of the world, is not entirely a coincidence. Article 90 of the Dutch constitution states: ‘The government stimulates the development of the international legal order.’ Such a statement of course creates a special responsibility when it comes to supporting the international rule of law, both in the legal and practical sense.

One way of doing this, is hosting the 10th European Regional Conference of the International Association of Prosecutors. Therefore the Netherlands is pleased to have you all here.

I also would like to consider this the full-dress rehearsal for the 15th IAP Conference; the world conference which will also be held in The Hague, next September, with as conference theme: Crossing Borders. It will offer participants the opportunity to discuss the latest developments on organised crime, human trafficking and asset recovery.

But that is still half a year away. Today and tomorrow we have a different conference theme: war crimes. This does not refer to ‘ordinary’ crimes committed during a war, like theft, robbery or murder. No, in international law the phrase ‘war crimes’ refers to the most serious of all crimes: genocide, crimes against humanity, torture.

Luckily few of us know war from personal experience. This has maybe something of a disadvantage for prosecutors who are investigating war crimes. I mean that it is hard to fully grasp the intensity of such crimes and the agony of its victims. We are talking here about an evil that surpasses ordinary imagination.

Let me give you one example. Last year, a Rwandan, called Joseph M., living in the Netherlands, was sentenced by a Dutch court for twenty years of prison. His acquaintances from a local Dutch church, where he worked as a volunteer, were astonished. They described him as a kind and open-hearted person.

Nevertheless, on April 13th 1994 in Rwanda the same Joseph M. stopped an ambulance, transporting two mothers and their young children. An angry mob, crying “cockroaches, cockroaches”, was led by him. They dragged the women and children from the car and killed them with machetes. Only the driver and a twelve year old girl were able to escape. Fifteen years later they testified against Joseph M.

It goes without saying that it is morally unacceptable that people who commit such crimes, walk the earth freely. Just like it is morally unacceptable when victims of such crimes have no prospect of justice. Investigating and prosecuting war crimes is necessary when you look at the gravity of the facts. And necessary to give the victims some peace of mind, so they can regain a sense of humanity and citizenship. When the victims – either in their home country or when seeking asylum abroad – know that the perpetrators are amongst them, the fear and the trauma will continue.

It is therefore essential that asylum seekers in the Netherlands find a safe haven here. This not only means bringing suspects of war crimes, living in the Netherlands, to justice. But also trying to prevent that suspected war criminals will try to settle in our country. To this end the Dutch police and prosecution co-operate closely with the immigration department.

Nevertheless, investigating and prosecuting war crimes proves to be very, very difficult, as you all know. First of all, the countries where these crimes are committed, often lie in ruins. Frequently the judicial and administrative systems have collapsed. And sometimes, the former war criminals have become the new authorities. This implies that in many cases the investigation and prosecution of war crimes relies heavily on the commitment of the international community.

Still, putting war criminals to justice in their home country has – in our view – many advantages. It means easier access to witnesses, better fact finding, judges who know the country and the culture. And it avoids complex, lengthy and expensive investigations from abroad.

Therefore the international community should invest financially and through knowledge sharing in the judicial system of countries where war crimes have been committed. With the goal of helping them meet the standards of the European Court of Human Rights. Once, these standards are met, we can hand over war criminals to their home country for trial there.

However, the reality is that many war crimes are dealt with through international or foreign courts. This makes the going extra tough. Because usually a case relates to war crimes from many years ago. Memories get distorted overtime. And witnesses are hard to find, often traumatised and sometimes still fearful for their lives. Furthermore, it proves difficult to find adequate and reliable translators. Also, diplomatic considerations might interfere with the investigation.

And then, international criminal law itself is very complicated matter. For instance, who is responsible for the investigation and prosecution of war crimes, if the state where they are committed fails in this respect? Should the international courts and tribunals take the lead? Or do other states also have an important role to play?

This is the main question of our conference: war crimes – whose crime is it? Not an easy one to answer. I will start modestly by giving you the Dutch perspective on this matter. The Netherlands believes that we need to follow the path set by the international investigators, prosecutors and judges, and continue their work in our own jurisdictions. Prosecutors who are responsible for the national jurisdictions, must all implement the so-called principle of complementarity and put it into practice.

Since the early 1990s we have witnessed the emergence of a system of international justice. Before the establishment of the ad hoc tribunals, those who committed war crimes, profited from effective impunity. With the establishment of the permanent International Criminal Court and other tribunals such as the Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon, this culture of impunity has been dealt a serious blow.

As the host state for several international tribunals the Netherlands looks at developments in the field of international criminal law from two sides. The Netherlands is committed to the proper functioning of these institutions on Dutch soil. And it is committed to the idea that, together with these international institutions, national states should form a closed system of law enforcement for war crimes.

In its preamble, the Rome Statute of the International Criminal Court underlines that

“(…) the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”. The preamble continues by recalling that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”.

This principle of complementarity plays a central role in the Netherlands’ policy to make the investigation and prosecution of war crimes a priority. Nationally, we strive to bring to justice all suspects of war crimes found on Dutch soil, whether they have the Dutch or another nationality. And internationally, we want to show the international community that these cases can effectively be brought to justice, either before a national or international court.

To date, Dutch investigators and prosecutors have brought 7 cases to court. These cases involved events in the former Zaire, Afghanistan, Iraq, in the Sierra Leone-Liberia conflict and the Rwandan genocide.

In our experience we have found that investigating and prosecuting war crimes needs more than a good international and national legal framework: it needs investigators, prosecutors and experts willing to undertake the work in these cases. Since 2004 the Dutch prosecution service has some staff members who focus solely on war crimes. Two of these – Hester van Bruggen and Ward Ferdinandusse - will also speak at this conference. Furthermore, a specialised police unit was formed five years ago to investigate war crimes.

The Netherlands is surely not alone in this fight: other countries such as Belgium, Canada, Norway, Finland, Germany, France, the United States, and Croatia (and I'm sure I am forgetting some) are all involved in extraterritorial investigations and prosecutions of war crimes.

Because these investigations are complex, much can be gained by cooperation between the national authorities but also with international tribunals and the International Criminal Court. This should be discussed in international fora such as this conference, but also in more operational settings, such as:

- the EU network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes;
- the Interpol expert meeting on genocide, war crimes and crimes against humanity.

For instance, case files on war crimes often start with a general, historical description of the conflict. This type of information could easily be shared between countries. Furthermore, it is not unusual that suspects, who are now scattered across Europe, operated in a network when the war crimes were committed. So, knowledge about these networks might be beneficial to several cases.

Finally, there is one more point I would like to make. As I mentioned, war crimes can be considered as the zenith of evil. Prosecutors and policemen who investigate these matters, are therefore under emotional stress. I try to imagine how it is: you get off your plane, immerse yourself in quite a hostile environment and start interviewing people who have experienced dreadful things.

For instance in the Afghanistan case, one of our prosecutors was told by the victims how they were tortured. Their fingers were placed in a doorpost, carefully sparing the fingers they would need afterwards to write a confession. After closing the door, the executioners removed the remains of the fingers with a pair of pliers. Without anaesthesia.

How do you cope with such a story, told by the victim? Well, this particular colleague found that after such an intense experience, watching Mr. Bean movies helped him to put his mind at ease. Of course, this will not work for everybody. I think prosecution services need a more professional approach on how to support colleagues who deal with war crimes. I also think that we can learn a lot from each other, regarding this aspect.

The Dutch prosecution service for instance has made a short film in which four prosecutors tell about cases they can't get out of their mind. This will be shown during internal workshops, meant to lower the threshold to debate the subject. Also we want to start a helpline that can support prosecutors over the telephone and face-to-face.

Ladies and gentlemen,

War seems to be part of the human condition, if sadly so. Like the Prussian military philosopher Carl von Clausewitz said: "It is the continuation of politics by other means".

I am prepared to accept war as a fact. However, I am not prepared to accept that war criminals can walk around unpunished. I think this goes for all of us.

Over the last twenty years, the international community has made huge progress in the investigation and prosecution of war crimes. No one could have predicted where we stand today. Therefore I am optimistic about what the next twenty years will bring. Of course, it will require hard work and international collaboration to close the impunity gap. Let's do just that.

I wish you all a fruitful and inspiring conference.

Thank you.