



Opening Address by President

Prime Minister, Prosecutor General, fellow prosecutors,

It gives me great pleasure to welcome you to the IAP's 16th Annual Conference and General Meeting. Let me begin by thanking our host Mr. Joon Gyu Kim, Prosecutor General of the Republic of Korea, for agreeing to host the conference in Seoul, Republic of Korea. This is the second occasion on which the IAP has held a conference in Seoul, the first being seven years ago. It had originally been intended that this conference would take place in Santiago in Chile. That was before the earthquake struck Chile and caused immense loss of life and physical damage. As a result, the Chilean prosecution service had to withdraw its offer to host our conference in Santiago as their resources are now devoted fully to the restoration of the prosecution service in Chile. Fortunately for us, Prosecutor General Joon Gyu Kim stepped into the breach with an offer to host our conference in Korea.

The theme for this year's conference is that of "Prosecution as a Public Service". The theme is an interesting and a challenging one. We intend to examine this question under a number of different headings. First of all is to examine the fundamental duties and responsibilities of prosecution services.

This subject has always been to the forefront of the International Association of Prosecutors concerns. When the IAP was established one of the first things it

did was to get to work on drawing up a document which would set out the essential duties and rights of prosecutors. In 1999 the IAP adopted its “Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors” generally known as the IAP Standards. These standards were drawn up by practising prosecutors from every continent and are intended as guidance for practising prosecutors everywhere. The Standards are short, uncomplicated and realistic. They deal with the professional conduct, independence and impartiality of prosecutors as well as their duty to cooperate with colleagues around the world and their rights to fair and proper terms of employment. There are provisions which set out standards of professional conduct for prosecutors, including the duties to conduct themselves professionally, in accordance with the law and rules and ethics of their profession, to exercise the highest standards of integrity and care, to keep themselves well informed, to be consistent, independent and impartial, to protect the accused person’s right to a fair trial, and in particular to ensure that evidence favourable to an accused person is disclosed, and to serve and protect the public interest, and to respect, protect and uphold the universal concept of human dignity and human rights. These are the essential and fundamental duties of prosecutors, and it is always important to bear in mind that the prosecutors’ duty is owed to the public as a whole rather than to any single individual.

The Standards deal with the relationship between the prosecutor and the executive. The fundamental rule is that if non-prosecutorial authorities have the right to give instructions to prosecutors, those instructions must be transparent, lawful, and subject to established guidelines to safeguard both the actuality and the perception of prosecutorial independence.

The IAP Standards lay great emphasis on the duty of prosecutors to perform their duties without fear, favour or prejudice, impartially, unaffected by individual or sectional interests and public or media pressures having regard only to the public interest. The importance of searching for the truth and ensuring that

justice is done between the community, the victim and the accused according to law and the dictates of fairness is emphasized as a core principle.

The Standards emphasize a number of key matters concerning the prosecutors' role in criminal proceedings. Prosecutors are to perform their duties fairly, consistently and expeditiously. They are to act objectively, impartially and professionally and to respect the law and fundamental human rights. Proceedings should be instituted only where a case is well founded upon evidence reasonably believed to be reliable and admissible and a prosecution should not be continued in the absence of such evidence. Prosecutors are to preserve professional confidentiality. They are to consider the views, legitimate interests and possible concerns of victims and witnesses and to ensure that they are informed of their rights. They are to safeguard the rights of the accused. Evidence should be examined to ascertain if it has been lawfully or constitutionally obtained and the prosecutor should refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment. When dealing with young defendants the prosecutor should give due consideration to dealing with matters without recourse to the formal justice system where this is appropriate. Prosecutors are to cooperate with other elements of the criminal justice system both nationally and internationally.

Finally, prosecutors should be protected against arbitrary action by governments and should be entitled to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. Prosecutors should be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions. Prosecutors should be entitled to reasonable conditions of service and adequate remuneration. They should be allowed to join and form professional associations – a right not always allowed. They should be

entitled to be treated fairly in relation to recruitment and promotion which should be decided upon in accordance with fair and impartial procedures. Where disciplinary steps are necessitated these must be based on expeditious and fair hearings.

The IAP has since the adoption of the Standards 12 years ago made significant efforts to promote them and to bring them to the attention of working prosecutors throughout the world. All IAP organisational members are required to commit their organisations to the IAP standards for prosecutors when they join the IAP.

Many countries and organizations have drawn from the standards in developing their own code for prosecutors. These include South Africa, Afghanistan, my own country of Ireland, Northern Ireland, as well as the International Criminal Tribunals for Former Yugoslavia and the International Criminal Court. At the 17th Annual Commission on Crime Prevention on Criminal Justice in Vienna, Austria, the United Nations adopted a resolution promoting the IAP Standards to all member states. State parties are requested to take the IAP Standards into consideration when reviewing or developing their own prosecution standards. The United Nations Office on Drugs and Crime has committed itself to develop, in conjunction with the IAP, practical guidance upon how the IAP Standards should operate. This is a subject on which our General Counsel, Ms. Elizabeth Howe, will speak at a later stage of the conference.

One of the issues which we will discuss at this conference is the question of whether prosecution services should have a remit beyond the basic one of bringing offenders to justice. This is sometimes a controversial issue. For example, particularly in states which formerly had communist regimes, the prosecution service frequently has a wider remit for the supervision of law generally and not just criminal prosecution. Of course, a prosecution service must always have a remit to ensure the observance of law and human rights when carrying out its mandate. Where it comes to extending the remit of the

prosecution service to cover matters other than criminal law, then I do not believe that there is a universal rule that says that this is always either a good thing or a bad thing. Each case has to be evaluated on its own merits.

There are, however, a number of principles which I think need to be observed. In the first place, the balance of powers in any society should be such that no one institution can be too strong. This is the basis on which the idea of the separation of powers was first developed. The essential idea behind the doctrine of the separation of powers is to ensure that no one person or institution in society can exercise absolute power and that each person or institution is to some extent kept in check by other institutions in society. As with every other institution in society, it is important that a prosecution service is itself subject to checks and balances, whether internally or through the exercise of powers by outside bodies such as courts or bodies of inspection.

The practical problem, of course, is how to ensure a degree of accountability without diluting the power of the prosecution to act independently. A second, related concern is that if the prosecution is too powerful it may weaken the role of the courts. While it is important that prosecution decisions can be taken independently, it is also essential that in the last analysis the final arbiter between the prosecutor and the accused must be a court of law and not the prosecutor him or herself. Where the prosecutor is given powers such as powers to search, interrogate persons and require them to answer questions, there must be adequate safeguards to ensure that where necessary the exercise of such powers is subject to a final decision by a court of law.

Sometimes the prosecutor has also the function of protecting state interests. In my view this also can be problematical since the public interest and the interests of the state may not coincide. Combining the prosecution function with other duties tends to increase the scope for there to be a conflict of interest.

The issue of how prosecutors engage and interact with the public is also a difficult one. The prosecutor's duty of confidentiality in relation to many of the matters which he or she becomes aware of necessarily limits the extent to which the prosecutor can engage with the media or with the public as a whole. Yet the public has to be entitled to know and understand the basis on which the prosecution service makes its decisions, at least in a general sense, even if it is not always possible to give full explanations in every individual case. Public confidence is essential if the prosecution service is to fulfil its mandate and that public confidence can only be earned if the public trusts the prosecution service to act properly and impartially. While a free press is essential to the functioning of a democratic society, at the same time it is important to bear in mind that often what drives the press is the profit motive rather than the search after truth.

Not only do we as prosecutors need public confidence but the cooperation of the public is also required if we are to be successful in prosecuting crime. If witnesses are not prepared to come forward and testify, whether through fear of the criminal or mistrust of the prosecutor, then criminal justice is impossible to enforce.

I have attempted to give a flavour of some of the matters which our conference will try to address and we look forward to developing these and other themes in the next few days.

One of the issues emphasized in the IAP Standards is the duty of prosecutors to keep themselves informed and abreast of developments in the law. Here the IAP has an important role to play on the international level. This year we have taken a number of steps in order to enhance our capacity to provide information to prosecutors. It is my belief that the services the IAP offer will more and more have to be provided through the use of the web. There are probably over a million prosecutors in the world and only a handful of them will ever attend an

IAP conference. The IAP's website, on the other hand, should be accessible to most prosecutors wherever they are.

A priority of our Association at present is the development of our website in languages other than English. In May I launched our revised and revamped Russian website which is hosted in Baku, Azerbaijan. With regard to the French language, the IAP has been actively discussing the future development of French language services with the Association Internationale des Procureurs et Poursuivants Francophones. The objective is to strengthen both the IAP itself and the Francophone association and to ensure that we enhance the quantity and quality of material provided in the French language. Our Communications Manager Mrs. Janne Holst Hübner has been in discussions with a number of our organizational members concerning the provision of an Arabic website. Finally, in relation to the Spanish language the IAP has been discussing this question with the Prosecutor General of Buenos Aires and the Prosecutor General of Spain. This issue will be discussed at the special interest Ibero-Americans group.

With regard to the specialized information provided on our website, we are looking to improve the Global Prosecutors e-Crime Network as well as the forum for International Criminal Justice. We are looking at the possibility of having other specialized forums on the website.

We must, of course, not suggest that conferences are unimportant. The last 12 months has also seen a major expansion in the number of regional conferences which have been organized by or in conjunction with the IAP. The first North American Regional Conference was held late last year in Bermuda, and the first African Regional IAP Conference was held in Nigeria earlier this year. Forthcoming regional conferences include the regional conference for Eastern Europe and Central Asia which will take place in Kazakhstan in early October and the second North American Regional Conference which will take place in Quebec city in May 2012.

I hope to be able to give you further information concerning these and other IAP activities both at the annual general meeting of the Association on Tuesday afternoon and during the closing session of the conference on Wednesday afternoon.

It only remains for me once again to welcome you to this conference and to express the hope that you will find it interesting and informative as well as a good opportunity to network with fellow prosecutors from around the world where the hosts of our next conference will offer a flavour of what is in store.