



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**The International Law Commission
and the fight against impunity**

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Excellencies,
Ladies and Gentlemen,

As we are meeting in New York on the occasion of the Seventieth Session of the International Law Commission, I am reminded that the last time that the Commission held part of its session here was for its fiftieth anniversary. At that time, a number of Members of the Commission arriving in New York – as well as colleagues in the Office of Legal Affairs and government delegates – were in fact coming back from Rome, where the Conference on the Establishment of an International Criminal Court had just successfully concluded its work. It was July 1998. The process of codification – which by its nature is at times lengthy and convoluted – had just borne significant fruit.

We are thus today celebrating not one but two anniversaries. This year also marks the 20th anniversary of the adoption of the Rome Statute of the International Criminal Court. On 17 July 1998, a historical agreement was reached to establish the first permanent treaty-based international tribunal to deal with individual criminal responsibility for the most serious crimes of concern to the international community as a whole.

Over the past 20 years, the International Criminal Court has contributed to ensuring accountability for such crimes. Its workload has grown steadily, with, as of today, 10 preliminary



examinations, 11 ongoing investigations, 12 cases at the pre-trial stage, 4 at the trial stage, 2 at the appeals and 3 at the reparations stage. Its jurisdiction has also been expanding, with several additions to article 8 of the Rome Statute, on war crimes, and with the amendment on the crime of aggression, over which the Court will be able to exercise its jurisdiction as of 17 July 2018.

The International Criminal Court is at the heart of the efforts of the international community to ensure accountability, fight impunity, contribute to the prevention of these crimes, and provide a restorative justice system for the victims. I would like us to seize the opportunity of this 20th anniversary to reflect on what has been achieved by the International Criminal Court, what are its current main challenges, but also its weaknesses, in order to reflect together on how to improve its role.

The United Nations continues to consider that the International Criminal Court is a crucial institution to achieve justice and maintain international peace and security. In this regard, the United Nations will continue to support the work of the ICC and looks forward to witnessing its growth as it solidifies its position as the centerpiece of our international criminal justice system.

People across the world have placed their hopes in the Court and we must all do our utmost to enable the Court to perform its vital work.

Excellencies,
Ladies and Gentlemen,

The fact that these two anniversaries coincide is fitting. The process that led to the adoption of the Rome Statute started almost seventy years ago, and the International Law Commission played an essential role in it. Indeed, in addition to the significant achievements of the Commission in fields of public international



law such as the law of the sea, diplomatic relations, treaties, succession, and international responsibility for wrongful acts, the Commission has extensively considered issues of international criminal law throughout its existence.

At its first session, in 1949, the Commission was already involved in the formulation of the Nürnberg principles and the consideration of the question of international criminal jurisdiction. These two strands – the content of substantive international criminal law and the question of the establishment of a court exercising jurisdiction thereupon – continued to occupy the Commission for a long time, and eventually culminated in the completion of two essential texts: the draft Statute for an International Criminal Court of 1994, and the draft Code of Crimes against the Peace and Security of Mankind of 1996. Both texts provided the backbone of the subsequent efforts that led to the Rome Conference in June and July 1998.

This fifty-year long journey, from the 1949 consideration of the Nürnberg principles to the eventual adoption of the Rome Statute, was certainly rather convoluted at times. The progressive development and codification of international law do not always take a linear path and require sustained efforts – and persistence – by many different actors.

The first attempts were ambitious but ultimately unsuccessful. In 1947 and 1948, the General Assembly wished to take stock of the recent experience of the post-war international military tribunals, and directed the Commission to formulate the Nürnberg principles, to prepare a draft code of offences against the peace and security of mankind, and to study the desirability and possibility of establishing an international criminal court. The Commission adopted corresponding texts in 1950 and 1954, and a draft statute of an international criminal court was drafted by a committee of Member States. However, the General Assembly eventually suspended consideration of all these topics in 1957, because of difficulties related to the question of defining aggression.



By the late fifties, therefore, codification efforts in the two strands – “substantive” and “jurisdictional” – had effectively stopped. In 1968 and 1974, the Secretary-General attempted to bring the attention of the General Assembly back to these issues, and the International Law Commission did the same in 1977, initially to no avail.

However, four years later, in 1981, the General Assembly finally invited the International Law Commission to resume its work on the Code of Offences against the Peace and Security of Mankind, and a few years later, in 1989, it invited the Commission to address again the question of establishing an international criminal court. These processes eventually brought fruit. The Commission thus adopted the draft Statute for an International Criminal Court, together with its commentaries, and submitted it to the General Assembly in 1994 – this is the progenitor of the current Statute of the International Criminal Court. Two years later, in 1996, the Commission adopted the draft Code of Crimes against the Peace and Security of Mankind, which also influenced the work of the bodies established by the General Assembly to finalise the creation of the International Criminal Court. The Ad Hoc Committee and, later, the Preparatory Committee on the Establishment of an International Criminal Court further elaborated on those drafts. The ensuing Diplomatic Conference met in Rome from 15 June to 17 July 1998. And the rest is history.

As we talk today about the role of the International Law Commission in the genesis of the Rome Statute, it is interesting to note that the Rome Statute followed the Commission’s approach on many essential points, for example on the treaty-based nature of the Court or on the primary role of domestic jurisdictions and the subsidiarity of the Court. But on some points, the Statute notoriously deviated from the Commission’s drafts.

For example, the Commission had presented, on the one hand, a more restrictive proposal for the activation of the Court’s



jurisdiction while proposing, on the other hand, a broader jurisdiction *ratione materiae* (including, among others, piracy, the use of mercenaries, international terrorism, or drugs trafficking).

In any event, we can thus see that, in this particular path of progressive development and codification, the Commission and the General Assembly encouraged – and at times nudged – each other at different moments over the years, until efforts finally coalesced in the adoption of the Rome Statute.

Since then, the Commission continued considering questions related to international and transnational criminal law.

In this regard, I wish to conclude by highlighting one topic that is in the Commission's current agenda: "crimes against humanity". The objective of the Commission is to propose draft articles for what might become a Convention on the Prevention and Punishment of Crimes against Humanity. While the crime of genocide and war crimes are the subject of global conventions that require States within their national law to prevent and punish such crimes, and to cooperate among themselves toward those ends, there is no global convention dedicated to preventing and punishing crimes against humanity and promoting inter-State cooperation in that regard. The Commission's work seeks to lay the groundwork for filling that gap.

A draft was adopted by the Commission on first reading last year. This will be yet another occasion to continue the debate and cooperation between the Commission and its stakeholders, with a view to continue the progressive development and codification of international law.

Throughout the history of the Commission, the Office of Legal Affairs has served both as the Secretariat of the Commission and as the Secretariat of the Sixth Committee of the General Assembly. In these complementary roles, it has been at the centre of the efforts of codification and progressive development of international law that we are celebrating today. Serving in these



roles is one of the key contributions of the Secretariat to the fight for the end of impunity.

Excellencies,
Ladies and Gentlemen,

The Secretariat stands ready to continue serving – and, when needed, gently nudging – the process of codification. As we saw, this process is often slow and not linear in its evolution. This is all the more reason for us all to cherish and protect its fruits, including the International Criminal Court. We shall continue doing so.

Thank you.
