



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

Message

by

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to the

ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

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Excellencies,
Ladies and Gentlemen,

I am honoured to speak before the Assembly of States Parties to the Rome Statute and to take part in this panel which marks the beginning of the commemorative activities for the 20th anniversary of the adoption of the Statute.

The singular accomplishment of the Statute, as we know, is that it establishes the first permanent treaty-based international tribunal to deal with individual criminal responsibility for the most serious international crimes of concern to the international community. However, in order to truly appreciate the magnitude of this achievement, I would like to begin by recalling some of the hard-won milestones in the long journey leading to the creation of the Court.

The horrors of the Second World War have galvanized the international community into setting-up international military tribunals in Nuremberg and Tokyo – thereby embracing the legal principle of individual criminal responsibility for international crimes. But the decades that followed contained a stark contrast between principle and practice.

The principle of individual criminal responsibility was thereafter repeatedly codified in various instruments such as the Genocide Convention, the Convention on the Suppression and



Punishment of the Crime of Apartheid, and the Convention against Torture.

However, it was plainly noticeable to the world at large that there was an absence of any mechanism to bring to trial those individuals who committed violations of the aforementioned Conventions.

In this regard, it was only 50 years later, upon the adoption of the Rome Statute, that Article VI of the Genocide Convention of 1948, which had included the idea of an 'international penal tribunal' to try persons charged with the crime of genocide, found purpose.

As the United Nations Legal Counsel – in-charge of an office which works very closely with the ICC – I am proud to say that the United Nations and the Court share a strong relationship of cooperation and support. This cooperation, established in Article 3 of the Relationship Agreement between our two Organizations makes cooperation an international obligation, and not merely an option.

This strong relationship between the International Criminal Court and the United Nations has a deep history. Some attribute the very creation of the Court to the 1989 resolution of the General Assembly on transnational crimes and the establishment of an international criminal court with jurisdiction over such crimes, which revived a negotiation process that had been stalled for decades. Indeed, the 1989 resolution itself refers back to the work of the International Law Commission on a Draft Code of Crimes Against the Peace and Security of Mankind started in 1947. One of the questions to be considered by the International Law Commission was, in fact, the creation of such a court.

The negotiation process of the Court's Statute also received strong support from the Secretary-General of the United Nations.



In December 1996, the then Secretary-General, Mr. Boutros Boutros-Ghali, wrote to the President of the General Assembly that “[t]he establishment of an international criminal court would be a monumental advance, affording, at last, genuine international jurisdictional protection to some of the world's major legal achievements. The benefits would be manifold, enforcing fundamental human rights and, through the prospect of enforcing individual criminal responsibility for grave international crimes, deterring their commission.”

In 1997, Secretary-General Kofi Annan, in his Report on renewing the United Nations, “strongly support[ed]” the effort to create an international criminal court, and said that it was “imperative” that the International Criminal Court be created.

Subsequently, it was again a resolution of the General Assembly which convened the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in order to consider the draft Statute of the International Criminal Court prepared by the International Law Commission. The Conference, which ultimately adopted the Rome Statute by consensus on 17 July 1998, was attended by 160 States, 16 intergovernmental organizations and other entities, 5 specialized agencies and related organizations, 9 United Nations programmes and bodies, as well as the representatives of 135 non-governmental organizations.

In other words, the International Criminal Court had, since its inception, the strongest support from the United Nations. A support that the United Nations continues to provide to the Court in its daily activities.

As I mentioned earlier, my Office works very closely with the different organs of the Court, but also with other bodies under the Rome Statute such as the Trust Fund for Victims.



On the basis of our Relationship Agreement, numerous Memoranda of Understanding, Exchanges of Letters and other arrangements have been concluded regarding the cooperation between various United Nations entities and the International Criminal Court, including several peacekeeping operations (MINUSCA, MINUSMA, and MONUSCO).

The United Nations also provides an extensive amount of documentation and information to different organs of the Court, and has made current and former United Nations personnel available for interview; some of whom have gone on to testify before the Court. Finally, the United Nations regularly provides administrative and logistical assistance to the Court when its personnel visit the field.

With 8 preliminary examinations, 11 situations under investigation, 4 trials, 2 appeals and 4 reparations proceedings ongoing, we are always mindful of the message that the Secretary-General conveyed in his address on the opening of the Assembly asking us all to "*acknowledge that the ICC has a challenging and complex mandate that encompasses some of the most difficult, sensitive and even contentious issues on the international agenda*". I wish to assure the States Parties to the Rome Statute that the United Nations Secretariat will continue to provide all its support to the Court and to nourish our excellent relationship.

In addition, I wish to note the increased attention which is being paid by the international community, and by the United Nations in particular, to the role of accountability at the national level.

In a sense, the ideal future of criminal accountability for serious violations of international law would be a situation in which the International Criminal Court would be the dominant multilateral institution in the field of international criminal



justice. Hopefully, the Court would have fewer cases and would exercise mainly a deterrent and preventive role. Ideally, as President Kaba noted in his opening address, the Court takes on the new mission of gradually becoming dormant as a result of the disappearance of mass crimes around the world.

In this future ideal scenario, domestic jurisdictions will have assumed the main responsibility in the prosecution of international crimes and will offer guarantees to respect international standards, in line with the principle of complementarity established in the Rome Statute. To get there, important work needs to be done in domestic capacity building. With respect to the national prosecution of international crimes, we have already begun seeing States in post-conflict situations preferring to utilize domestic prosecutions for international crimes with different levels of international participation. One example is the Special Criminal Court in the Central African Republic, which includes international judges, an international prosecutor and an international deputy-registrar. Another example is the Colombia Special Jurisdiction for Peace, which is composed exclusively of Colombian judges, but allows the participation of foreign amicus curiae lawyers.

Of course, in such scenario, the international community needs to be careful to avoid being utilized by some States that may want to provide an appearance of legitimacy through cosmetic international participation, and probably to avoid the International Criminal Court.

I foresee a difficult role for the international community when international participation in domestic efforts is requested without any involvement in the establishment and operationalization of domestic structures. Support can be provided but it should not mean validation of the processes or their outcomes.



This brings me to a conclusion. The fight against impunity and, beyond, the protection of human rights and of international humanitarian law depends on their enforcement. This is an old idea, already stated by Cesare Beccaria in 1764, when he affirmed that “the conviction of finding nowhere a span of earth where real crimes were pardoned might be the most efficacious way of preventing their occurrence”. The International Criminal Court is instrumental in this regard and the commitment of the United Nations to cooperate fully with the Court is firm.

Thank you.

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