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Assembly of State Parties to the Rome Statute



Statement by

Ms. Navi Pillay

United Nations High Commissioner for Human Rights

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Mr. President,
Excellencies
Distinguished Delegates,
Ladies and Gentlemen,

I am pleased to be with you at this Assembly. I believe the ICC is a crucial instrument of the rule of law and human rights protection in our troubled world. Current events have continued to engage in a very direct way its value and relevance.

We have seen how international human rights protection and the ICC complement each other. On the one hand, human rights monitoring and advocacy helps de-escalate situations where international crimes are at risk of being carried out. Furthermore, cooperation and technical assistance on rule of law issues extended by my Office and others can equip national authorities to adequately respond to such situations and hold perpetrators accountable, without recourse to the ICC being necessary.

On the other hand, the prospect of being held accountable by the ICC provides a measure of deterrence that has, I believe, constrained certain autocratic rulers that might have otherwise resorted to more killing, torture and other gross human rights violations to hang on to power. The high-level indictments and ensuing arrests in Libya and Cote d'Ivoire can only add to this deterrent effect.

Furthermore, ICC proceedings promote fair trial standards by providing an exemplary model on how to conduct fair trials in sensitive high-profile cases. Moreover, in considering whether its complementarity jurisdiction should be activated, the Court also needs to take into account the capacity and will of the relevant national courts to conduct trials in line with international standards.

Ladies and Gentlemen,

The State Parties assembled here today share the commitment to a world where no one is above the law and everyone works toward ending impunity for gross human rights violations that amount to the worst crimes. Your ratification of the Rome Statute testifies to that fact. I would refer to you as a progressive *avant-garde*, were it not for the fact that you already represent two thirds of all states on this planet. Year after year, more states join this cross-regional alliance against impunity. I applaud the fact that, over the last twelve months alone, St. Lucia, Tunisia, Grenada, the Philippines, the Maldives and Cape Verde have acceded to the Rome Statute. The minority remaining on the side lines is shrinking. The ultimate goal can be no less than universal ratification.

While we are striving for universal ratification, the Court's universal reach is already a potential reality, thanks to the avenue of Security Council referrals to the Court. Referral is one element of implementing, through non-military means, the international community's responsibility to protect human beings from genocide, crimes against humanity and war crimes, where states manifestly fail to do so.

Nevertheless, the referral option has triggered very divisive debates. In the long run, universal ratification of the Rome Statute—effectively ushering in universal jurisdiction for the ICC—would remove the root cause of these debates. Until then, I believe that member states should strive to form a political consensus on objective criteria to determine when the Security Council *could* and indeed *should* refer a situation.

There has to be credible evidence of probable cause indicating that core international crimes falling under the jurisdiction of the Court have been committed. Furthermore, as the Court's jurisdiction is complementary, a Security Council referral is most justifiable when there are credible indications that the national jurisdiction concerned is likely unwilling or unable to provide justice.

The foregoing two criteria should be largely uncontroversial. The real debate starts when contemplating additional conditions implicated in the nature of the Security Council and the manner in which it does its work. Here, it is important to recall that a Security Council referral under Chapter VII of the United Nations Charter is premised upon a threat to international peace and security. The question arises whether the commission of core international crimes with impunity, in and of itself, is sufficient to anchor a presumption of a threat to international peace and security. In this context, we have to bear in mind that security of course also entails the protection of human security and that every referral adds to the overall deterrent effect fostered by the Court's existence as an instrument of the rule of law.

A second set of questions concerns the process en route to the Security Council decision to refer or not. The first referral made—the Darfur situation—was based on the findings of an International Commission of Inquiry mandated by the Security Council.

Special sessions of the Human Rights Council, convened immediately on situations of concern, now provide another option for a trigger mechanism for Security Council referrals. Security Council Resolution 1970 referring Libya to the Court made specific reference

to the resolution of the Human Rights Council's special session held the day before, which in turn raised concerns about apparent commission of crimes against humanity.

As part of my mandate to protect human rights around the world, I consider it within my remit to call upon the Security Council to refer cases to the ICC when it appears to me that gross human rights violations amounting to international crimes have been—or are being—committed. Hence, my repeated call upon the Security Council to refer the situation in Syria.

As with referral, there is also a need to establish a clear understanding regarding when the Security Council may *defer* cases, pursuant to article 16 of the Rome Statute. This will go a long way in providing predictability and transparency to decisions on deferrals. Obviously, those standards will need to mirror, to the applicable extent, those involved in the decision to refer.

Ladies and Gentlemen,

Some would try to have us believe that the ICC is a source of instability. This confuses cause and consequence. It is the *commission* of international crimes that breeds the forces of domestic instability and threatens international peace and security. It is not the deployment of the Court—or indeed the Court’s processes—in any *response* aimed at holding perpetrators accountable and preventing them from committing more crimes. Indeed, Security Council Resolution 1970 embodies this understanding: The Security Council considered that the atrocities committed in Libya were a threat to international peace and security. To counter this threat, the Council referred the situation in Libya to the Court.

Ten months later the surviving suspects identified by the Court are in the custody of Libyan authorities. Whether the trials occur at the ICC or in Libya, as long as international standards are respected, this development will mark a victory for the rule of law in a country that has seen so much oppression for so long. It will also be a victory for the Rome Statute regardless of which forum conducts the trial, because the primary objective is not to bring as many perpetrators as possible before the ICC, but to get states to diligently implement their obligation to prosecute international crimes.

Overall, however, we are still some distance from the ideal situation in which all States parties deal effectively with international crimes committed within their jurisdiction. Shortcomings start with domestic legislative frameworks. For instance, many States Parties have yet to criminalize the core international crimes in their own penal codes.

As a first step, I would therefore like to call on State Parties that have not done so, to adopt comprehensive legislation incorporating the Rome Statute into domestic penal law. This also provides an opportunity to bring domestic laws in line with other aspects of international law; such as obligations to abolish amnesties and statutes of limitation impeding the prosecution of core international crimes. I offer the technical advice of my Office in this respect.

Ladies and Gentlemen,

This Assembly marks a mile stone, with the election of the next Prosecutor and six new judges. Perhaps the strongest assistance that all of you gathered here can give to the ICC is to elect the most qualified candidates with the most relevant experience. I urge you to

pick wisely and responsibly, with the best interest and integrity of the Court in mind.

Thank you for your attention.