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President of the International Criminal Court**

Keynote speech at Seminar

“From Ratification to Action: The Importance of Full Implementation of the Rome Statute”

CHECK AGAINST DELIVERY

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Excellencies,

Dear fellow judges and colleagues of the ICC and other tribunals and courts,

Ladies and Gentlemen,

It is a great pleasure to participate in today's important seminar, and I am grateful to the Hague Institute for Global Justice for hosting it.

I would also like to thank the co-focal points on the Plan of Action for Achieving the Universality and Full Implementation of the Rome Statute, Cyprus and Denmark, for convening this event and for inviting me to participate.

A few months ago, I took part in a strategic meeting with Ambassador Kouros and Ambassador Moesby on the way forward for the Plan of Action. One of our conclusions was that it is crucial to mobilise States to become more active – and I hope that this will be one of the outcomes of today's meeting. Words must be followed by actions.

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Today, we have gathered to speak about the actions that are required for the full implementation of the Rome Statute.

By this we mean primarily national implementation of the Rome Statute in domestic legislation by each State Party.

This is a complex, multi-faceted topic. Full implementation is closely linked to both cooperation and complementarity.

Cooperation, because States should have adequate legislation providing legal basis and procedures for all forms of cooperation with the ICC. This is a legal requirement under article 88 of the Rome Statute.

And complementarity, because the Rome Statute system is based on the presumption that States carry the main responsibility for the investigation and prosecution of core international crimes – and to do so, they must incorporate these crimes into national law.

This is strictly speaking not an obligation that emanates from the Rome Statute – rather, the Rome Statute is based on the understanding that it is a pre-existing obligation of each State to “exercise its criminal jurisdiction over those responsible for international crimes”¹.

National implementation is a complex topic because there is no “one size fits all” solution. You all know very well that States have widely different legal systems and constitutions. And this is why States have broad latitude in deciding how to implement the Rome Statute in their national law.

Some States, such as my own country, Argentina, have adopted a single piece of legislation covering both the cooperation and complementarity aspects of implementation.

Other States, such as the Netherlands, have separately adopted amendments to their criminal codes incorporating Rome Statute crimes, and passed another piece of legislation providing procedures for cooperation with the ICC.

Whatever the practical solution, it is the outcome that matters.

Each State Party has to ensure that it is able to prosecute those who have committed genocide, crimes against humanity and war crimes. This is the very basis of the Rome Statute system. It is for national jurisdictions, in the first place, to ensure accountability for these crimes. The ICC must intervene only if that is not possible. This is what complementarity is all about.

You may be surprised to hear that there are tens of States Parties, possibly as many as half of all States Parties, that do not have adequate national laws criminalizing the acts contained in the Rome Statute. So there is much work to be done on this front.

Although it is for each State to define crimes for the purposes of domestic jurisdictions, for ICC States Parties, the Rome Statute and the Elements of Crimes provide a natural reference point for the definitions of genocide, crimes against humanity and war crimes,

¹ Rome Statute Preamble

or related aspects concerning general principles of criminal law, such as the non-applicability of statutes of limitation.

I would also encourage States to consider providing for participation and reparation of victims within the possibilities of their legal systems, as well as witness protection.

The Rome Statute has already had a very positive effect in harmonizing national legislation on international crimes. On some issues, States may of course opt for slightly different solutions, or more progressive provisions than those in the Rome Statute, notably for example to criminalize the use of child soldiers between 15 and 18 years of age.

But all in all, it would be highly advisable to draw from the Rome Statute as much as possible. Harmonisation of national laws with the Rome Statute will also facilitate dialogue and exchange of experiences among different national jurisdictions, or between the ICC and national judges.

In addition to the core international crimes, there is a specific obligation under article 70.4 of the Statute on States Parties to extend their criminal laws to encompass offences against the administration of justice before the ICC. In other words, States Parties have a legal duty to ensure that they can prosecute those who for instance interfere with witnesses of the ICC. The effective prosecution of these offences is extremely important for the effective prosecution of the core crimes, as demonstrated by current practice at the Court. The first trial for this type of offence will start next week and, as you may be aware, recent arrests have been made against further individuals charged for these offences pursuant to warrants issued by the Court.

Let me now move on to discuss the full implementation of cooperation obligations under the Rome Statute, which are essential for the effectiveness of the Court's mandate.

Under article 88 of the Rome Statute, States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under Part IX of the Statute.

This is not only a formality. As I said, this is a question that impacts directly on the effectiveness of the Court. Proper national implementation of the Rome Statute is a very

important factor for a State Party's ability to respond swiftly and comprehensively to requests for assistance and cooperation from the ICC.

We all strive for more efficiency and effectiveness; as you know, I have made it my personal mission to lead reforms in the ICC's judiciary in order to achieve more effective and expeditious judicial proceedings. But there are factors outside our control. If States do not support us, if responses to requests for cooperation are delayed or incomplete, the effect on our proceedings can be devastating.

The Assembly of States Parties has repeatedly recognized the importance of implementing legislation, and the 66 Recommendations on cooperation adopted by the Assembly in 2007² contain very specific and highly useful recommendations in this regard.

One particular recommendation I would like to highlight is the designation of a national focal point or central authority for cooperation with the ICC. Such focal points have proven to be very effective in streamlining and expediting communication with the Court, as well as mainstreaming of ICC issues across national authorities.

In this sense, implementing legislation should ideally create not only procedures, but also structures for cooperation.

Excellencies, ladies and gentlemen,

As I said earlier, words must be followed by actions. Let us focus on how we can achieve progress in very concrete terms.

Many of you represent States Parties to the Rome Statute. I would urge all of you to review the status of your national implementation of the Rome Statute. Please keep in mind that this is not only a question of whether legislation exists or not; it is also a question of the quality and comprehensiveness of the national implementation. Indeed the Assembly has recommended that "[a]ll States Parties should, where appropriate, review their implementing legislation, with a view to improving its functioning"³.

² ICC-ASP/6/Res.2, Annex II ("66 Recommendations").

³ 66 Recommendations on Cooperation, Recommendation 3.

I spoke earlier about implementation in relation to complementarity and cooperation, but there are many more specific aspects to implementation. I cannot go into the details within my remarks, but let me make the following points:

First, 50 States Parties still have not ratified the Agreement on the Privileges and Immunities of the ICC. If your country is one of them, please urge your capital to make a pledge at the next Session of the Assembly to ratify the Agreement as soon as possible. I would certainly view this as part of the full implementation of the Rome Statute.

Second, implementing legislation should provide a legal basis for the enforcement of the ICC's orders for fines, or forfeiture of assets, which may be used for the benefit of victims.

And third, all States should consider whether they can extend some forms of voluntary cooperation to the ICC, such as relocation of witnesses or enforcement of sentences.

Finally, before I conclude, let me note that the effective investigation and prosecution of international crimes by national authorities is of course a far broader question than that of legislation. Resources and capacity building are also needed. And above all, political will is one of the first preconditions for ending impunity.

We need determination, drive and passion to make sure that the Rome Statute system becomes a well-oiled machinery of international justice. Full implementation of the Statute is a vital part of that process.

Thank you.