

Cour
Pénale
Internationale



International
Criminal
Court

Judge Silvia Fernández de Gurmendi
President of the International Criminal Court

48th Pacific Islands Forum
Remarks to Forum Leaders

6 September 2017

Apia, Samoa

Mr Chair of the Pacific Islands Forum, Honourable Prime Minister of Samoa,

Honourable heads of state and government from the Member States of the Pacific Islands Forum,

Excellencies,

Ladies and Gentlemen,

I feel deeply privileged to have this opportunity to address you and would like to express my sincere gratitude to the government of Samoa for inviting me to speak about the International Criminal Court (the ICC).

I am extremely happy to be in beautiful Apia on the occasion of the Pacific Islands Forum Leaders meeting and thankful to the Forum Secretariat for ensuring this important space in your busy agenda.

It is quite a long way to get here from the seat of the Court in The Netherlands. And this may be one of the reasons why we seldom have the chance to meet with all. I am grateful for the opportunity to be here and brief you all on developments at The Court. I will seek to be concise so that we have the time to engage in a dialogue on the achievements of the Court and the challenges ahead.

Some of you represent state parties in the founding treaty of the Court, the Rome Statute. Others amongst you have not yet joined and may be less familiar with our relatively young institution.

I would like to recognize the active participation of the host country, Samoa, in the negotiations of the treaty and establishment of the Court.

In this regard, I would like to acknowledge in particular, the important contribution of Mr. Tuiloma Neroni Slade of Samoa, former Secretary General of this Forum, who can be rightly considered one of the founding fathers of the International Criminal Court and who was one of the first judges of the Court. I am happy that he is with us today. I am confident he will be positively surprised on how much has happened at the Court since he left in 2006.

Indeed, the Court has attained its judicial maturity since then, although as I said it continues to be relatively young in institutional terms.

This year it is celebrating 15 years of operations, and next year, we will be celebrating the 20th anniversary of the adoption of the treaty, the Rome Statute on 17 July 1998. The entry into force of the treaty only required 4 years, prompting many to say that the court was “an idea whose time had come”.

As you may well know, the Court was created to fight impunity for the most serious international crimes: genocide, crimes against humanity and war crimes.

At the end of this year, in the Assembly of State Parties that will gather in New York, states will need to decide whether they accept to trigger the jurisdiction of the Court over a fourth crime, aggression.

The fight against impunity for the most serious international crimes may seem removed from the theme of this year’s forum and, it may seem distant from what are the top priorities for your beautiful and unique region, such as climate change or the protection of the oceans.

However, I believe the underlying values of the Court cannot but resonate well with the Pacific region and the Pacific Islands Forum, which is based on cooperation and solidarity to build a rules-based international order, in which international law and treaties are fundamental to secure peace and sustainable development.

As has been recalled by the Honourable Prime Minister of Samoa, the conservation and sustainable use of the oceans and marine resources is one of the sustainable developments goals of the 2030 Agenda of the United Nations, this is Goal 14.

Ensuring access to justice for all through the rule of law is also part of the same Agenda, as Sustainable Development Goal 16. Indeed sustainable development needs the rule of law in all areas, and the rule of law cannot be attained without a proper system of justice that ensures accountability for the worst crimes.

The ICC was created on the premise that the most serious crimes that affect the international community as a whole threaten peace and the well-being of societies.

States recognized that certain crimes are one of the biggest causes of human suffering. They feed conflict and have a devastating effect on efforts to secure development, the rule of law and respect for human rights.

Therefore states sought to create a system to ensure individual accountability for those crimes in order to bring justice to victims and by so doing contribute to their prevention.

The Court does not address violations of human rights that may be committed by states. It is not a human rights court. The ICC is a criminal court that may prosecute individual perpetrators, regardless of their position or rank, regardless of whether they are state officials or non-state actors, such as members of terrorist groups.

It is also important to underline that the court was created as a last resort, a back-up institution, created to complement the work of national courts and tribunals. They are the ones that have the duty and the right to investigate and prosecute these crimes in the first place. The Court was not created to compete with them; it can only act when domestic systems fail to do so.

One extremely positive consequence of the creation of this complementary Court is that many states of the world have now adopted legislation that allows them to prosecute international crimes. So the Court is not alone to do its work. The International Criminal Court, rather than being one tribunal, is one tribunal plus the domestic systems of the states. We do not compete with domestic courts; we work together with them. We encourage them to do investigations and prosecutions and seek to provide assistance to the extent possible.

In an ideal world, the ICC would not have any work to do, either because crimes are not committed or because the national systems investigate and prosecute them in a genuine effective manner.

In the real world, unfortunately the Court has indeed a lot of work to do. Several countries have already requested the Court to investigate and prosecute crimes committed in their territory because they felt they did not have the capacity, for a variety of reasons, to do the job themselves.

This was what put the Court in motion immediately after the entry into force of the treaty. Several African states referred to the Prosecutor of the ICC, situations of crimes committed in their territory, Uganda, DRC, Central African Republic and most recently Mali.

The Security Council of the United Nations also referred two situations of crimes which it considered threatened peace and security of the world, in Darfur and Libya.

The Prosecutor opened investigations in other three situations on his or her own initiative in Kenya, Ivory Coast and most recently Georgia.

In sum, in 15 years, the Prosecutor has opened investigations in 10 situations of crimes committed in 9 countries.

Within those situations, several cases against individuals were brought before the Court, several trials have finished resulting in 9 convictions and one acquittal.

Three trials are now ongoing against four individuals that include the former president of Ivory Coast and one of his alleged aids, and two members of militia leaders in Uganda and Democratic Republic of Congo.

All of the convicted persons are non-state actors, leaders of rebel militia and terrorist groups.

Among the crimes, the Court has issued judgements for the use of child soldiers, sexual violence in conflict, and, most recently, for the destruction of cultural property in Timbuktu, Mali.

The Court has issued a number of additional arrest warrants for 15 individuals that are still at large.

In the proceedings of the Court more than 14,000 victims have been allowed to participate and many are now seeking reparations against the convicted persons for the harm they have suffered as a result of the crimes. This is an innovative part of the system.

In sum, much has happened in 15 years. The Court has already been able to demonstrate that it can fulfil the essential goal for which it was created, that it can deliver high quality justice for the most serious crimes.

After 15 years of operations the Court is also going through an exercise of lessons learned in order to enhance efficiency and effectiveness, accelerate proceedings and improve its governance. This has been my top priority as President of the Court in the last three years.

Importance of accountability

The creation by the states of the world of the first permanent international court to deal with these crimes is a huge achievement that consolidated three decades of efforts to put international criminal justice firmly on the global agenda.

Today, impunity is no longer an option. The expectation for justice for the gravest crimes is part of discussions on how to solve ongoing conflicts at the regional or international level. It is increasingly recognized that there must be a component of justice in order to attain sustainable peace – and development.

The Court has not the monopoly of justice but it has a central role in a global system of justice in which other national, regional and international tribunals all have a role to play.

This huge achievement was possible because of the efforts of mainly small and medium size countries. They created the Court and they are the ones that sustain the Court today. Not surprisingly so as they are also the ones that benefit the most from a system based on cooperation, solidarity and international law.

The Court has achieved a lot but is not immune to the serious challenges that today confront efforts to consolidate a rules-based international order.

These same challenges affect the protection of the oceans or the fight against climate change.

To tackle all of these global challenges, the support of states of all regions is essential.

Importance of Universality

The ICC has now appeal in all regions of the world. 124 states have joined the Court, including about two thirds of the world's small island states. This includes eight members of the Pacific Islands Forum. We hope that other states in this region will also consider joining, to help make the ICC more effective.

Indeed, the Court needs cooperation of all states and organisations to investigate the crimes and prosecute those most responsible.

Most importantly, the Court has a global aspiration that can only be fulfilled with universal participation in the treaty. The Court can only address situations where crimes have been committed where the countries concerned are parties to the treaty. If the countries concerned are not parties, crimes are beyond our reach

More states, all states are needed for the effectiveness of the institution and ultimately its relevance to contribute to fight impunity for the most serious crimes and protect all victims in an equal manner. The Court is a last resort court but can only be a credible back-up if it is itself able to act in case of inaction by others.

In light of your remarkable efforts to address climate change and the protection of oceans, you know very well that cooperation and international law and solidarity are extremely important in today's globalised world.

Consequences of ratification

Since I have arrived I have been asked on various occasions what are the concrete advantages and disadvantages of ratifying the Rome Statute.

Of course, as a matter of principle, for the reasons given, ratification of the Rome Statute may be seen as a powerful foreign policy commitment not only to justice but also more broadly to peace, security, rule of law and sustainable development.

In practice, a party to the treaty is a full-fledged member of this Assembly of State Parties and, in this capacity can participate in the negotiations and decision-making in relation to important institutional aspects of the Court. It can also vote in elections and to present candidates for various positions in the Court or the Assembly.

This year, the Assembly will meet in New York to elect six new judges to replace those that are leaving. As I said, it will be also deciding whether to expand the jurisdiction of the Court over the crime of aggression. Those are all crucial decisions that only States Parties can make.

A state party is also allowed to present candidates for elections of judges. This is important for each state and each region but also vital for the Court. As a global court it is important to ensure adequate representation of all legal systems, traditions and cultures. Legal and cultural diversity of the ICC as a global institution is crucial for its legitimacy.

States Parties decide every year the budget of the Court, which is to say that it decides the priorities of the institution. State Parties also finance the Court on the basis of this budget. The financial contribution of each state is assessed on the basis of their contributions to the UN, which in the case of, most Pacific Islands Forum members are at the lowest end of the scale, and therefore very modest.

It is also important to note that there are no reporting requirements for States Parties.

The Assembly of State Parties meets annually, in The Hague and New York. I would like to note that the Assembly has a trust fund that can sponsor the travel of delegates from small states to the annual meetings in The Hague or New York, which usually take place in late November, or early December.

There is also technical assistance available for the process of ratification and implementation of the Rome Statute. The Court works closely with a number of organisations that are ready to collaborate with the authorities of countries that wish to start the process of ratification. Model laws to implement the founding treaty of the Court already exist that can be tailored to the needs of each State.

Excellencies,

I would like to conclude by emphasizing again that the ICC is one of the most significant achievements of multilateral diplomacy for the realisation of shared values and international solidarity. All values that your countries are known to share.

Your region is truly unique in many ways – its history, its geography and culture, and the challenges it faces today. You have shown that you are not afraid to speak up before the world about pressing issues – as many of you will no doubt do later this month at the United Nations.

The theme of this year's general debate at the United Nations General Assembly goes to the heart of what I have spoken about today: "Focusing on People: Striving for Peace and a Decent Life for All on a Sustainable Planet".

While many may support this aspiration in principle, we all know that the challenge is how to make it happen. How to get real commitment to a rules-based international order that puts people first.

The creation and strengthening of the ICC is very much part and parcel of these efforts to consolidate a rules-based international order through the fight against the gravest crimes.

124 states have already contributed to this important effort by ratifying the Rome Statute. I hope more of you will take this step which I believe is truly essential for building a peaceful and just world for all.

I thank you for your attention and wish you all very productive discussions in this forum.

Thank you.

[end]