



Remarks by ICC Prosecutor Karim A.A. Khan KC at the opening of the 22nd Session of the Assembly of States Parties

Statement: 4 December 2023



Bismillahir Rahmanir Raheem, Madame President Silvia Fernández de Gurmendi, Vice Presidents, Members of the Bureau. I start by applauding you as you come to the end of your three years on your service to the Court and international justice, Under-Secretary-General and Legal Counsel to the United Nations Secretary-General, my dear friend, Miguel Soares, thank you so much for your leadership, your support, independent to the United Nations, but upholding these fundamental principles of the Charter. President Hofmański, thank you for your service to the Court over nine years. The sincerity that you have displayed and that was apparent just now is sincere and I think we all owe you a debt of gratitude as we do for all of

the judges of the ICC that I recognized and to my friend, the Registrar, who's made a storming start under challenging circumstances, I also want to pay acknowledgement to him.

Excellencies, civil society representatives and my friends, I think, every night and every morning, when people turn on their television screens, tears are shed. Because we see pictures of hell visited upon us in our living rooms. And those tears are nothing compared to the pain and the bloodshed that too many millions are feeling around the world.

This is a perilous moment by any yardstick. I said that actually, I think almost verbatim, when the Ukraine situation kicked off and we started seeing the results that we are investigating. And I think now it's not hyperbole to say that we've gone beyond the precipice. We're in danger of freefall and we are searching for some guardrail, some handle to hold on to, to prevent things from descending even more for our fellow men, women and children around the world.

And so, the opportunity to speak to you all today is really a somber one, because it's framed by the needs of the hour, the hopelessness and heartbreak of millions. And yet, at the same time, in the same space we have clearly, with great clarity, a need, a demand and imperative that the Rome Statute has given effect to. That the international structures that have been created in the shadow of the Shoah, of the Holocaust and the Second World War can step up and sustain the tragedies that we see.

And it's critical at this particular moment. And is something that should be reflected upon in the seriousness of our discussions, these next 10 days or so, and in your decisions as the ASP, as to how do we live up at this moment to the very real challenges that are abounding the world. I think we have to prove the relevance of the law, not fine words, to those that need it the most.

I arrived in New York yesterday from Israel and also Palestine. And I heard very clear messages from victims in Ramallah, in Tel Aviv, in the various kibbutzim that I visited, whose tears were real, whose anger was real, whose heartbreak was deep.

And many believe that the institutions created have already irredeemably failed. Because they see these structures and they believe, part of them believe in this wonderful, necessary creation, the United Nations, they believe in the aspiration of an International Criminal Court that will be a court of last resort finding justice. And yet, their lived experiences show for far too many, they feel invisible. They feel voiceless. They feel too small to somehow count in the big power dynamics that straddle the world.

And I told them I understood because we have to understand that perspective. Unfortunately, there's no monopoly on suffering and the suffering of one community anywhere in the world

can't drown out the suffering of others. It's the terrible legacy of our times that suffering is too rampant and unaddressed. It leads to bitterness, it leads to heartbreak, it leads to distrust and failure collectively of states as the anchor of the international system to grapple the nettles of peace and the rights of the individual are creating an ever greater yawning gap.

And, as we see on our television screens, as brothers and sisters caked in dust pull out brothers or sisters or family members from rubble and kissed their tummies of little babies and kissed their feet, as fathers running barefoot, holding a beautiful little child and saying, "Can he, can she be saved?" We see this in very stark terms. What is the result of the words we speak today? What are the results of the international institutions that have been built in the shadow of the Holocaust? What do we say to the promise of "never again"?

What do we say to those hostage families that were taken on the 7th of October, who every moment also are waiting for their loved ones wondering what condition they are in? Are they alive or not? Have they been killed in the bombardment?

And for families in Gaza, what do we say? How do they feel if they come from the rubble injured and in life, and are taken to hospitals that don't have the basics for healthcare?

I think, as we sit in the comfort of this hall, remembering the legacy, after the failure of the League of Nations to prevent the Second World War and rising as a phoenix was the United Nations, and this wonderful Charter that underpins, as the Under-Secretary-General says, every single international institution, including the ICC, what is our answer? What is our grading? How have we done?

This is not a cry for despondency and despair. It's a cry for action, determination that the world we see now, the world that so many encompass is not the world that has to be our legacy, our inheritance to our children.

My prayer, my humble prayer, but a very profound prayer is let us not even utter the word "justice" during this Assembly of State Parties without vividly seeing these children, innocent around the world. Let us not utter the word "justice" without bearing in mind that people are wondering what on earth is happening to their father, their mother, their loved ones that are hostages. Let us not utter the word "justice" without remembering that we must have a bandwidth that is wider than just Ukraine or wider than just Palestine or Israel. What about the hell that is happening in Darfur? If we are true to the promise that every life matters, we need to find a way to grip and to tackle and to be relevant to people that are voiceless, that are invisible, and that very often have been marginalized for a long time.

I was deeply and personally affected by meeting the victims in Ramallah, people from Gaza and the West Bank that have lost indescribable amounts. And yet, amazingly, they came to see me. And they spoke with me. I had the honor of meeting them.

And the same applies to those wonderful people I met in Israel. Israel is not a State Party. But those individuals that I met in the various kibbutzim or in Tel Aviv, that engaged with a foreign prosecutor, from a court in The Hague believing that justice is every person's birthright, must leave an indelible effect.

But I was clear with them that the ICC, the law that was passed in Rome, is the birthright of humanity. That it's the right of people, not as some charity that we dispense, not some aid convoy that we ride up in. It is a right based on their God-given rights as being children of God and by being humans. This goes back to the Universal Declaration of Human Rights. This goes back to the wonderful words of the Charter.

And where did that eloquence come from? Did it come from professors, academics, judges, prosecutors, in abstract, putting something down? Or did the prose come from seeing hell and realizing they didn't want that ever to become the reality ever again?

I was clear in my messages. And it's important to recall them at the moment when there's so much distrust and heartbreak and sorrow. When there's a risk of unrestrained fury arising out of the belief, sometimes the disinformation, that the structures are not fit for purpose. That's a fundamentally wrong and dangerous assumption. The issue maybe is not the structures, it's the will to enforce and support the structures that are in place.

But I was very clear that humanitarian relief, the denial of humanitarian relief is a matter that my Office is investigating. It is and may be an offense under the Rome Statute, and Israel must allow that humanitarian relief in on scale, as the Secretary-General of the United Nations, as the Head of the Office for Coordination of Humanitarian Assistance, Martin Griffiths, the WHO, UNRWA, ICRC, all have demanded.

I emphasized that when I was at the Rafah crossing in October, when I saw for myself, trucks filled up with food and medicine and yet they were not going to those that needed the anesthetics, the food or the water. I emphasized that hostages, well, they shouldn't have been taken at all. It's a grave breach of the Geneva Conventions. It's a crime under the Rome Statute. But those hostages taken from Israel must be released immediately. They can't be used as human shields, which also is a crime under the Rome Statute.

And I saw, in fact, I met two delegations, Excellencies, of Israelis in The Hague and I met one grandfather that came to see me about a month ago as part of a delegation. And I met him again two days ago. And he was overjoyed that his grandson had been released. And the joy

and the relief was palpable and yet he was with an organization trying to support others. And the pain that Palestinians are feeling in Gaza or in the West Bank, the pain that so many Israelis who've suffered on the 7th of October and continue to suffer in the aftermath is something that is not academic. It's why we have law, why we need you, why you created us and the International Criminal Court. So the stakes cannot be higher and the relevance of international justice could not be rendered more stark than at this particular moment.

And I emphasized that all attacks against Palestinians in the West Bank by Israeli settlers in the occupied Palestinian territories must cease without delay. No individual with an extreme ideology and a gun can feel they can kill or shoot or attack Palestinians with impunity. And I emphasized Israel as an occupying power has fundamental legal obligations to repress, prevent and punish those crimes and that we're looking at that as well to make sure their rights are vindicated.

And we've all heard a lot, one doesn't need to be an international lawyer now to have heard the terms distinction, precaution and proportionality. But I emphasized that these are not abstract constructs. They're solid hard law. And they cannot be interpreted in a way that denudes them from any legal effect, that eviscerates from them their core meaning, which is to protect children and women, the old and infirm, civilian men and civilian children. And at the same time, I emphasized that human shields, using civilians is also a crime.

So I want to be quite clear that this Court and this Office is guided by one fundamental principle which is justice has to be delivered, not based upon emotion – we can't be that self-indulgent – but based upon a common yardstick which has been set out from the Nuremberg principles, from customary international law by the Geneva Conventions and finds form in the Rome Statute that the judges of the ICC ultimately decide.

These are active investigations and I've also announced today that, whilst I've been increasing with the very difficult resources and, in fact, stealing resources from other situations, next year we will have another new member of staff, I appointed a P5 about five months ago, but a D1 level that will be leading the Palestine investigations, reporting to me directly as the D1 in Ukraine reports to me directly, and this is because of the complexity of the situation, but also because we can't divert attention from the work that the Deputy Prosecutors are doing on other situations, because those situations and the victims there deserve progress. They deserve those situations to be properly addressed as well.

I emphasized repeatedly to all decision makers in Israel and in Palestine, particularly Hamas, that this is the time when they must comply with the law right now. And if they don't comply with the law right now, nobody should complain later because we are moving forward with our investigations.

But as the tragedy unfolds in Israel, and the West Bank, and Gaza, we have to show that we have the stamina, the ability, the tools to show that every life matters. And in a few days, I will launch the second Annual Report of the activities of the Office. It will be available online. But the Office and the Court have been extremely busy and this new approach that is set out in the Strategic Plan I launched for 2023 to 2025 is already showing results.

We see since April the nightmare that in Sudan has returned. It should also be on the front pages the amount of tragedy. But the Office has had multiple missions to the region, is investigating those current actions again. I mentioned at the Security Council that we had jurisdiction there and we're moving also with focus by these multiple teams on the ground and accelerating our work.

In terms of Ukraine, we've built partnerships, we've been working effectively and the independent judges of the ICC this year issued warrants in relation to President Putin and Madame Lvova-Belova. We are moving forward with the investigation and again, like in many other situations, like in Gaza, I'm very worried with the onset of winter, very deep and biting in Ukraine, and the attack on power plants and infrastructure.

In Bangladesh and Myanmar situation, I visited Cox's Bazar and Dhaka for the second time and met the Prime Minister again and we've really deepened our relationship with the authorities in Bangladesh, with the United Nations' support and also with our field presence in terms of having longer missions in Bangladesh. And I believe, God willing, next year the results of that will become manifest as we are accelerating the speed of that investigation that's been open since 2019.

Afghanistan as well, an obvious case where manifest human rights abuses have taken place, but last year we announced in December, with the excellent work of Lisa Davis, a new policy paper on gender persecution. We're focusing on the situation in Afghanistan, where we see on a massive scale the denial of rights to women and girls which also may be crimes within the Court's jurisdiction. We're investigating that.

Across these and other situations I really do believe, Members of the Assembly of States Parties, distinguished delegates, that the results are being felt. We're moving at a new speed, with new nimbleness, with greater field deployment, using cutting-edge technology and deepening our cooperation with civil society.

But we're going to continue to deliver more results, being more focused. And since the last ASP, I have announced the closure of the investigative phase in the Central African Republic, in Georgia, and in Uganda, and the Deputy Prosecutor Nazhat Shameem Khan announced the closure of the investigation stage in Kenya. And these are the first time these situations, an investigative stage has been closed.

Whilst this may not all be visible yet, this has been the most productive year ever in terms of output by the Office of the Prosecutor, in terms of warrants, public and sealed, issued by the judges of the ICC, in terms of other benchmarks as well. It's been a year of great activity.

Complementarity and cooperation have also had many tangible successes. Just in the last two weeks, I've engaged with the government and Prime Minister of Iraq, a Non-State Party, in terms of accountability. Two days ago in Venezuela, the Office signed a work plan with the government of Venezuela for the delivery of support to Venezuelan authorities, including a physical office in Caracas. I'll be signing an agreement during this ASP with the foreign minister of Colombia to open a field office also in Bogota, and an example that when I promised that when we closed the preliminary examination, it wouldn't be the end of partnerships, I was true to my word because of the work of the men and women of the Office.

Last week, Deputy Prosecutor Niang was in the CAR to sign an MOU with the government and the specialized court. He was also in the DRC to follow up on my MOU that I signed in June and we're continuing to engage in Guinea. We've sent out a policy paper on cooperation and complementarity, and we'll launch today and tomorrow new policy papers on crimes against children and also on gender crimes as well.

There's much more I can say, but I want to conclude now with your leave, Madame President. We hear in this building, and we hear in capitals around the world, a constant refrain that there is this wonderful support for the rules-based system, for the principles of public international law and that the principles of IHL must be respected. Many states have contributed. But respect for these rules means supporting the institutions charged with promoting and protecting them.

This is really a critical moment for the ICC, for the United Nations and all institutions. What we ask for is a chance to deliver. What we ask for are the tools to deliver. We will fail together, but we can, and we must succeed together. That's why this Assembly of States Parties is so critical.

Thank you so much.

Source: Office of the Prosecutor | Contact: OTPNewsDesk@icc-cpi.int

