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Keynote remarks at plenary session of the 16th Session of the Assembly of States Parties to the Rome Statute on the topic of the 20th anniversary of the Rome Statute

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Messrs Vice-Presidents of the Assembly,

Mr Under-Secretary-General for Legal Affairs of the United Nations,

Mr Convenor of the Coalition for the International Criminal Court,

Excellencies,

I am honoured to address this plenary dedicated to the 20th anniversary of the Rome Statute, which was adopted on 17 July 1998.

That is an extremely important event to mark. What was until then a distant dream became a reality on that day.

The idea that certain offences cannot go unpunished was certainly not new and several initiatives were undertaken in the past to bring perpetrators to justice. In the aftermath of the Second World War, the International Military Tribunals of Nuremberg and Tokyo laid the foundations of international criminal justice and served as a powerful precedent for the establishment of the International Criminal Court. In 2015, the judges of the ICC signalled their recognition and respect for this precedent by holding their first retreat aimed at revising the criminal proceedings in Room 600, where the Nuremberg Trial had taken place.

This trial was indeed historic and continues to be a permanent reminder that, as famously declared then: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

During the five decades that followed, however, there was no similar endeavour. Instead, important norms and principles were adopted in the areas of human rights and humanitarian law, including provisions intended to expand the basis to investigate and prosecute beyond the confines of territorial jurisdiction. Amongst them, next year the international community will not only mark the 20th anniversary of the Rome Statute but also the 70th anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, with which the Statute is very much linked.

However, prosecutions continued to be rare at the national level and non-existent at the international level. While the normative development was extraordinary, impunity flourished as there was no effective enforcement of international law.

International agreements to that effect were only reached again at the end of the Cold War, which allowed for the creation by the Security Council of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

In parallel, in 1994, the General Assembly agreed to create an ad hoc committee for the establishment of an international criminal court. This was the first step toward the road to Rome. In this regard, I would like to pay tribute to the vision of one country in particular, Trinidad and Tobago, which had pressed for the inclusion of the creation of a permanent court in the global agenda.

The fact that both ad hoc tribunals were created by the Security Council under Chapter VII of the Charter reflected an understanding that certain crimes not only offend mankind but are a threat to peace and security. In addition, as clearly spelled out in the constituting resolutions, both tribunals were set up on the belief that they could "*contribute to the restoration and maintenance of peace*".

The same underlying objectives would guide the negotiations of the Rome Statute. This time, it was not only the Security Council but the international community as a whole that endorsed the premise that grave crimes threaten the peace, security and well-being of the world and that justice is necessary for their prevention. This belief is explicitly reflected in the preamble of the Rome Statute.

While the ad hoc tribunals were crucial precedents, the creation of a general and permanent court was a different and far more ambitious project. By virtue of being general and permanent, the court would not be circumscribed to pre-defined situations but would be able to intervene potentially in *any* future situation of international crimes, within the parameters of the founding treaty.

Where to investigate and who to prosecute would be fundamental questions to be answered by the Court itself, not by any group of countries.

Was the international community ready for such a project?

This was an open question at the time of the start of the negotiations. The term "international community" encompasses a broad group of actors with different positions, which may evolve depending on many factors, including the commitment and will of others to lead in the promotion of a particular cause.

This is what happened in the early 90s when a group of like-minded states in partnership with a coalition of non-governmental organisations decided to steer the negotiating process towards the establishment of an international criminal court.

The process was fundamentally democratic as it was opened to all states of all continents as well as the participation of a large number of non-governmental organisations. Having been one of the participants, I can indeed say that there was an explicit and deliberate effort to reflect the diversity of regions, legal systems and traditions.

Through intensive discussions over more than three years, support for the creation of the Court was gradually broadened, including acceptance for certain particular features that were considered to be essential for a strong Court. Early on in the process there was agreement that the Court would be a Court of last resort, intended to address situations only when national systems failed to act in a genuine manner.

While the final decision to create the Court was taken by a vote, the overwhelming majority of the Rome Statute provisions was achieved by consensus as it was indeed recognized that the Court could only be effective if based on broad agreements and shared values.

Excellencies,

As we all know, the process was complex and doubts persisted as to whether it would be possible to adopt the treaty until hours before the conclusion of the conference. Not surprisingly, when 120 states voted in favour of the creation of the Court, emotions ran high. The adoption was accompanied by an explosion of memorable joy. The moment certainly marked profoundly those of us who had the privilege to be present. We had, no doubt, made a huge, historic leap forward in the road towards a rules-based international order. A legal revolution, according to some. The international community had demonstrated that it was indeed ready for a permanent international criminal court.

And yet, shortly after the Rome Conference doubts re-emerged. To become a reality, the treaty required a very high number of ratifications, at least sixty. In other words, the achievements attained multilaterally required the individual confirmation of states.

Were states ready for that?

Again an open question that was positively and swiftly answered less than four years later. Support for the new institution had not diminished, nor the enthusiasm of states and civil

society that led a vigorous campaign for ratification. Small and medium sized countries in particular continued to champion the process.

On 1st July 2002, the Rome Statute entered into force and the Court was set up. The first judges and the first Prosecutor took office. Uganda and the Democratic Republic of the Congo were the first states to deposit their trust in the new institution and triggered with their referrals the first investigations. Other investigations would follow, initiated upon referrals by other states and the Security Council or, ex officio, by the Prosecutor with the authorization of pre-trial judges. To date, this has resulted in 11 investigations, 25 cases, 9 convictions, one acquittal, reparation orders, three ongoing trials and some 14000 victims participating in the proceedings.

Beyond the ICC courtrooms themselves, the treaty has influenced justice solutions nationally and internationally, notably in the form of domestic legislation passed in numerous states. This is indeed an encouraging trend that is also fully consistent with the complementary character of the Court. The fight against impunity requires a mutually reinforcing global justice system, in which domestic, regional, international and hybrid institutions coexist and strengthen each other.

However, also by virtue of its permanent and general character, it is clear that the Court has a central and unique role to play as back-up mechanism to prevent impunity. This was a central rationale for the creation of the Court, which continues, in my view, to be relevant today.

Excellencies,

The achievements in international criminal justice in the past decades are truly impressive. There is much to celebrate.

And yet, we enter the 20th anniversary of the creation of the Court with – again – many doubts.

We feel that our world is less benign today than it was in the 90s where idealism was at its peak. As populism, bigotry and xenophobia are on the rise, there is a danger of a serious push back with the potential of undermining international criminal justice and more broadly a rules based order.

At times, we cannot but wonder whether the Court could be created today. However, this may not be the right or even a useful question to ask. The Court **has** been created. It is not perfect but it has matured, it is delivering and it is improving.

Now, the real question is **whether the international community is ready to sustain this Court in the next 20 years.**

Again an open question to be answered by states, organisations and civil society, and most specifically by the 123 States that are already parties to the Rome Statute. They must be at the forefront. It is for them to confirm in the first place whether they have the will and the commitment to preserve the achievements of the last decades.

Most importantly, it is for them to confirm whether they are ready to lead the efforts not only to maintain but to strengthen the Court. Indeed, in order to be effective, legitimate and credible, the ICC system must be strengthened.

Participation in the treaty must grow for the Court to be able to address all situations equally and thus contribute to a consistent pattern of accountability.

Cooperation with the Court in situations that are addressed must be enhanced. While the efforts to increase the efficiency of the Court from within must continue, initiatives to foster its effectiveness from the outside are also imperative. Fifteen persons sought by the Court that continue to be at large are a notorious example of the external obstacles that hinder progress in its justice efforts.

Excellencies,

We have come again to a point where it is necessary to engage in a renewed debate on the objective and purposes of international criminal justice and the role of the International Criminal Court in the quest for accountability.

The 20th anniversary offers a unique occasion to have this debate and to confirm whether the premises on which the creation of the Court was based remain valid. Whether there is still a belief that justice does not undermine but rather contributes to a sustainable peace. Whether there is the will and the courage to continue building a system fit for the challenges of the 21st century.

In sum, the 20th anniversary offers a golden opportunity to discuss whether the ICC community is ready to sustain in the next 20 years a strong and effective Court capable of prosecuting the gravest crimes for the protection of all victims.

Again an open question, for you to answer.

I thank you for your attention.

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