



OFFICE OF THE PRESIDENT  
REPUBLIC OF TRINIDAD AND TOBAGO

**HIS EXCELLENCY ANTHONY THOMAS AQUINAS CARMONA O.R.T.T., S.C.  
PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO & COMMANDER-IN-CHIEF OF THE  
ARMED FORCES**

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**Address at the International Criminal Court's Inaugural Ceremony for the  
Opening of the Judicial Year 2018**

*18 January 2018, Courtroom 1, International Criminal Court, The Hague, Netherlands*

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Madame President of the ICC, Silvia Fernandez de Gurmendi

Your Excellency, Mr. President of the Assembly of States Parties

Esteemed Judges of the International Criminal Court

Honourable Chief Justices, Presidents and Judges representing national, regional and international jurisdictions

Madam Prosecutor and Mr. Deputy Prosecutor

Mr. Registrar

Mr. President of the ICC Bar Association

Excellencies, distinguished guests, ladies and gentlemen:

In keeping with the fine traditions of the practice of law, many Courts worldwide open each new law term with a ceremony of sobriety and solemnity that at the very least, let its stakeholders know that the judicial, independent arm of State shall do its just duty for another year. This is a beacon of hope that manifests itself, sometimes in parades and religious services and in today's case, by this remarkable initiative, interposing judicial education with ceremony. The opening of a law term, incorporating its stakeholders- the judges, defence attorneys, prosecutors, court personnel and the public at large- is a strong visual statement of solidarity that **we are in the important business of justice for all.**

A celebration that recognises 20 years of the founding treaty of the Rome Statute, is well-placed and well-merited. To be your distinguished guest speaker, at this landmark event in the ICC's rich 20 year old history, is indeed a humbling experience. My presence here today at the seat of the Court of which I was a member, is like a home-coming. I recall my tenure as special advisor on criminal law to the late ANR Robinson, former Prime Minister and later President of Trinidad and Tobago, at the preparatory conferences at the United Nations, New York. I recall many in the trenches of the genesis of the Rome Statute- Hance Currel, Professor Cherif Bassiouni, and of course, the late President Robinson.

President ANR Robinson was a statesman, who is universally recognized for his unrelenting advocacy and political work at the international level to reactivate, what had become by 1989, a dormant idea for the establishment of a permanent international criminal court. President Robinson's work was the launch pad that eventually led to actions at the level of the United Nations General Assembly, the International Law Commission and eventually the Rome Diplomatic Conference on the ICC, which led to the adoption of the Rome Statute of the ICC and the establishment of this Court.

As I stated at the High Level Seminar for Fostering Cooperation with the International Criminal Court, hosted by the ICC in Port of Spain, Trinidad and Tobago, in January 2017- to those wavering States, *"stay in the ICC or come on board- there is nothing to **fear** because the ICC is **fair**".*

**There is an intractable benefit being party to the Rome Statute and acceding to the jurisdiction of the ICC and this very opening ceremony, allows us all to take stock, to reaffirm our vigilance in defence of the Rule of Law and fundamental rights and freedom regimes in our individual countries.** I daresay, vindication and acclamation for such hallowed principles have become grounded in the benchmark standards invoked by the ICC, through its processes, procedures and decisions. Let us be clear here- **the International Criminal Court is the international guardian and guarantor of the Rule of Law.**

This inaugural opening ceremony of the ICC is a celebration of the past 20 years and an opportunity for the Court to demystify its purpose; to account to its stakeholders; to evaluate

its successes; and to prepare for the continuing challenges that lie ahead. One safeguard, inter alia, that always maintains the integrity of an institution is **accountability**. This was not lost upon the President of the Court, Judge Silvia Fernandez de Gurmendi, when delivering the ICC's annual report to the UNGA, New York, in October 2017. The Honourable President stated:

*“The concept of accountability has been put firmly in the global agenda...The emergence of this principle as a norm under international law has changed the parameters for the pursuit of peace. There is now an expectation that there will be accountability for the most serious crimes and the conviction that this is necessary for sustainable peace. The question is no longer whether to pursue justice, but rather when and how.”*

Today, as the ICC commemorates the milestones of an inauguration and an opening ceremony, the resonating themes implicit in the Court's very existence are **accountability, transparency, independence, cooperation among Member States, Nation States and the universality of the Rome Statute**. With these aspirations, the ICC will have attained the status of **full recognition, acceptance and compliance by Nation States of the indispensable role this Court plays in bringing to justice, the perpetrators of genocide, crimes against humanity, war crimes and I am pleased to add, the crime of aggression**.

The decision adopted by consensus at the recently concluded Session of the Assembly of State Parties (ASP) in December 2017, held at UN Headquarters in New York, on the activation of the jurisdiction of the Court over the crime of aggression, as well as on amendments to article 8 of the Rome Statute, agreed upon in Kampala, Uganda in 2010, **long overdue, is welcomed and well-merited**. It signals affirmatives on many fronts, most pivotally for the victims of crimes of aggression and as well, is a success story for the ICC, as it builds bridges and alliances with other international organisations such as the very United Nations.

The crime of aggression must have its moment- strange thing to say, especially when it had bloodied much of history's timeline with acts so heinous that they desecrated and defiled the sovereignty of States and the dignity of their citizens- in telling measure, demonstrating **man's inhumanity to man**. Indeed, this moment, in many ways, belongs to the victims who shall receive their due justice before this International Criminal Court, hopefully in short order.

The activation of the ICC's jurisdiction over the crime of aggression has filled that residual gap from the Diplomatic Conference in Rome in 1998, which could not agree on the definition of the crime nor on the conditions for the Court's exercise of jurisdiction. With this superintendence of the ICC's jurisdiction, those accused of the commission of the crime of aggression would be brought to justice under Article 25 of the Rome Statute and shall be held *"... individually responsible and liable for punishment ..."*, and most importantly, would not be able to use defenses such as: **"official capacity", or "superior orders"** to escape justice. Ladies and gentlemen, this is a good day to re-emphasize the supremacy of the Rule of Law, in times still gravely tormented by dictatorships that exist *in and out* of military camps- in fact, even on Twitter, in a war of words, of threats, in attempted displays of power and chauvinistic dominance, where nuclear bombs are the bait. But that is a story for another day, another time. **Au passa, this saber-rattling does not lend itself to a reliable and sustainable international peace, law and order.**

Another significant development emerging from the activation of the crime of aggression may well be that this historic session of the ASP took place at the United Nations Headquarters in New York. **The optics of this cooperation and collaboration hold as much value as the strength of union between the UN and the ICC.** Indeed, the drafters of the Rome Statute recognized that while the **ICC's mandate is to *prosecute the most serious crimes to the international community, its purpose is also to act as a deterrent to the commission of those international crimes.*** Correspondingly, the Court does not exist in isolation, but is part of the global architecture committed to the maintenance of international peace, law and order. It is for this reason, the preamble of the Rome Statute of the ICC, affirms the purposes and principles of the Charter of the United Nations, and contemplates a symbiotic relationship between the ICC and the UN. The Relationship Agreement between the ICC and the UN gives effect to the provisions of Article 2 of the Rome Statute.

Excellencies, ladies and gentlemen:

Cooperation is central in order for the ICC to fully realize the diktat conferred on it by all people of conscience that are responsible for the creation of the ICC and moreso, for those who

subsequently embraced its mandate, as well as those States which would in the future, accept its jurisdiction. In this vein, I salute the ASP for adopting a resolution on cooperation in its last Session. In the same breath, I also commend those State Parties which have withdrawn their notifications to denounce, hopefully permanently, pursuant to Article 127 of the Treaty. It is my fervent hope that progressive actions would serve to cause a flow of additional accessions to the Rome Statute, which are essential to achieve universalization of the Court, thereby making this system of criminal justice a truly global one. Our goal should be the achievement of 193 State Parties to the State Statute to reflect the entire membership of the UN General Assembly.

In some measure, the operationalisation of the ICC has been stymied, at times, by cooperation from certain countries that are being transient, convenient, occasional and in the extreme, non-existent. The iniquity of non-cooperation by Nation States often opens the door to unfair and unjustifiable criticisms of the ICC being ineffective, ineffectual and non-productive.

Ladies and gentlemen:

Cooperation among Member States and even, organisations, can be challenging. I recall, Madame President, in your annual report to the UN General Assembly, on October 30, 2017, you further expressed *“grave concern that requests for arrest or transfer remained outstanding for 15 individuals”* and called on the Security Council to take measures with respect to the situations in Libya and Darfur, to ensure full cooperation with the Court. You surmised that failure to do so could help to perpetuate impunity as those accused of perpetrating grave crimes, which fall within the ICC’s jurisdiction, could go unpunished. No doubt, if this development is allowed to continue, it would only serve to reduce the efficacy, utility and productivity of the ICC, as cooperation on the part of the UN, States Parties and other States, is essential in order for the Court to fully discharge its mandate and functions. Remember, at the heart of the successful prosecution of Jean Pierre Bemba Gambo, was cooperation and coordination, by several Nation States.

**Such cooperation is not at variance with a system of interdependence, so indispensable to the ICC’s success.** It is my expectation that all State Parties must examine their legislative agenda to determine whether same gives full effect to the operational provisions of the Rome

Statute, detailed in Part 9 of the Instrument. The legislation of Nation States must be so enabling as to fulfill the various cooperation requests contemplated by the Rome Statute, and implementing legislation must be able to address particular requests such the arrest and transfer of suspects, freezing assets, protection of victims and witnesses and sourcing evidence. The International Criminal Court lacks direct enforcement powers and this situational circumstance requires the cooperation of all States to effectively investigate and prosecute perpetrators of international crime.

It was indeed a progressive step, when, on 15 December 2017, the new President of the ASP, Mr. O-Gon Kwan of the Republic of Korea, met with the President of the General Assembly of the UN, Mr. Miroslav Lajcak and UN Secretary-General, Mr. Antonio Guterres, where *“reference was made to the important role of the United Nations in supporting the Rome Statute system, including by facilitating the holding of sessions of the ASP to the Rome Statute at UN Headquarters...”* It was further reported that *“during the meetings, discussions centered on the role which the International Criminal Court plays in the system of international criminal justice, on the importance of seeking to advance the universality of the Rome Statute, on the continued need for diplomatic support to the Court, as well as the need to strengthen cooperation with the Court.”*

The UN and ICC will continue to benefit from a **solid, respectful relationship with each other**, since they share common goals and values and as President Silvia Fernandez stated, *“the Court is often engaged in situations that are of concern for the UN.”* It holds to reason then, that continued efforts must therefore be made to sustain and augment the burgeoning relationship that exists between the ICC and UN. As I stated at the Port of Spain High Level Seminar in 2017, more mediative dialogue, and open and frank discussions are needed among the Court, Member States, regional and international stakeholders such as the UN Security Council. I stated, *The International Criminal Court was created from the bowels of a diplomatic process and in that regard, it makes sense to engage similar diplomacy in acknowledging and addressing*, inter alia, **the principled, consistent and just approach to ICC referrals by the UN Security Council.**

From inception, the ICC as an institution, has had to persevere, facing multi-faceted obstacles. There have been criticisms and at times, misplaced allegations, about the performance of the Court- or rather, its perceived *lack of performance*. It has not been an easy road for the ICC. I am comforted by the fact that despite all the attempts to undermine and dismantle, the Court has not shifted from its moorings and has not compromised or violated the object and purpose bestowed on it by its founding Treaty.

An imperative that must be pursued with the required vigor is for State Parties to accede to the Agreement on the Privileges and Immunities of the ICC, so that when the personnel, including Judges of the Court, are conducting the business of the Court, they must be able to do so in an environment that assures total independence. Judges and the personnel of the ICC must be allowed by a State Party to work freely and unencumbered in an environment that is not intimidating through sometimes, intentional breaches of privileges and protocol.

Judges, I urge you to remain steadfast, remain vigilant, and continue to ensure that you adhere fully to the tenets of Article 40 of the Rome Statute on the independence of your hallowed positions as Judges. Yes, I am aware that there may be issues of funding when, for example, requests for investigations are made, but at no point must **economics influence or trump the efficiency and independence of any office**, including this International Criminal Court. There cannot be any halfhearted approach to judicial independence. I say this only to emphasise- *because I am preaching to the choir*- that as judges, you represent an honourable judicial system, which is the **international guardian and guarantor of the Rule of Law**.

It may appear self-serving, but **my Caribbean and Caricom Region have always been committed to international benchmark standards and practices, with a strict adherence and respect for fundamental and human rights and freedoms and the Rule of Law. I wish to emphasise that the Caribbean Region represents a cohesive force, with its unstinting support for the mandate, agenda and existence of the ICC.**

We must never lose our sense of purpose and direction, in supporting the ICC. The venerable Benjamin Ferencz, the only living former Prosecutor at the Nuremburg Tribunal- whom I had the pleasure of meeting some years ago, gave an account of the evidence leading up to his

case, to the UK Guardian Newspaper in 2017, to mark the 70<sup>th</sup> anniversary of the trials of the Nazi criminals at Nuremburg. 97 year old Mr. Ferencz recalls with a memory that defies his years:

*“There were 3,000 men who, for two years, murdered people, including children and infants...One shot at a time, or, as one of my lead defendants, who killed 90,000, instructed his troops: ‘If the mother is holding an infant to her breast, don’t shoot the mother, shoot the infant because the bullet will go through both of them, and you’ll save ammunition.’”*

In describing his experience in visits to the concentration camps, Mr. Ferencz went on to say, *“It was an experience indescribable because of its horror. It was as if I had peered into hell. That’s why I’m still fighting, to prevent that from happening again”*. If Mr. Ferencz, at the age of 97, can express with such rigor, this undying philosophy to ensure that hell no longer exists on this earth through, bringing to justice, those persons responsible for those actions, certainly, ladies and gentlemen, this can be our daily inspiration in the conduct of our affairs.

My dear Judges, this is the grand old man, a veritable sage, the epitome of what is good of humanity, lamenting about horrific events, which took place over 7 decades ago that shook the conscience of those who believe in the sanctity of human life. Tragically, in our lifetime, we have been witness to similar atrocious acts, in almost every continent of the globe after 1945. Therefore, **as Judges, you must see yourselves as gatekeepers of international human rights law and international humanitarian law** as codified in the Rome Statute and other relevant instruments. Remember Judges- your successful work enables the international community to have faith in the promotion and preservation of peace and the Rule of Law.

Ladies and gentlemen, the basic premise of international human rights is that human beings have rights, based on the inherent dignity, acknowledged universally, that we be accorded such rights based on nothing more than *the fact of our humanity*. The end product of this premise is that the individual is not defined by national law nor are dignity and respect to be accorded to an individual as a result of the administrative functions of an individual State. The International



Human Rights Treaty is therefore the document that records the acceptance of these principles based on the above premise. *It does not create it.*

Accordingly, the norms that accept genocide and crimes against humanity as criminal conduct, which transcend national borders, are reflections of the deep-seated need, for mankind to rise above the once prevalent notion that human beings that live in a particular geographic region, defined by recognized borders, are not necessarily subject to despotic rule. While respecting domestic independence, sovereignty can never be used again as a cover for repressive acts of cruelty against groups, whether a minority or otherwise. The appalling experience of war in the past and the use of media or its absence, as a cover for the imposition of acts of cruelty and violence to impose the sovereign domestic and political will on human beings, within the borders of a particular State, are no longer tolerated as the right of a sovereign State.

This is the basic tenet of the International Criminal Court.

However, if my basic assumption is correct, then the existence of the Court and its work in securing the prosecution of international crimes can never be enough. **The Court does not exist in a vacuum.** It is part of an international movement that proclaims and encourages solidarity in working for the development of international justice. **This cannot be defeated by the concept of sovereignty,** because as we become more civilized, our experience as human beings, informs us that common values and norms are the glue that preserves and encourages order and development, along the principles of human rights. This need for a sense of justice finds its way into the development of international Tribunals that adjudicate on International Trade, International Investment, International Treaties, The Use of the Sea and Sea Bed, among others.

Accordingly, we cannot escape the reality that slowly but surely there is an inevitable trend and journey towards **Judicial Globalization.** **How can this develop without affecting the core doctrine of sovereignty?**

I suggest that the first step must be the development of a type of broad, international “common law” where the judicial decisions and trends on particular subject areas are accepted as highly persuasive by other international tribunals, which will be slow to depart from those

principles. There has to be set out, the ground rules for such **acceptance** and also, the ground rules for **departure**. The decisions and the principles should be manifested in the written decisions of the Courts. Moreso, this principle should be reflected where International Tribunals are dealing with the same subject matter, although established by different Treaties. International Human Rights principles, for example, cannot be treated differently by the ICC, the ICTY, the ICTR or the European Court of Human Rights.

With the winding up of operations of the ICTR, ICTY and other Ad Hoc Tribunals, Judges- you must demonstrate to the world through your **balanced, fair, independent and impartial judgments**- that there is no need for the establishment of any other mechanism, whether Ad Hoc or otherwise, that are complementary to national criminal jurisdictions with jurisdiction over the most serious crimes of concern to the international community. At the same time, although there are no hierarchy of courts at the international level, and some would also argue that there is fragmentation in international law, I humbly ask that you avail yourselves of the judgments, the judicial reasoning, which led to the decisions handed down in cases presided over by your brother and sister judges at the now defunct Ad Hoc Tribunals.

In order to achieve this type of judicial comity and continuity, relationships must be encouraged between both National and International Courts.

I would go further to suggest that the ICC should promote the development and incorporation of Constitutional principles, that engage the consistent interpretation of rights between national and international obligations and which, inevitably, remove the need for domestic incorporation on Human Rights Treaties. This process is currently sporadic, at best. I recall the South African Court in the case of **The State v Makwanyane**, citing the European Court of Human Rights, in support of its finding the death penalty, unconstitutional. In **Pratt & Morgan v Attorney General**, the British Privy Council relied on the ECHR decision in **Soering v The UK** as well as a decision of the Human Rights Committee to commute a death penalty recipient in Jamaica to life imprisonment. The Inter American Court has also relied on decisions of the ECHR and the UN Human Rights Committee. We can thus see that national courts have begun the

process. These decisions acknowledge that national courts derive assistance from international Tribunals and they must stand ready to so apply the juridical decisions of the ICC.

The question is, **do international tribunals derive assistance from each other and if so, how might such assistance manifested?**

The ratification of International Treaties on Human Rights by Nation States is evidence of the acceptance of the premise with which I started, that is, **the supremacy of human rights in any system of laws**. It seems to me that International Human Rights treaties ought to be treated as an exception to the rule in dualist countries that human rights treaties have to be domestically incorporated in order for the human beings within the sovereign State to receive the accorded protections. **The protection is granted to human beings, not citizens**. As I have stated previously, that universal commonality of standards by the international community, enforces and fosters the Rule of Law. **Sovereignty therefore cannot and must not be invoked on the altar of impunity**.

In order to achieve this objective, judicial contact has to be encouraged between national and international judges on a consistent basis. National judges ought to be exposed to training in cross border international norms that will begin the process of familiarity, which is, the genesis of comity. There must be a community of judges that is part of a global community of judicial officers.

This inaugural Opening Ceremony and seminars hosted by the ICC such as the one in 2017 in Port of Spain, Trinidad and Tobago, in Costa Rica, in Botswana and Romania, are valuable opportunities for judges at the domestic level and at the international level to connect, share and learn from each other, in an attempt to bridge gaps. I cannot help but emphasise the importance of seminars, workshops and fora, taking place not only in Member States of the ICC, but also in those marginal States that harbor wavering doubt about the utility of the ICC in the context of international justice.

I am not talking about ‘talk-shops’, but rather, a dialogue that crystallizes pellucidly clear, the transformational ideas of an international justice system, done in such a way that it targets not only the proverbial man at ground zero, but very importantly, **the relay runners of tomorrow-**

**our young men and women.** It is imperative that when such fora are taking place, they are not restricted to the policy makers, who walk the corridors of power. These seminars must incorporate secondary, university and other young people, which will not only set the stage for continuity of the good work of the ICC, but will serve as a strong measure of connectivity to the valid ideas of our young people. Indeed, earlier today, the Judicial Seminar organized by the ICC, themed *“Complementarity and Cooperation of Courts in an International Global and Justice System”* promotes the vibrant interconnection of national, regional and international courts as part of a global system.

We must also, I suggest, accept, that there is a need to educate the man in the street, about the role and function of the International Criminal Justice. Unfortunately, because the genesis of the Court has always been out of wars and atrocities committed during the course of a war, **the Court is perceived as being successful only where there is a conviction. An acquittal is sometimes viewed as a failure to reward the victim. The process is not perceived to be as important as the result.** This perception that a conviction is an indication that the Court is doing its work and that, of an acquittal, the reverse is true, must be disbanded. The work of this Court is the pursuit and attainment of justice, not convictions. **There is no such thing as an endemic right to a guilty verdict. The endemic right lies in a just verdict.**

In all of the above, the key element is **dialogue.** Dialogue at national levels, transnational levels and diplomatic levels. The dialogue must be between individual judges in their different capacities. In a sense, the cooperation and development must be horizontal- between international Courts- and vertical- between national and international courts and of course, as I previously mentioned, with all relevant regional and stakeholders.

The International Criminal Court continues to demonstrate that despite all of its detractors, it continues to persevere, to carry out its mandate under the Rome Statute, which also includes allowing for the participation of victims in the proceedings and the ordering of reparations to victims in, for example, **the Lubanga and Katanga cases.** As your President Judge Silvia Fernandez remarked, not so long ago, *“Central to the justice efforts at our Court are the victims of crimes. They have the right to participate in proceedings to express their views and concerns*

*and request reparations for the harm suffered...The participation and reparation of victims is essential for a system of justice that seeks to be restorative as well as retributive.”*

As in any system of criminal justice, reparations to victims will always have an important role and **we must always look at the glass half full**. While monetary compensation may be the ideal form of reparation in some cases, in many others, return of property, rehabilitation, infrastructural developments to improve affected communities, hospitals, student scholarships (for education is the key that opens all doors), or symbolic measures such as apologies or memorials, may mean more to victims of particularly traumatizing and heinous crimes than any amount of money can ever compensate.

I cannot help but laud the appointment of a former colleague of mine at the ICTY, Patricia V. Sellers, as Special Advisor on Gender. Madam Prosecutor, Mrs. Fatou Bensouda, has recognised the importance of gender sensitivity and gender vulnerability in prosecutions coming out of internecine and international conflicts. Mrs. Bensouda stated, *“Since the adoption of our policy on sexual and gender-based crimes in 2014, the Office (of the Prosecutor) has been involved in various implementation initiatives. Further integrating a gender perspective into all areas of our work is a priority for me.”*

As President, I have invoked a similar philosophy that has resulted in greater women and youth upliftment and empowerment, because I recognise **the importance of genuine inclusivity in the progress of a Nation**.

Madame President:

I have also observed the increased workload of the Court. I commend you on the number of important reforms being undertaken to enhance the speed and quality of judicial proceedings. Your new permanent premises which were opened in April 2017, is befitting the status of the ICC as the only permanent international criminal tribunal and it is a tribute to the ongoing contribution of the Court to ensure through judicial dispensation, a safer, more secure world, grounded in justice, law and order.

Indeed, there are times when, as a Court, you may have to let someone go, who is guilty on paper but innocent on the basis of evidence. It is what justice is all about. It is a fortifying feature of justice when a Court acts on evidence and evidence alone- not passion, public perception, opinion or pressure. In other words, ladies and gentlemen, **the court of public opinion is not a court of law**. The court of public opinion may be a social barometer that tests the tenacity of a court's judgment but it does not represent the law. The adjudication of matters and issues fall within the juridical dispensation of judges who have been elected as persons of **integrity, independence, probity, impartiality and competence** in accordance with the Code of Judicial Ethics of the ICC. Esteemed judges of the International Criminal Court, if you have to make a decision, stand firm and make that decision, as you have always done, in accordance with the evidence and law- nothing else.

Madame President, Honourable Judges, Excellencies, distinguished ladies and gentlemen:

The world today is in need of transformative leadership, governance and equality of treatment. The ICC must aspire to be that beacon, that bearer of good news to all, who are victims of grave injustice at the hands of hegemony and self-serving, self-centered leaders, who cling to the clutches of power, by trampling on the inalienable human rights of ordinary citizens. I affirm the adage that there is no peace without development, and no development without peace. I, however, also assert that **there is no peace without justice, and no justice without peace**.

Excellencies, ladies and gentlemen, I urge, that in all things we do, in and out of these hallowed halls of justice- and for our Honourable Judges, in dispensing justice, in adjudicating cases- stand firm and **do the right thing, because it is the right thing to do**.

*I thank you.*