



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Président
The President



Judge Piotr Hofmański

President, International Criminal Court

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African Centre on International Criminal Justice,

Ghana Institute of Management and Public Administration, Faculty of Law

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Professor Bonsu, Rector of GIMPA,

Hon. Diana Asonaba Dapaah, Deputy Attorney-General and Minister of Justice,

Dr. Agyeman-Budu, Dean of the Faculty of Law,

Esteemed professors,

Your excellencies, members of the diplomatic corps,

Dear students,

Ladies and gentlemen:

I would like to start by thanking the African Centre for International Criminal Justice (ACICJ), and the Ghana Institute of Management and Public Administration (GIMPA) for the kind invitation for me to deliver this eminent lecture.

I am particularly delighted to have the opportunity to address many students today. I used to be a university professor for a long time, and teaching is still very close to my heart.

On that note, I would like to commend GIMPA for all its efforts to promote education in the area of international criminal law on the African continent.

The importance of that work cannot be overstated. For the system of international justice to be truly effective, it is essential to have specialists in international criminal law in every country and every region – and to make sure that there are such experts in every new generation of lawyers.

International justice is not something we should take for granted. It requires ongoing commitment and active efforts to maintain the system that exists, and develop it further. The ICC is grateful to rely on Ghana's support in that context.

Let me furthermore recall that Ghana gave the ICC one of its first judges, Professor Akua Kuenyehia, who also served as Vice-President of the Court.

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Excellencies, ladies and gentlemen:

This is a special year for the ICC, as we celebrate the Court's 20th anniversary.

On 1st of July 2002, the Rome Statute, the founding treaty of the ICC, entered into force. That day marked the beginning of the ICC's jurisdiction, and it made it possible for the Court to be officially set up and gradually start its work.

It was a historic moment for the fight against impunity for the most serious crimes under international law: genocide, crimes against humanity, war crimes, and the crime of aggression.

The ICC had been long in the making: the vision of a permanent international criminal court had existed for decades.

The United Nations International Law Commission had worked on an ICC statute already in the 1950s, inspired by the Nuremberg Tribunal that held Nazi war criminals responsible after World War II.

But the Cold War stopped that process. The world was too divided to reach agreement on the momentous step to establish an international criminal court.

It was finally in the 1990s that a new spirit of international cooperation made it possible to reactive the process of creating the ICC.

The *ad hoc* tribunals created in 1993 for the former Yugoslavia, and in 1994 for Rwanda, paved the way. Those tribunals increased the confidence of the global community in the idea that international trials for the most serious human rights violations are feasible.

And after three years of intense negotiations, culminating in a 5-week conference in Rome with 160 participating States, the statute of the ICC was finally adopted, with 120 votes in favour.

Like any treaty, the Rome Statute is a compromise between different aspirations and views. It is not a perfect document. Some countries have refused to join the treaty because they consider the ICC to be too strong and not sufficiently controlled by States. Others will claim the opposite, arguing that the ICC should have more powers. Perhaps we can conclude that the Statute is a good compromise.

And what really matters is that the ICC now exists, and it is here to stay.

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Excellencies, ladies and gentlemen:

During 20 years of operations, the ICC has done much more than many imagined it would do.

The ICC has opened investigations on four continents, in 16 different countries. Let me repeat and underline that: we have investigations in *16 countries, on four different continents*: Africa, Asia, Europe and South America.

You see, the ICC's work started largely in Africa, after several African governments asked for the ICC Prosecutor to investigate events in their countries.

But we have long since started moving out of Africa.

For instance, the latest six investigations of the ICC Prosecutor are all in countries *outside* of the African continent: Afghanistan, Palestine, Myanmar/Bangladesh, the Philippines, Venezuela, and Ukraine.

The latest arrest warrants issued by the ICC concern alleged crimes committed in Georgia, in Eastern Europe – the region I come from.

In total, 31 cases involving 51 suspects or accused have been brought before the ICC so far. These cases have addressed a wide variety of crimes – or alleged crimes – including sexual violence in conflict, attacks on civilians, forcible displacement, attacks on peacekeepers, murder as a war crime, and much more.

The ICC's jurisprudence has broken new ground on matters such as the use of child soldiers, destruction of cultural heritage, and the participation of victims in the judicial proceedings.

Global awareness about the ICC is higher than ever, and the Court has beyond any doubt become one of the pillars of the international legal system.

In sum, I dare say the ICC has achieved more in this relatively short time than many thought possible.

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And the ICC's impact goes far beyond what happens in its own courtrooms in the Netherlands.

123 countries have joined the Rome Statute. That is a remarkable number, when you stop to think about it. It means that almost two thirds of the world's sovereign states have endorsed the jurisdiction of the ICC for crimes committed on their territory, or crimes committed by their nationals.

Those 123 States have made a solid commitment that the perpetrators of the gravest international crimes must be held accountable either by domestic jurisdictions, or failing that, the ICC.

And those 123 States have accepted the legal obligation to cooperate fully with the ICC in its investigations and trials, and to participate in funding the Court's activities.

In times of much turmoil, tragedy and instability on our planet, the significance of that commitment by 123 States should not be underestimated.

Ghana can be proud that it was sixth among those 123 countries to join the Rome Statute and make those important commitments, which have a real, positive effect.

There is growing empirical evidence showing that the Rome Statute system helps prevent violence in the long term in the countries that are part of it,

But, while we can rejoice about the support of so many countries, the flipside of the coin is worrisome: approximately 70 States are still outside the ICC system. The populations of those countries fall outside the legal protection of the Rome Statute.

Of course, joining a treaty is a sovereign decision for each country. It cannot be forced. But we must encourage all countries of the world to seriously consider ratification of the Rome Statute, to strengthen international criminal justice.

I have made this one of my priorities as President of the ICC. The Assembly of States Parties has also repeatedly underlined the important of promoting the universality of the Statute.

In the ECOWAS region, only two States are not parties to the Rome Statute – Togo and Guinea-Bissau. I hope Ghana on its part can encourage these two countries to join the family of ICC States Parties committed to peace and security through the rule of law.

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Excellencies, ladies and gentlemen,

Right now, the ICC is busier than ever before. We have a record number of five cases on trial this year, so our three courtrooms are constantly full of activity. Another five cases are at the victim reparations stage; I will come back to that later.

Sadly, there is huge demand on the mandate of the ICC. Humanity is confronted with brutal conflicts and atrocities that cause untold suffering to millions of people.

You may ask: isn't justice a weak weapon in the face of the gravest crimes under international law?

But if we give up on the ideals of justice, accountability and redress, then what would be left of our humanity?

Surely, we cannot give a free ticket to perpetrators. Surely, we cannot turn our backs to victims.

We do not pursue justice for the sake of justice in the abstract. The rule of law and access to justice are the heart of protecting the most fundamental human rights, as well as creating the

conditions for the stability and wellbeing of societies. This is the essence of Sustainable Development Goal 16 of United Nations Agenda 2030, which the ICC supports through its work.

The ICC is an avenue for justice when other avenues do not exist, or they are blocked. While the ICC is a court of last resort, it can, and has, stepped in when States are unwilling or unable to conduct the necessary national proceedings.

At the ICC, victims have a very strong position compared to earlier international tribunals, such as the ones for Rwanda, the former Yugoslavia, or Sierra Leone.

The ICC gives victims the right to be represented by a lawyer in court, to express their views, and to request reparation for the harm they have suffered.

The ICC engages directly with victims and communities affected by crimes through its Outreach programme. Our staff reach out to people in local languages, traveling to the smallest villages in the affected communities to inform victims about their right to participate in the proceedings and apply for reparations.

Reparations to victims can take many different forms, depending on the particular circumstances of each case and the type of harm suffered by the victims. Reparations can for instance consist of psychological or physical rehabilitation, monetary compensation, community projects for education and healthcare, symbolic measures such as monuments, ceremonies or apologies, and so forth.

I cannot sufficiently underline how important it is that justice for the gravest atrocities has this reparative element. Justice cannot be only about punishment and retribution. There must be something tangible for the victims, the survivors, to help the rebuild their lives.

To make this possible, the ICC's Trust Fund for Victims collects donations from governments and private entities and uses them for the benefit of victims. The Trust Fund does this in two main ways: one is in connection with the ICC's trials and judicial orders for reparations, and the other one is separate from the cases, so that the victims can benefit from assistance even if there is no conviction in the courtroom.

These features represent an important step forward in the development of international criminal justice and in promoting access to justice.

So far, the Trust Fund for Victims has provided assistance and reparations to hundreds of thousands of victims and family members, changing countless lives for the better.

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Excellencies, ladies and gentlemen:

In the words of Ben Ferencz, the last surviving prosecutor of the Nuremberg trials, one must *replace the law of force with the force of law*. This is indeed one of the central ideas behind the ICC.

For the rule of law to be applied meaningfully, independent and impartial courts are absolutely crucial. These principles are at the core of the ICC. Judicial independence and the fairness of proceedings are cornerstones of the Court's credibility.

As you may know, the ICC's legal system is unlike any national criminal procedure. It contains elements of the different legal systems of the world, combined into a *sui generis* international criminal procedure.

To give you just two examples: in the ICC's trials, the presentation of evidence is mainly led by the parties, which each call their witnesses to the stand, who are then examined and cross-examined. This is clearly an adversarial feature, typical of common law systems. But at the same time, our Statute and Rules provide for the participation and legal representation of victims in the courtroom, with the possibility of putting questions to witnesses and even presenting evidence. Here we can very clearly see the influence of civil law systems.

In my opinion, this mixed system is very fitting for an international court, where the judges all come from different backgrounds. The 18 judges of the ICC are all nationals of different States Parties to the Rome Statute, some from common law systems, others from civil law system. We have judges from all different regions, and a perfect balance of 9 male and 9 female judges at the moment.

So, the ICC's legal system is new for every judge that arrives at the Court for their 9-year mandate, after being elected by the Assembly of States Parties. It is really quite fascinating how quickly everyone adapts to the unique system we apply, bringing their own experience on board.

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Excellencies, ladies and gentlemen:

I would like to emphasise that the Rome Statute is not just about enforcing the rule of law at the international level: the ICC system is also having a concrete effect in strengthening the rule of law in the national setting.

This occurs through the principle of *complementarity*, which means that the ICC can only investigate or prosecute, if domestic courts are not doing so.

So, we could call the ICC a court of last resort, or a backup system to prevent impunity. Viewed from another angle, it means that by ratifying the Rome Statute, States have accepted that if they cannot address the gravest crimes at home, they will welcome the intervention of the ICC.

But I stress that in the first place, it should ideally always be the national authorities that would step up to the plate to investigate atrocities, prosecute the suspected perpetrators, hold fair trials in their courts, and arrange for reparations to victims.

Indeed, the ICC, while it plays a key role as the lynchpin of the international criminal justice system, has no chance of stopping impunity on its own.

That is why the capacity building of national jurisdictions is so crucial. That capacity building has several elements, including the education and training of lawyers, as well as legislative measures.

As a court of last resort, the ICC acts as a mirror to national jurisdictions, urging them to deal with the gravest crimes through domestic courts, so that the ICC does not need to get involved. And indeed most states prefer to see trials take place in their own courts, rather than in The Hague. So the ICC is a catalyst of a sort, an incentive for national jurisdictions to hold perpetrators of atrocity crimes accountable.

Numerous states have enhanced their national capacity to tackle such criminal acts since they joined the Rome Statute. Roughly half of the 123 States Parties have incorporated genocide, crimes against humanity and war crimes in their national criminal codes.

Let me take this opportunity to encourage the Republic of Ghana to finish that process on its part – if I am not mistaken, the crime of genocide is contained in the criminal code of Ghana, but the other Rome Statute crimes are not. Incorporating them would allow your country to be in full readiness to address such odious acts through its judicial system, if it ever became necessary.

Full implementation of the Rome Statute also implies adopting national provisions on all forms of cooperation with the ICC. I equally encourage the lawmakers of Ghana to finish the work on that front, to have full capacity to deal with any cooperation issues that could arise in the future.

Furthermore, I invite the Republic of Ghana to consider ratifying the various amendments to the Rome Statute adopted after 1998. The most well-known of those amendments is the one concerning the crime of aggression, adopted in Kampala at an ICC Review Conference.

The crime of aggression, in a nutshell, is when an individual person who has effective control over the political or military action of a State, plans, prepares, initiates or executes an act of

aggression consisting of the illegal use of armed force by that state against the sovereignty, territorial integrity or political independence of another State, in violation of the UN Charter.

When the Rome Statute was adopted in Rome in 1998, the participating States could not agree on the definition and jurisdictional rules for the crime of aggression, and instead they only put a placeholder for it in the Statute. Later they came back to negotiate and agree on those details, and these are contained in the Kampala amendments I mentioned, adopted in 2010.

Those amendments must be separately ratified by each State Party, and they apply only between those that have agreed to them.

So far, 43 ICC States Parties have ratified these amendments, but among them are no West African States, unfortunately.

Ghana has often led the way in its region, and this would be another opportunity to do so.

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Before I finish, let me make a quick comment on an issue which I know to be one of the most difficult contemporary challenges in the wider region in which Ghana is situated. By this I mean violent extremism and terrorism in the countries of the Sahel.

I should be clear that extremism and terrorism as such are not crimes under the Rome Statute. However, extremist ideologies may fuel the commission of those crimes just like they can fuel terrorism.

And, under certain circumstances, terrorist acts may also constitute war crimes or crimes against humanity. For instance, if a terrorist act is committed during an armed conflict, with a nexus to the conflict, it may qualify as a war crime. To be a crime against humanity, a terrorist act would have to be committed as part of a systematic or widespread attack against a civilian population. Of course I am simplifying, but this gives you an idea.

Accordingly, there may be more connections between the work of the ICC and the efforts to tackle violent extremism and terrorism than meets the eye at first glance.

A good example of this is the case of Mr Al-Mahdi, who was convicted at the ICC for the destruction of religious and historic buildings in Timbuktu, Mali. He was a member of Ansar Eddine, a movement associated with Al Qaeda. Mr Al-Mahdi admitted his guilt and made a statement calling on others to desist from involvement in similar groups and criminal activities. At the moment, another, connected case is on trial at the ICC, against Mr Al-Hassan. He is of course presumed innocent until and unless proven otherwise.

I would stress that the ICC's Office of the Prosecutor has consistently expressed its willingness to consider requests from domestic authorities to assist their national investigations and proceedings.

Naturally, just like with Rome Statute crimes, it is first and foremost the task of national authorities to address terrorism, and to cooperate with each other in doing so.

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Excellencies, ladies and gentlemen:

Permanence is a key element and strength of the ICC. But that does not mean that the Court cannot learn, evolve and improve over time. I believe strongly in the principle of continuous improvement. My priority as President of the ICC is to enhance the Court's delivery of justice in every way possible.

Because, while the ICC has truly achieved a great deal, so much more remains to be done.

It is humbling to serve an institution which embodies so much hope on behalf of those who have suffered immensely. An institution that for a long time was not more than a distant dream. An institution we must not take for granted.

Indeed, in this 20th anniversary year of the ICC, we should celebrate and cherish the fact that the world now has a permanent, independent international court, which is dedicated to the fight against impunity for genocide, crimes against humanity, war crimes, and the crime of aggression.

By holding perpetrators accountable, we show that heinous actions have consequences, and we help to deter future crimes.

By putting victims at the centre of the ICC's work, we show that justice is not only about retribution; it is also about repairing the harm caused by the crimes.

By upholding fundamental principles of international law, we try to give a glimmer of hope in the middle of some of humanity's darkest moments.

The ICC belongs to the whole world. All people should have access to justice, regardless of their gender, religion or ethnicity.

Thank you all once more for being here today, and thank you for your attention.

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