



**Judge Silvia Fernández de Gurmendi
President of the International Criminal Court**

Remarks to the 25th Diplomatic Briefing

Check against delivery

*The Hague
26 March 2015*

Excellencies,

Dear fellow judges of the ICC,

Madam Prosecutor,

Mr Registrar,

Ladies and gentlemen,

I would like to extend a warm welcome to all of you to the 25th Diplomatic Briefing of the International Criminal Court. I am very pleased to have this opportunity to address the diplomatic corps for the first time as President of the ICC. I would like to start by paying tribute to my predecessor, Judge Song, as well as his colleagues, former vice-presidents Judge Monageng and Judge Tarfusser. I thank them for their efforts to strengthen the institution, which make my own task much easier today.

I am humbled by the confidence that my fellow judges have placed in me, and I am grateful that they have given me the opportunity to build on almost twenty years of involvement in the establishment and operations of the Court, as negotiator, member of the Office of the Prosecutor, and Judge.

The questions and the nature of the challenges ahead of us today are considerably different from the questions and challenges that confronted the Court at its inception. During the negotiating process the prevalent question was "Is the Court possible?" After the adoption and entry into force of the Rome Statute, some wondered –including myself –" Will this Court ever become a relevant institution?"

Now, after 12 years of functioning, we can give a firm positive answer to both questions. Yes, the Court was possible. Yes, the Court has become relevant. The justice component is part and parcel of discussions surrounding current conflicts and the particular role of the ICC in providing such a component is increasingly recognized.

The growing relevance of the Court makes it also more vulnerable to criticism. The greater the impact, the greater the attention and the expectations and concerns it raises. Is the Court sustainable? This is the prevalent question today.

It is my view that the sustainability of the Court is contingent on the actions that all of us – the Court, states and civil society – will take to address the challenges ahead. It will depend, first, on the cooperation that the international community is willing to provide to ensure effective investigations and prosecutions wherever they are undertaken and, second, on the quality of justice that the Court is able to dispense. Both aspects - cooperation and performance - are interrelated and interdependent. Without cooperation the Court cannot investigate and prosecute effectively. At the same time, if our supporters lose confidence in the ability of the Court to deliver high quality justice, the willingness to cooperate will diminish.

With respect to the first aspect, cooperation of the international community, I am thankful for the efforts that are deployed by the Assembly of State Parties, States, organisations and civil society to promote broad support for the Court's mandate and respect for its independence, as well as enhance universality of the Rome Statute. I am willing and ready to contribute to these efforts as may be necessary and appropriate. It is absolutely essential that States comply fully with their obligations to provide cooperation to the ICC's investigations and trials, and, where possible, to provide voluntary assistance to the best of their ability, whether on enforcement of sentences, interim release, witness protection or something else.

With relation to the performance of the Court, I am aware that there is currently a widespread belief that our proceedings are too lengthy and not as efficient and effective as they should be. This perception poses a potential risk to our ability to gain and maintain support and cooperation. We must address it. And we must address it *now*. While it is clear that some delays and difficulties derive from factors beyond the Court's control, I recognise that some of the problems are indeed within the powers of the Court to resolve. As its new President, I commit myself to deploy all my efforts to contribute to the sustainability of the Court by seeking to enhance its efficiency and effectiveness. This will be my top priority for the three years ahead.

In order to enhance the efficiency and effectiveness of the institution, there is a compelling need for the Court to undertake wide-ranging reforms as a whole. I note with appreciation that important initiatives are already underway. The Office of the Prosecutor is implementing a new Strategic Plan adopted two years ago, and the Registry is embarked in an ambitious ReVision process intended to streamline and reorganise the Registry.

As part of a court-wide effort to improve our operations, inter-organ discussions have also started to develop indicators, as encouraged by the recent Assembly of States Parties, that may serve to assess and improve our performance. Last week there was a two-day meeting at the Court with the participation of external experts to discuss the way forward in this regard.

I was personally involved in part of these discussions as I believe that it is extremely important that we develop a coherent, Court-wide vision of how we can ensure a high quality of justice at the ICC. This is not a simple task and developing and implementing useful criteria will take time as there are inherent difficulties in evaluating the performance of a court, in particular an international criminal court. There must be coordination among the organs in order to capture areas of cross-cutting concern, and to ensure adoption of a coherent approach. Despite these difficulties, I am confident that we will be able to achieve meaningful progress that we can report to the next session of the ASP.

A process to improve the work of Chambers is also underway. More than two years ago, a judges' Working Group on Lessons Learnt was established at the Court to take stock of developments during the first years of the institution, revise proceedings and propose to States Parties concrete amendments to the Rules of Procedure and Evidence. I would like to commend the work done by Judge Monageng who has provided able guidance to the Group at the Court as well as the work done by Ambassador Håkan Emsgård as the previous Chair of the counterpart working group of the ASP, the Study Group on Governance. Thanks to the efforts deployed in these groups some very useful results were produced, including the identification of issues to be reviewed and the proposal of specific amendments to the Rules of Procedure and Evidence, some of which were adopted by the ASP and are now being implemented at the Court.

I attach the greatest importance to this lessons learnt exercise and I intend to be personally involved to steer the process and ensure a full and timely revision of our proceedings. In light of past experience, I believe, however, that the process and output of the exercise needs to change.

Indeed, the experience of the past years has shown that the adoption of amendments to the Rules, which involves various groups at the Court and the ASP, is too complex. Recent amendments proposed by the Court could not be adopted at the latest session of the Assembly. Even when adopted, discrete amendments to individual Rules are, in any case, not sufficient to produce systemic changes that substantially improve the efficiency of proceedings.

It is therefore my view that rather than producing scattered recommendations concerning individual legal provisions, it is better to address entire clusters of issues in a holistic manner with a view to diagnosing practical problems and proposing comprehensive remedies. On the basis of such a diagnosis, we can decide whether amendments to the Rules of Procedure are indeed necessary or whether we can standardize solutions by other means, such as directives or written understandings that consolidate existing best practices, or amendments to the Regulations of the Court. When amendments are necessary, they must be considered by the Advisory Committee on Legal Texts, which is currently chaired by the First Vice President of the Court, Judge Aluoch. This is an essential part of the lessons learned process. It is a fundamental forum where all three divisions of the Judiciary, the Office of the Prosecutor, Registry and Counsel for the defence and victims are represented. I trust that under the able guidance of our First Vice-President, the methods of work of the ACLT will continue to improve so that it can produce results in an effective and timely manner.

Naturally, the collective review of our legal process and working methods is going to be a challenging task, and it comes at a very particular time. With the departure of five judges, and the arrival of six new ones, approximately one third of our judicial bench has been replaced practically overnight. I am glad that the new judges will provide fresh eyes and ideas to the review process, while also helping to identify and consolidate best practices from our past work.

The modifications to the bench have also resulted in changes to the structure of the judiciary as a result of the re-assignment of judges to divisions, chambers and cases, which is done every three years upon the arrival of new judges.

The Presidency took all decisions in this regard through a fully transparent and consultative process and taking into account the statutory requirements, the preferences of each judge to the extent possible and, last but not least, the interests of the Court. The Presidency paid particular attention to the need to compose the Appeals Division in a way that would guarantee sufficient stability and certainty and ensure greater continuity of experience within the Division in future election cycles.

I am confident that the new composition of divisions and chambers provides us with an excellent starting point for our judicial work over the next three years.

Excellencies, ladies and gentlemen,

While we look ahead at the challenges of the next three years, we must recognise that we enter into a very exciting moment in judicial proceedings at the ICC this year.

The third trial of the Court is in its final stages, with the judgment expected later this year. The fourth trial is underway and three other cases are approaching commencement of trial proceedings.

I would like to emphasize the important developments that we foresee in the implementation of the reparations mandate of the ICC, for the first time in the history of this Court. I cannot sufficiently stress the significance of this issue for the entire Rome Statute system. The Rome Statute was a historic breakthrough in recognizing the right of victims to participation and reparations after very intense debates and negotiations. The substantive development of reparations principles was left to the Court that has just taken a major step forward in this respect, through the Appeals Chamber's recent judgment in the case of Mr Thomas Lubanga.

I am delighted that this decision has clarified the legal framework and provided guidance on the work that needs to be done to implement it. The Trust Fund for Victims has a very important and challenging role to play in this regard, as it will embark for the first time on the implementation of court-ordered reparations in addition to the highly valuable work that the Fund has been carrying out under its assistance mandate.

I have already met with the Trust Fund's Board and provided them with assurances as to my full commitment to a collaborative relationship between the Trust Fund and the Court. I also appeal to States to extend all possible support and cooperation to the Trust Fund for Victims.

Excellencies, ladies and gentlemen,

I look forward to working with all States and civil society over the next three years. Your support is absolutely essential to the Court. I am sure that I will be meeting many of you personally in the coming months. Please rest assured that I will always be ready to engage in a dialogue on issues of mutual concern.

I would also be happy to take any questions you may have for me now.

Thank you for your attention.