



Cour  
Pénale  
Internationale  

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International  
Criminal  
Court

Le Président  

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The President

PRE-RECORDED STATEMENT TO UNITED NATIONS GENERAL  
ASSEMBLY

by

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Monsieur le Président,  
Excellences,  
Mesdames et messieurs,

## INTRODUCTION

Comme toujours, c'est pour moi un immense honneur que de prendre la parole devant l'Assemblée générale des Nations Unies. C'est la troisième fois que je m'adresse à vous en tant que le Président de la Cour pénale internationale. Malheureusement, ce sera aussi la dernière fois.

Je regrette de ne pas pouvoir être présent en personne en raison de la pandémie de Covid-19. Mais cela ne saurait en aucun cas diminuer l'importance de l'occasion. La Cour est particulièrement attachée à la possibilité qui lui est donnée d'informer la communauté internationale au sujet de la contribution qu'elle apporte à notre humanité commune. Et nous chérissons la précieuse relation de coopération qui unit l'ONU et la CPI.

Je ne répéterai ici ni la teneur ni la substance du Rapport annuel de la Cour à l'Organisation des Nations Unies. Ce Rapport fait déjà partie des documents officiels de l'ONU, et il est accessible au public.

## A COMMON HISTORY AND A SHARED SPIRIT OF MISSION

Cette année est une année très particulière. Non seulement parce que c'est l'année où une pandémie a mis le monde à genoux ; mais aussi, et plus positivement, parce que dans les annales des Nations Unies, elle marque le soixante-quinzième anniversaire de la création de l'Organisation.

Dans la déclaration que j'ai enregistrée pour marquer cette occasion, j'ai mis en avant les points communs entre l'ONU et la CPI, en termes d'évolution historique et d'esprit d'engagement en faveur d'une mission.

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I recalled that although the ICC is separate from the UN, we are members of the same family. That close family relationship derives from our shared philosophy in the central creed of multilateralism, expressed by Mrs Eleanor Roosevelt – the 1st Lady of the United States during WW2 and the Mother of Human Rights – in words that tell us that our own land and our own flag cannot be replaced by any other land or any other flag; but we can join with other nations, under a joint flag, to accomplish something good for humanity that we cannot accomplish alone.

I recalled that the need for both the ICC and the UN originated directly from the horrors of the Second World War.

I recalled that although it took much longer for the ICC to materialize, the seeds of its birth were planted during the very first years of the United Nations - and within that body. The early work of the International Law Commission - as directly commissioned by this Assembly - was crucial in laying the foundation on which the

Court would later be built, when the Cold War eased its chilling grip on world affairs.

Once again, the United Nations served as both the sponsor and the global forum for the revival of the project of a permanent ICC, as well as the formal negotiations that launched its creation in 1998. That is the story of the common thread of history, cast in the slimmest of outlines.

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As for the shared spirit of mission, I recalled that in the well-known UN document titled “The Future We Want”, it is reported that people from all around the world do want international cooperation: to achieve a world free of violence and conflict – with human rights for all.

That is the future that the ICC strives to foster. It is the future that assures that there will be accountability through the rule of law and justice for victims - when atrocities that shock the conscience of humanity have been committed; thereby contributing to the prevention of those kinds of atrocities.

But, how is the ICC doing in that respect?

## **ICC’S VALUE IN LOOSENING TYRANNY’S GRIP ON HUMANITY**

Ladies and gentlemen, I can assure you that the ICC has acquitted itself well.

The story here goes beyond mere tabulation of how many cases the court has tried, how many verdicts of convictions, and how many acquittals.

The story must engage a broader picture. And a correct view of that picture will truly tell us one thing. It tells us that the ICC has effectively served to loosen the ugly grip of tyranny upon the spirit of our shared humanity.

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Since the creation of the ICC, there is seldom a day that goes by without someone at the Court receiving an email from someone, somewhere else in the world, complaining about an alleged circumstance of injustice that they are labouring under, which they hope the Court could help put an end to.

Some of these complaints, sadly, may not constitute a crime under the ICC's jurisdiction, or meet the requisite threshold of gravity before the Court can engage its processes. And some come from people who do not know that their country is not a member State to the ICC treaty; and, therefore, the ICC cannot intervene on its own in the particular situation, without a Security Council referral.

But, the mere fact that these people look to the ICC, to lift the weight of injustice that they feel tells their story of hope. Hope that there is at last a place beyond their countries where they can seek justice that is denied to them at home. And that says a great deal about the value of the ICC.

It tells us that the ICC is effectively serving your collective purpose in firmly planting the flag of accountability through the rule of law and justice for victims of genocide, crimes against humanity, war crimes and the crime of aggression: thereby contributing to their prevention. In defending that flag of accountability, the ICC has truly served to loosen tyranny's grip upon our humanity.

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Many years ago, when I was serving as a prosecuting counsel at the Rwanda genocide tribunal, I was prosecuting a former mayor of a village in a local government area near Kigali. He was charged with genocide, crimes against humanity and war crimes. The defendant, Mr Laurent Semanza had been the mayor of the village for over 29 years until shortly before the Rwandan genocide in 1994. And when the genocide erupted, he rallied - and led - the Interamhamwe militiamen, who were the infamous foot soldiers of that genocide against Tutsis.

In a society with very weak or non-existent structures of rule of law, an all-powerful mayor of the village meant that the local population were left helpless against the whims and caprices of an abusive mayor.

Twenty-nine years as the mayor of the locality had the effect that many of the young adults in his community had grown used to seeing him as the local strong man, who dictated events in their lives.

Very quickly in the course of the trial, I could not help but notice the psychological hold he still had on them. I had to work hard against a perceptible reflex on the part of some of the witnesses to freeze, once they came into the courtroom and saw Mr Semanza sitting there.

Some of them even told me that they found it difficult to believe that he was actually standing trial, being required to account for his conduct; that he was no longer controlling their lives as he once did; and that his own fate was now truly in the objective hands of judges of an international criminal tribunal that was located in another country, where he had no way of asserting an overriding influence.

Those witnesses represented the teeming denizens of the rural communities of the world, where the klieg light of global attention does not always shine, fully to expose for all to see the weight of oppression under which they labour.

It took the international criminal tribunal for Rwanda – a temporary international mechanism - to convince those witnesses that the hands of tyranny – which the former mayor had represented – had actually been loosened from their lives, by an international instrument of accountability.

The purpose of the ICC is to serve permanently for humanity everywhere in the world the purpose that the ICTR served on a temporary basis for Rwanda.

As such, it embodies the pledge of ‘never again’ – to atrocities and gross human rights violations that bear out the human capacity for evil.

## **THE CHALLENGES**

But, it will be a mistake to take this achievement of a permanent instrument of accountability for granted. Or to rest on our laurel. We must not underestimate the enormity of the threats that the Court faces.

WE may get a snapshot of the significance of these threats by asking ourselves this question: would it be possible to create the ICC today, when we consider the prevailing geopolitical circumstances of today?

And here, we must keep in mind that armed conflicts are the most usual vectors of all the crimes over which the ICC has jurisdiction. Genocide, crimes against humanity, and, of course, war crimes – and, naturally, the crime of aggression – are typically associated with armed conflicts.

Now keeping that in mind, let us further consider the conflicts that we read about in the current news of the world: Syria, Afghanistan, Yemen, Libya, Armenia-Azerbaijan, Democratic Republic of the Congo, Mali, Burkina Faso, Boko Haram insurgency in the Lake Chad region (comprising roughly parts of Nigeria, Cameroon, Chad and Niger), Myanmar, South Sudan, Somalia, Israel-Palestine. And there are many others.

The point of this limited roll call of conflict zones is that the United Nations Security Council has been dishearteningly unable to agree to subject even the most virulent amongst these conflicts to the independent, international searchlight of accountability. The instinct of 'ward protection' has not allowed such inquiries, as the ugly ghost of the old Cold War begins to stir again.

Meanwhile, the African Union has insisted that the international searchlight of accountability is no longer to be trained only on situations in Africa, if it cannot also be trained elsewhere.

Within the AU objection resonates Dr Martin Luther King Jr's insistence that 'injustice anywhere is a threat to justice everywhere.' That being so, humanity everywhere – not only African victims of atrocities – deserves the active interest of the ICC. That is a very sensible position.

However, what I cannot support is the reductive version of that objection – which may have the effect of saying that even African victims of atrocities must be denied the benefit of the ICC, until there is an assurance that ICC is able to attend to the needs of victims of atrocities everywhere in the world. I do not accept that argument.

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Also to be considered as part of the challenges against the ICC's story of hope is the bellicose predisposition of some powerful global actors that rail against the Court – even threatening to destroy it – as they perceive it to be inimical to their political interests and aspirations.

Ironically, the attacks against the ICC by powerful nations are also an emblematic demonstration of the Court's value for humanity.

Those attacks entail a resistance, which shows that the Court is making a difference. It shows that the Court cannot be ignored by those who may, at the very least, see some geo-political interest in the preference to leave innocent victims at the mercy of heinous crimes.

Indeed, it is in the very nature of the ICC's mandate to attract such resistance as is inherent in the incidence of the arduous struggle, which was always contemplated in the post-WW2 pledge of 'never again'.

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The foregoing are some of the important global and geopolitical dynamics that some would reasonably see as raising great odds that another ICC would be created in the current environment or in future.

In other words, just because the International Court of Justice (as an organ of the United Nations) was readily created upon the demise of the Permanent Court of International Justice (as an organ of the League of Nations) does not mean that a new international instrument would just as readily be created to replace the ICC, if we allow it to wind up or be destroyed by those who prefer a world without the ICC.

## A LUCID MOMENT IN TIME

But those great odds against repeating that feat of ICC creation (now or in the foreseeable future) also invite us to consider what a fortuitous event it was that the feat was even achieved, in the first place, in 1998, when the Rome Statute was adopted.

The timing of that event is not always readily appreciated. But, it is significant.

In the swirl of world affairs that accommodated the creation of the ICC in 1998, was a period that I call 'a lucid moment in time.' The 1990s.

It was a period of positivity and possibilities rarely witnessed in the often demoralising circumstances of global geopolitics; which plays out in the micro-climate of the UN Security Council whose work is defined infamously by the veto power – and where some of its wielders seem ever ready and willing to use it more often than others, regardless of its consequences to our shared civilisation and humanity.

Perhaps the greatest of those possibilities - achieved within that lucid moment of the 1990s - was the adoption of the Rome Statute that established the ICC.

Notably, this was within a five-year band of time during which the UN Security Council had managed to create two ad hoc international criminal tribunals: one for the former Yugoslavia (in 1993), the other for Rwanda (in 1994) – respectively to bring accountability for the violations including ethnic cleansing that were committed in the former Yugoslavia, and the genocide that had been committed against Tutsis in Rwanda.

Some of the heady hallmarks of the immediately preceding period had been the policies of Glasnost and Perestroika and their associated demolition of the Berlin wall. That period also saw the abolition of the apartheid regime in South Africa and the associated release of Nelson Mandela from a lifetime of political imprisonment.

As fate would have it, that lucid moment of the 1990s lingered just long enough to permit the ICC finally to be created in 1998. This came after extended periods of moribund efforts that had long been dismissed in the previous decades as wishful thinking – due to the Cold War.

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Perhaps, the significance of the lucid moment of the 1990s may be better appreciated if one considered that the other time – much to their credit – that France, Russia (then USSR), the UK and the US – four of the P5 members of the eventual UN Security Council - had agreed to create an international accountability mechanism was at the London Conference of 1945, regarding the Nuremberg proceedings that was to address the atrocities committed in Europe during World War II.

In the odd half century between the Nuremberg experiment of 1945 and the Security Council's creation of the ad hoc tribunals (in 1993 and 1994) for the former Yugoslavia (the ICTY) and for Rwanda (the ICTR) - pursuant to the Council's mandate of international peace and security - no international accountability mechanism was created under the auspices of the UN.

Yet, it could not be seriously supposed that, during that intervening period, there had not been atrocities that shocked the conscience of humanity

committed in Africa, Latin America, Asia, Europe and elsewhere, which engaged the need for such an accountability mechanism.

And all that gives especial significance to the lucid moment of the 1990s.

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There is another important dimension that must be kept in mind as regards the opportunity which was seized to create the permanent ICC directly in the wake of the creation of those two ad hoc tribunals for Rwanda and for the former Yugoslavia.

That dimension is that the purpose or effect of creating the ICC – against the background of historical experience – was to avoid holding questions of accountability (for gross atrocities) hostage to the UN Security Council's ad hoc solutions that may not materialise due to the vagaries of geopolitics that often stymies that body to the point of harrowing inertia.

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We know that the lucid moment of the 1990s has now become a stationary object in the rear-view mirror, as the world drives down the lane of heartaches for many of the victims of apparent atrocities that shock the conscience.

And it is for that reason that it should be difficult to reproach anyone who may worry that the politics of the Security Council may not permit a new ad hoc tribunal to be created now, should grave violations be committed in ways that conjure up the ghosts of Srebrenica or Rwanda. Some may argue that certain current situations that now confront the world already conjure up those ghosts.

But the broader point is to underscore in a very particular way the enduring value of the ICC, that we should not take for granted.

## **AN IMPERFECT HUMAN SYSTEM**

That value must remain foremost on our minds. It should not be distracted by the fact that the Court is not a perfect instrument – even for its own purposes. This is because that human system that is perfect – even for its own purposes – has not yet been created.

This is so, not only in the design of the system, but also in its actual operation.

Some States (not yet parties) have expressed concerns about joining the ICC. They complain that there aspects of the Court’s design that do not please them.

I urge them to reconsider that objection.

In urging them to reconsider, I shall commend to them the words of an eminent historical figure: George Washington (the first President of the United States).

On 1 July 1787, in the course of the Convention underway in Philadelphia to draft what is now the Constitution of the United States, President Washington wrote a letter to David Stuart, a family member, about difficult differences of views in full display during the Convention. In his letter, Washington wrote as follows: ‘To please all is impossible, and to attempt it would be vain. The only way, therefore, is ... to form such a government as will bear the scrutinizing eye of criticism, and trust it to the good sense and patriotism of the people to carry it into effect.’

And on 24 September 1787, one week after both the conclusion of the Philadelphia Convention and the adoption of the US Constitution, President Washington wrote another letter. This time to four former Governors of his own State of Virginia, urging them to support Virginia's ratification of the new Constitution. In that letter, Washington wrote as follows: 'I wish the constitution which is offered had been made more perfect, but I sincerely believe it is the best that could be obtained at this time; and, as a constitutional door is opened for amendment hereafter, the adoption of it under the present circumstances of the union is, in my opinion desirable.'

Those two letters from President Washington himself, tells the story of the stormy controversy that engulfed the new US constitution and circumstances under which it was adopted in 1787.

But, that also is the story of the adoption of the ICC treaty – the Rome Statute – and the circumstances under which it was adopted in 1998.

If the US Constitution would provoke the dizzying controversy that greeted it amongst only 13 states of the American Union at the time, where many stiffly objected against it for not being a better document, it must come as no surprise that there would be some from amongst the 193 countries that make up the United Nations, who would find the Rome Statute an imperfect document.

But, I would urge those States to reconsider their objections and join the Rome Statute, knowing that not even their own national constitutions can lay claim to the perfect design that they wish upon the Rome Statute.

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Nor must we be distracted by questions of an undeniable need to improve the operation of a human system – the Rome Statute system. Here, I must emphasise that every legal or judicial system in the world – even those with the best of designs – is operated by human beings.

And that necessarily entails a never-ending need to do better.

At the ICC, we are keenly aware of that need. It is for that reason that we voluntarily invited a systems review earlier in the year. The exercise was not imposed upon us from outside the Court itself. We – the leadership of the Court – asked for it. And we fully opened ourselves up to it. It was the first time that such an extensive review had been undertaken in the Court’s 18-year operation.

We have now received the report. While the review exercise itself was not perfect – that too being a human exercise – we are confident that the observations and the recommendations made in the report will go a long way towards spurring us to make the improvements that we know will help the Court consolidate the positive values that the ICC holds to humanity.

## **CONCLUSION**

In the end, the moral of the story is this. We now have this instrument of hope for accountability that was improbably created when a rare opportunity presented itself to do so – during a lucid moment in time.

We must spare no effort both to hold on to it - and to make it work better.

For, if we lose it, we may never get it back – any time soon.

I thank you.