

Check Against Delivery

Assembly of States Party to the Rome Treaty



Opening Remarks by

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Excellencies,

Ladies and Gentlemen,

Friends and colleagues,

It is a privilege and honour for me to address this Assembly.

From its inception, the International Criminal Court, being a new creation, attracted international interest, and does even more so today. Let me start by recalling why the ICC was established: the preamble of the Rome Treaty declares that its drafters were “Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity” and affirmed “... that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured”. Indeed, the creation of the ICC resulted from these efforts to end indifference to the victims’ pleas for justice.

The ICC embodies the general international consensus that genocide, crimes against humanity, and war crimes are too grave to be left unpunished. It is clear that justice should first be achieved through national processes. The primary responsibility to prosecute international crimes continues to rest with States, which should relentlessly engage in concerted efforts to foster accountability. And yet, all too often, impunity prevails for such crimes at the domestic level: national investigators, prosecutors, judges and defence lawyers face overwhelming challenges when confronting international crimes. Indeed, these crimes go unpunished for various reasons – political expediency, inability or unwillingness to investigate or prosecute them. In these circumstances where States are unable or unwilling to fully investigate certain crimes, the ICC’s mandate gets activated.

The Court’s mandate is to investigate and prosecute individuals only, not States nor an entire continent or region of the world. As a result of independent, impartial and professional investigations, the Court identifies individuals suspected of having committed war crimes, crimes against humanity or genocide. It is only where those individuals are not investigated or prosecuted at the domestic level that the Court admits cases against them.

The struggle against impunity for international crimes and grave human rights violations is necessary for many different reasons, but especially to bring justice to victims. Justice and accountability have inherent value for reconciliation and sustained peace.

Accountability is the core principle behind the promotion and protection of human rights which is central to the mandate of the United Nations in general, and in particular to my own mandate as the High Commissioner for Human Rights. Starting with the Universal Declaration of Human Rights, all human rights treaties and mechanisms, including the Human Rights Council and the Universal Periodic Review, aim at furthering accountability. This is a framework which States not only accepted, but created. Far from undermining the

sovereignty of States, these treaties and mechanisms are based on a conception of sovereignty that is concerned with the protection and promotion of people's fundamental human rights.

It would be erroneous to expect that the ICC alone can *end* impunity. It would be unrealistic to expect that the Court can investigate every situation of impunity in the entire world. There are considerable limitations to the temporal, territorial and personal jurisdiction of the Court, and the Court also has limited resources. Achieving the universal ratification of the Rome Treaty is necessary to broaden the reach of the ICC, turn the Court into a truly universal one, and ensure that there is accountability for all.

In my engagement with Governments, civil society organisations and victims, I frequently face questions pointing to selective prosecutions by the ICC. This is particularly my experience with students from my own Continent, who want justice but want to see it applied universally. These are concerns and perceptions that must be addressed or we risk seeing the legitimacy of the system of international accountability and of the Court, being undermined.

The Statute and Rules of procedure and evidence of the Court provide many checks and balances to ensure non-selectivity. The fundamental principles underpinning the ICC are similar to those that exist at the domestic level and have been enshrined in international human rights law. First, the principles crucially assert that no one is above the law and that everyone should respect the law. Second, these principles provide that, if an individual is suspected to have committed a crime, he or she is entitled to a fair trial, due process, the presumption of innocence, as well as other due guarantees. The principles are all at the heart of international criminal justice: the Statute of the ICC provides that it applies equally to all persons without any distinction. In this vein, it is also important that the ICC judges have the flexibility to exercise justice with compassion and an understanding for individual circumstances.

My mandate as the High Commissioner for Human Rights is to be a voice for victims. Victims of international crimes have rights too, notably the right to justice, the right to truth, the right to an effective remedy and the right to reparation. For them, the ICC is the forum that can provide redress when the domestic courts are unable or unwilling to hear their claims. Giving them access to justice and hearing their views is at the heart of the project of international criminal justice. People on the ground have been demanding that victims be recognised and their rights be realised. They have been demanding that victims obtain effective redress. These voices have prompted the development of the international normative framework, the machinery geared towards the delivery of human rights at national and international levels.

My own experience, as the UN High Commissioner for Human Rights, as an international judge, and also as a victim of apartheid in South Africa, has shown me again and again that failure to restore the rights and dignity of victims, failure to secure

accountability for victims of human rights violations and other international crimes does critical harm not only to the victims, but also to society at large.

Excellencies, Ladies and Gentlemen,

The World's first permanent international criminal court is no longer a dream but a reality. It will face challenges in many important ways. It is up to all of us to think through these challenges and find the best and most sustainable ways to surmount them, so that justice prevails. Fighting impunity requires time and perseverance, resolve and determination. It also requires unequivocal political support and commitment.

Thank you.