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Plenary on the 20th anniversary of the Rome Statute

Assembly of States Parties, 7 December 2018

As I begin my statement, let me at the outset bring to mind two themes that underpin our reflection in this plenary session dedicated to the 20th anniversary of the Rome Statute. This Assembly of States Parties corresponds to a concept of multilateralism, which we find distinctly valid and necessary for the work of the International Criminal Court and which is required in order to maintain an active awareness of its effectiveness and its needs. We also wish to take the opportunity to celebrate this year the 70th anniversary of the Universal Declaration of Human Rights, which established principles that impart profound meaning to this Court.

Two questions provide guidance in respect of my opening comments:

(a) What does participation in the Rome Statute mean and what should States Parties do to that effect?

(b) Is it possible to reconcile the independence and competences of the organs of the Court with the discussions and mandates of the Assembly of States Parties and its Working Groups?

The ideas that emerge from the statements made by Member States in this Assembly, from the contributions of civil society organizations and other actors whom we have listened to attentively, reflect cross-sectional concerns of the international community. The presence, within the Assembly, of the Court, its organs, States Parties, academic experts and members of an organized civil society, inspire us to maintain an open and well-informed exchange of views on those concerns.

With these questions as my point of departure, allow me to put forward the following thoughts:

(a) With twenty years of experience and a growing number of States participating in this system, we have seen develop a favourable climate in which to consider universality as a concept that not only applies to the inclusion of other States, but one that is also relevant to the internal functioning of this system, and which relates to the importance of taking care that it is not perceived or judged as being directed at a select group of countries and/or governed by a group a countries.

(b) Universality also requires that an internal interplay of relationships be maintained to support those members that, finding reason to be critical, lose their faith in the Statute. Moreover, one can consider regional viewpoints as a step on the path towards achieving greater universality, and that the efforts engaged in by different regions to build legal alliances and to cooperate in terms of assistance also constitute ways of strengthening the representation and participation of certain under-represented States and regions. This approach could be further enhanced.

(c) The Court does not replace the role of political organs that operate at an international level and neither does it displace the organs specific to each State. The power conferred upon it is different to that proper to States; the Court's power is of a strategic nature in the fight against impunity for serious war crimes and crimes against humanity, and for the crimes of genocide and aggression. All of this requires a common set of values and objectives. Building and consolidating this core basis is fundamental to the objectives of universality and this task is not only legal in character, but also political, social and cultural.

(d) Furthermore, the stages covering preliminary examinations, investigations and prosecutions, with due respect for high standards of probity and efficiency, are not carried out in a legal vacuum where the response which is or should be given in the domestic context of each State bears no relevance.

(e) On the contrary, given that the jurisdiction of the Court covers legal persons, the exercise of powers within a State involved in the process is relevant, as the said internal capacity and power are to be seen as forms of cooperation with the objectives established by the Rome Statute and which the Court advances in a complementary manner. This is the basic point of principle that we need to respect. Incidentally, I shall not refer, on this occasion, to those discussions, which sometimes occur in the midst of proceedings before the Court, regarding the question of the nature of the relationship between a State and the Court when the former, at the request of the latter, provides cooperation, furnishing evidence or handing over a suspect.

(f) I would like, instead, to highlight the interesting relationship that we see develop between the law and the internal organs of the States Parties and the Court. This is particularly instructive with regard to those countries that are undergoing an internal peace process, which helps to demonstrate the multifaceted character of the relationship between States and the International Criminal Court, under the concept of cooperation.

(g) In this context, we cannot forget that the Rome Statute links justice to domestic legal systems and to the decisions that national institutions adopt, and that the impact of this relationship can be of importance vis-à-vis the effectiveness of the Rome Statute itself.

(h) Another dimension that is of increasing interest to States Parties relates to the quality and value of the Independent Oversight Mechanisms, without encroaching on the strictly judicial function. In these twenty years, we have learnt how to usefully participate in the research, advisory and decision-making processes of the Assembly of States Parties, in the spirit of finding a compromise in certain discussions, of safeguarding the autonomy of the judicial function and maintaining the efficiency and effectiveness of judicial proceedings.

(i) In that context, we wish to highlight the issue which begs the question whether we have explored all avenues in terms of addressing the matter of non-cooperation of States Parties with the Court, and what to make of the silence of the Security Council regarding those situations referred by the latter organ to this Court.

(j) Similarly, we have observed a certain ongoing discussion on whether States Parties and some non-State Parties have clearly settled the question of the scope of immunity for a Head of State in exercise of his functions and the implications in terms of the exercise of the Court's jurisdiction. In these discussions, reference is usually made to the need to preserve a balance and to take into account relevant political circumstances in order to bring to fruition peace processes and to give stability in fragile contexts, and to keep in mind the Rome Statute in those contexts. We believe that respect for the integrity of the Statute is not incompatible with an understanding of the specific conditions that might lead to situations covered by Article 98 of the Rome Statute, without wishing to supplant the exercise by the ICC of its own competencies.

(k) These are far-reaching issues and the viewpoints of different actors deserve respect and require appropriate treatment, depending on the way in which an issue arises or is submitted for resolution by the Court. Although we will not discuss these matters in this panel, we would like that a distinction be made between questions that specifically relate to criminal procedure and those that relate to cooperation between States Parties and the International Criminal Court in terms of the scope of the obligations of those Parties. In that context, we need to make the most of the work of the Assembly consisting in developing a respectful relationship between the different actors, and developing, as a key objective, capacity-building in order to steer us towards a constructive relationship.

(l) This way of proceeding has been visible in instances where a diversity of approaches has seemed to frame the debate on the options available by implied reference to different value judgments about the cooperation or non-cooperation of a State, and which require consideration of all of the structural elements contained in the actual Rome Statute. On the other hand, respect for the competences of the International Criminal Court does not close the door on consideration of issues of international law that arise in the wide-ranging implementation of the Rome Statute. We, as States Parties, can ensure the safeguarding of the investigative and judicial functions of the organs charged with duties in accordance with

their own terms of reference, while at the same time, reflecting on how best to address issues relating to the scope of the rules contained in the Statute itself.

Finally, as the Assembly celebrates the 20th anniversary of the Statute, we can discern the effective need to strengthen dialogue and cooperative dealings in key areas. We hear this call, in particular, in connection with budgetary matters, in the governance and promotion of the efficiency and effectiveness of criminal trials within the framework of the Statute, and from the point of view of the assistance and reparations provided to victims. In the last years, we have seen that, in addition to the debate on the work of the Court, in and of itself, and on the need to increase levels of cooperation with it, there have been strongly argued issues relating to reparations and assistance to victims.

Despite the progress made, do any situations exist which capture our attention and with reference to which the tools currently at our disposal do not seem to be of use or fail to sufficiently target certain problem areas? What do we hope to get out of this discussion in the context of the 20th anniversary?

Our discussions are held against a backdrop of changing circumstances, and it is the duty of States Parties to make every effort to work together on those issues, such as the efficiency and effectiveness of the judicial process, which might, inter alia, entail decisions by the Assembly. The participation of victims in the process and the assistance given to affected communities, as well as the meaning and scope of cooperation, the specificities of preliminary examinations and the topic of universality are all elements which continue to require our attention.

We would conclude by pointing out that the Statute constitutes a promise aimed at applying concepts of restorative and reparatory justice, as genuine objectives, and that States Parties must fight to counter the perception that we are dealing with a reality that cannot be overcome. Two actors in the international system merit inclusion in achieving this task. On the one hand, the Security Council of the United Nations, weak in the face of the actual work of the Court resulting from referrals from the former, and on the other hand, we need to recall that, in terms of the efficiency of their participation, States can benefit from the part played by non-governmental organizations, as sources of information and analysis, and for their ability to contribute towards an assessment of policy and situations. This input can be valuable from the perspective of States Parties.