

AFRICAN UNION



UNION AFRICAINE

الاتحاد الأفريقي

UNIÃO AFRICANA

**Secretariat of the Assembly of States Parties
17th Session of the Assembly of States Parties
Plenary Session: Rome Statute 20 Years –
Addressing current & Future Challenges**

**7 December 2018
The Hague, Netherlands**

TALKING POINTS

FOR

AMB. DR. NAMIRA NEGM

LEGAL COUNSEL AND DIRECTOR FOR LEGAL AFFAIRS

AFRICAN UNION COMMISSION

**Excellencies,
Co-Panelists,
Distinguished Representatives,
Ladies and Gentlemen**

1. I am pleased to address you today on behalf of the African Union, at such a great occasion celebrating the 20th Anniversary of the ICC.
2. Let me start by avoiding pondering upon the future too much because it is so unpredictable. I can only say that many issues need to be resolved in order for the Court to either reach universality or at least keep its membership without losing more States.
3. For now, I would like to focus on our perspective from the African continent. Since the inception of the Court until now, the African States are the biggest regional block in its membership, which reveals the commitment of

Africa towards the cause of justice. Yet, we have major contentious issues with the Court starting from our hard work since before Rome until now, to ensure the independence of the Court from the political discourse of the UN Security Council. However, with the African cases on the dock, we still have major doubts whether this end goal will ever be achieved.

4. Of course, all of you are waiting for me to start speaking on the issue of immunities and the Court, but that is what I will end with.

5. If we are to point out technical issues that we think are highly important for the ASP to tackle in a more vigorous way, I would start by complementarity and say that until now, we are not 100% satisfied with how the concept of complementarity has evolved into positive complementarity. The question we have is whether the positive complementarity really reflects the will of Member States that negotiated the Rome Statute or not.

6. Moreover, the identification of the level of satisfaction of international cooperation with the Court is highly subjective and politicised, which is another issue that requires further clarifications and work by the ASP.
7. Now, as promised, I will end with my famous immunity issue. I am not going to address a case of one person. I am here to address the major element that we believe the Working Group of the ASP should address. This is the proper interpretation of the will of Member States in Rome, 20 years ago – to include in one text, Article 27 and Article 98.
8. In our understanding, Article 27 speaks of jurisdiction so that no individual can come before the Court to contest its jurisdiction based on immunities, however, Article 98 addresses obligations of States Parties to the Rome Statute towards third parties. This is to ensure political and legal stability in the world.

9. We see these provisions complementing each other so as to ensure that States Parties can honour all their legal obligations – under the Rome Statute and other legal instruments. However, sadly so, until now, from the practice of the Court, we have only been witnessing an encroachment of Article 27 on Article 98, which shows absolute disregard to the text that has been negotiated to establish the Court and should bind its decisions.

10. From our side, we believe that to have a strong international judicial mechanism, it should depart from politics in order to achieve its goals – to work as a deterrent from committing horrendous crimes against humanity and give solace to victims around the world.

11. This is what the Court should focus on for the future. I am not sure I will be here in 20 years, but hopefully my younger colleagues will not come here to address these same concerns, so that their future will be brighter.

12.I thank you.