

Regional conference on the International Criminal

Court

Doha

24 to 25 May 2011

Closing of Conference

Silvana Arbia

Registrar of the International Criminal Court

Excellencies

Ladies and Gentlemen

As-Salāmu `alaykum

Initially, I want to thank H.E. Dr. Al Marri and H.E. Ambassador. Ben Khadra for making this event possible, and for all their hard work and dedication, as well as that of their staff, in making it the success that it was. I still recall when the seeds for this conference were sown in my office during a meeting with Ambassador Ben Khadra, and later when Qatar and Dr. Al Marri generously agreed to sponsor this conference.

So what have we achieved in these past two days: I hope we have set out a blueprint for the developing bonds between the ICC and the region. There are currently only three Arab states parties to the Rome Statute; Jordan, Djibouti and Comoros. Tunisia will soon be the fourth, when it will deposit the instrument of ratification at United Nations Headquarters. I believe that it is only through open, frank and constructive dialogue that the region's trust and support for the ICC as an impartial justice mechanism of last resort can be fostered, and the membership increased.

Certainly, the region has a long and proud legal tradition, and this has been apparent in the interventions and presentations during these two days. Also, many states in the region have made the fight against impunity a policy priority, and have advocated on the issue in many fora over the years. This can be seen in the region's participation in the negotiations of the Rome

Statute, as was mentioned in the introductory presentations yesterday. 11 Arab states, amongst other important Middle Eastern states, were key participants in Rome and became signatories to the Rome Statute. Observer delegations from Palestine, the League of Arab States, the African Union, and the Organization of the Islamic Conference also attended the Rome negotiations.

Further, as we have learnt, the League of Arab States has drafted a model Arab Law on Crimes within ICC jurisdiction, which was issued in 2005. This provides a model for national laws which may be needed in order to be able to prosecute at the national level crimes against humanity, genocide, and war crimes, thus giving full effect to the cornerstone of the Rome Statute system, the principle of complementarity.

The development of the Court in its early years was also shaped by the region with the Hashemite Kingdom of Jordan holding the Presidency of the Assembly of States Parties from 2002 to 2005. Jordan was also actively involved in the Trust Fund for Victims, and through chairing conferences on the crime of aggression.

To underscore Arab commitment to the fight against impunity, we also learnt in the last panel today that there are more than 300 civil society organizations in the region that are members of the Coalition for the International Criminal Court.

I can therefore conclude that the region is well positioned to make an active and continuing contribution to the work of the Court. Such contribution

need not only come from ratification of the Rome Statute, which can be seen as the culmination of embracing the Rome Statute system.

The Rome Statute system posits a global network of states working individually and collectively to fight impunity for the most serious crimes known to humankind. The sovereignty of nation states is well guarded by the system, as any crimes that fall under the Rome Statute must be prosecuted nationally. It is only where national jurisdictions are either not able, or not willing to genuinely prosecute these crimes that the institution of which I am Registrar will step in.

As such, all of you, all the states in the region which have a desire to fight against impunity for these most serious crimes can and should already be working under the umbrella of the Rome Statute system, prosecuting any ICC crimes nationally and cooperating with the Court voluntarily, whether or not you are states parties to the Rome Statute.

Lawyers from the region can and should join the ICC list of counsel eligible to represent clients before the Court. You have heard my colleague state that there are currently more than 400 lawyers admitted to the Court's list of counsel, only eight of which are from the region. This shortfall must be remedied, and I must stress that a lawyer need not be from a State Party in order for him or her to be admitted on the list. The list is open to all States in the region.

As I look across the audience, I am certain if those qualified individuals in attendance today were to apply, we could easily increase this

number. Under Rule 20(1)(f) of the Court's Rules of Procedure and Evidence, I have a mandate to cooperate with national defence and bar associations to further their specialisation in international criminal law and the ICC. I have therefore decided to start a campaign to increase the number of lawyers from the region. The Court will work with national bar associations in the region and give priority to applications from qualified Arab lawyers up until the end of 2011. Throughout the campaign, their applications will be given priority status. I am confident that this policy, along with our information campaign, will enable us to encourage as many Arab lawyers as possible to apply to the lists.

The presence of Arab lawyers at the Court is all the more crucial now with two situations under investigation before the Court being in the region. In the Sudan and Libya situations, accused persons, as well as victims participating in the proceedings need to be represented by talented lawyers, and such clients usually prefer a counsel who shares their language and culture. As such, there is much work to do at the ICC for talented Arab lawyers.

States not party to the Rome Statute are also able to contribute to the Rome Statute system in the protection of witnesses at risk on account of their testimony before the Court. The Court is committed to mitigating any risk which persons face as a result of giving their testimony to the Court, and usually this can be done with local measures and best practices. In some instances, however, there is no solution but to relocate a person at risk to a different country. We have found that relocations are more sustainable and attractive for the persons concerned where they are moved in a cultural and

linguistic context similar to their own. Given that we have two investigations ongoing in the region, Arab states could assist the Court by hosting such witnesses on their territories.

Another way that States can further the fight against impunity and contribute to the Rome Statute system is by hosting information centres and research facilities on international criminal law and on the work of the Court, so that civil society and the public at large can be invested in the latest developments in the area, and contribute to the evolving jurisprudence with scholarly work and research. This would fit very well in this region with its strong historical commitment to learning and scholarship.

There are many other ways that the region could contribute to the work of the Court, for instance in providing security and support to missions of the Court in the region, or in the exchange of pertinent information. But of course, I would be remiss not to say that the Court would prefer that your commitment to the Rome Statute system is consummated with a ratification of the Rome Statute.

There are many advantages to taking this final step. Given the region's commitment to fighting impunity, the Court's jurisdictional reach would be expanded as a Court of last resort, and use of Article 13(b), that is referral of a situation to the Court by the Security Council, would be minimised. As we have discussed, both situations in the region were referred in this way to the Court, and this has created some frictions and concerns which were debated during this conference. The discussions in the first panel have gone into detail over this issue, and I will therefore not dwell on it further here.

This conference also discussed the crime of aggression – a topic of great interest to the Arab world and the Middle East in general. The debate over the crime of aggression, as was highlighted by yesterday's panel, was also one of the main issues of concern for Arab states when considering ratification. With the active contribution of all Arab and Middle Eastern states present at the Review Conference in Kampala this past June, a resolution on the definition of the Crime of Aggression and its triggering mechanism has finally been adopted. This is an enormously important step forward in the history of international law and I hope that it will offer a renewed opportunity for the Arab region to consider ratifying the Statute.

Another issue I would point out is that by ratifying the Statute, States get to be represented at the ASP and vote in its decisions. Such decisions range from setting certain policies of the Court, to electing its judges and the Prosecutor, and to considering any amendments to the Statute. The more States in the region join, the more the Court will be moulded in the image of the region.

This brings me to another key feature of the Rome Statute, and that is the role of victims in the Court's proceedings. This was also the subject of the last panel yesterday, and I hope you will agree that the Court is offering both a unique forum for victims to become an active participant in prosecuting the perpetrators of the horrible crimes they have suffered, and a cathartic and empowering process for both individual victims and affected communities as a whole. By ratifying the Rome Statute, states would grant their populations the benefit of this unique system.

I will finish with another key facet of the Rome Statute, and that is the centrality of fair trials, the equality of arms and the rights of the defence. We have seen repeatedly in the practice of the Court that the judges will grant the accused all the necessary means and tools in order defend him or herself against the accusations made by the Prosecutor. This is essential to preserving the integrity and independence of the Court. It is also a central pillar for the Registry, since Rule 20 of the Rules of Procedure and Evidence mandates me to organize my staff in a manner to promote the rights of the defence.

I am proud to say that the Court is a leader in ensuring the fairness of trials and the equality of arms. The discussions in the second panel this morning highlighted this. By ratifying the Rome Statute, states can rest assured that the Court provides a model in running fair trials, and has strengthened its independence by the procedural and administrative guarantees and support it grants to the defence.

In conclusion, I believe that the ICC and the region are now on a joint path to combat impunity for serious international crimes, under the umbrella of the Rome Statute system, and I do hope I can also welcome you soon to the Court as parties to the Rome Statute.

Shukran li houdourikom