



Address by Prof. Dr. Rahmat Mohamad, Secretary-General, Asian-African Legal Consultative Organization (AALCO) at the Plenary Session of the 11th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thursday, 15 November 2012, The Hague.

Your Excellency Madam Tiina Intelmann, President of the Assembly of States Parties,

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

At the outset I take this opportunity to congratulate you Madam, on your election as President of this Assembly, as well as Ms. Fatou Bensouda, who was sworn in as the second Prosecutor of the ICC, and the six new judges who were elected.

We have no doubt, Madam President that under your wise and able leadership, the deliberations during this Session will be productive and useful. I am grateful to you, for giving me this opportunity of saying a few words at the Plenary Session of this Eleventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC). I particularly welcome this opportunity as the International Criminal Court is celebrating its tenth anniversary year. The ICC and its functioning is of great significance to the Asian-African Legal Consultative Organization and its 47 Member States.

Madam President, the International Criminal Court (ICC), established by the Rome Statute in 1998 filled in the gaps left by ad-hoc tribunals (Nuremburg and Tokyo established by the Allied powers and tribunals at Rwanda and Yugoslavia established by the United Nations Security Council), previously established to deal with criminal breaches of international peace.¹ The Rome Statute and the ICC came into force in 2002.

¹ Philippe Kirsch, *The Role of the International Criminal Court in Enforcing International Criminal Law*, 22(4) AM. U. INT'L L. REV. 54–541 (2007); see also, Song, *infra* note 27 at 4.

The ICC's mandate is to dispense justice without undermining ongoing peace processes. The endeavor is always to make the perpetrator of international crimes accountable; however, attempts are made to bolster reconciliation and negotiation efforts as well.

After 10 years of its establishment the ICC is a fully functional, independent organization with broad support. It is the fulcrum of a new justice system, joined by 121 States that have decided to strengthen their national jurisdictions, with an international court of last resort in order to prevent impunity for the gravest crimes known to humankind.

During its first decade, the ICC has firmly established its role in a multilateral system that aims to end impunity, and this role was recently welcomed and recognized by the General Assembly during its 67th Session, which adopted a Declaration of the High-level Meeting on the Rule of Law held on 24 September 2012.

Before that, on 14 March 2012, the Trial Chamber I of the ICC issued its first verdict against Thomas Lubanga Dyilo, who was pronounced guilty, as a co-perpetrator, of the war crimes. At present, 14 other cases are before the Court, three of which are at the final stage of trial.

Madam President, AALCO, as a regional inter-governmental organization, has been considering since early nineties issues relating to the International Criminal Court. During the negotiation phase of the Rome Statute, the AALCO was a participant in the momentum for its adoption. Subsequent to the adoption and entry into force of the Rome Statute, our work programme on ICC is oriented towards raising its awareness amongst the Member States, as well as serving as a platform for exchange of ideas on the important institutional and legal developments in this regard.

Madam President, our work on the International Criminal Court is an attempt to promote international criminal justice. To realize this objective we have joined hands with the ICC by concluding a Memorandum of Understanding in February 2008. In furtherance of the cooperative framework established between our two Organizations, AALCO also conducted Seminars and Work Shops on specific thematic concerns relating to the ICC. For three consecutive years in 2009, 2010 (pre-Review Conference) and 2011 (Post Review Conference) in collaboration with the Governments of Japan, Malaysia and the ICC Secretariat,

we convened three Expert Group Meetings on various issues and challenges facing the ICC in New Delhi and Putrajaya.

I ought to make it clear that the idea of holding these meetings was to promote an exchange of views on the crucial issues before the Review Conference and thereafter on the outcome of the Review Conference, so that the Governments could take their own decisions after considering all possible view points. The meetings provided a unique opportunity in which some of the States Parties to the Rome Statute shared their experiences regarding the challenges they faced in becoming Parties to the Rome Statute and how they overcame it. Questions concerning specific legal issues on national legislation to implement the Rome Statute were also deliberated upon.

In crux the inferences from these meetings was that the Member States were concerned primarily with : (i) the relationship between the ICC and the UN Security Council; (ii) the principle of complementarity in light of the post ICC Review Conference developments; (iii) Bilateral Immunity Agreements; (iv) why Asian states were hesitant to ratify the Rome Statute; (v) the immunity of Heads of States; (vi) it is important for States Parties and non-state parties to the Rome Statute strengthen their domestic legal institutions; (vii) domestication of the provisions of the Rome Statute into the domestic legislations (viii) *Proprio motu* powers of the Prosecutor and (ix) imparting proper training to Prosecutors and Judges (State parties and non State-Parties) about the provisions of the Rome Statute.

In sum and substance, we had free, frank and candid discussions on all crucial questions and controversial issues. It was emphasized at the meeting that the three major challenges facing the ICC were: universality, sustainability and complementarity.

Madam President, now after 10 years of its establishment, we stand at a critical juncture to carefully envision the future direction of the Court. In light of the fact that the ICC has continued investigation into seven situations, furthermore, the Court has been seized of an eighth situation, following the Mali government's referral of the situation in Mali since January 2012 to the ICC Prosecutor on 18 July this year, pose significant challenges for the Court. As the resources available to the ICC are limited and the Court cannot undertake to examine all situations, States Parties as well as non-State Parties concerned should reflect with great care upon the future course of the ICC.

I would like to reiterate the following specific points, with a view to fostering an ICC which will be more efficient, effective, universal and systemically sustainable.

Securing the future of the ICC depends primarily on whether it can achieve the universality of its membership. As the number of States parties increases, there will be fewer safe places for the perpetrators, and preventive effects should be enhanced. To encourage membership in the ICC among non-party States, the Court should make every effort to produce a tangible record of performance, by effectively implementing its activities and efficiently managing the conduct of its work.

Although the ICC is a judicial organ whose independence should not be undermined, yet the Court is not immune from any examination of its management and governance. The need for further strengthening the relationship between the Court and the United Nations in order to make the Court more effective cannot be overemphasized. A Member State of AALCO during one of the meetings had specifically mentioned the two Security Council referrals to the ICC and had inquired what was the legal authority and criteria of the ICC to investigate situations in non State-Parties.

Although AALCO Member States highly appreciate and commend the historic importance of the agreement made in Kampala, there still exists serious concern about the legal uncertainty on the definition of the "crime of Aggression".

The other major challenges before the ICC are mainly universality, sustainability and complementarity. Another Member State of AALCO had pointed out that the principle of complementarity as enshrined in the Rome Statute did not give a satisfactory explanation for "when a state is unable or unwilling" to take up a case in its courts. Yet another Member State had pointed out that it was grappling with complementary legislation by criminalizing ICC offences into national legislation.

In order to achieve the universality of membership of the Rome Statute, it should be recognized that each country has its own legal culture and ratification of the Statute that which has different political implications on the home front of each State. Therefore, sustainable efforts should be taken on the part of international community to iron out the differences, misconceptions revolving around the

Rome Statute of the ICC and thereby accommodate the non-States parties in to the system to attain the universality of the international criminal justice system.

AALCO as a consultative body among Asian and African countries confines its activities to scientific examination of legal problems and in assisting our Member States and such non-member States as desire our assistance, to consider these problems by collection of materials and documentation, as also by providing a forum for exchange of views. It is then up to the Governments to arrive at their own decisions in the light of their own experience and in the interest of the world community. Significant, in this context, is the resolution adopted at our Fifty-First Annual Session in which AALCO Member States that were not yet party to the Rome Statute were encouraged to consider ratifying/acceding to it.

Madam President, we remain at the service of all Asian and African States and we would be prepared to assist all such States which desire our assistance. I would like to emphasize that the membership of the Asian-African Legal Consultative Organization is open to all States of the region. Finally, I would like to extend to the Eleventh Session of the Assembly of States Parties felicitations and best wishes from AALCO expressing the hope that the deliberations of this Session will be successful. Towards this end, AALCO would be ever willing to work upon building the existing cooperative framework within our two Organizations with the common goal of universalization of the Rome Statute, upholding the rule of law, and the principles of judicial and prosecutorial independence, guided by the Rome Statute and inspired by the common goals of humanity.

Thank you, Madam President.

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