



**Cour
Pénale
Internationale**

**International
Criminal
Court**



**Judge Silvia Fernández de Gurmendi
President of the International Criminal Court**

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Keynote Remarks at Plenary Meeting on Cooperation**

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Votre Excellence, Madame le Président (*Ambassadrice du Sénégal, Diop Sy*),

Votre Excellence, Monsieur le Président de l'Assemblée,

Votre Excellence, Monsieur l'Ambassadeur Van Hoorn,

Honorable Ministre Malla Sanogo,

Madame le Procureur,

Monsieur le Greffier,

Monsieur Dive,

Excellences, mesdames et messieurs les Représentants, mesdames et messieurs :

C'est pour moi un grand honneur de m'adresser à l'Assemblée réunie en Session Plénière au sujet de la coopération, qui est un des aspects fondamentaux du système du Statut de Rome.

Comme vous le savez, le régime de coopération est essentiellement situé dans le chapitre IX du Statut de Rome qui contient une obligation générale, « les États Parties coopèrent pleinement avec la Cour dans les enquêtes et poursuites qu'elle mène pour les crimes relevant de sa compétence », et détaille également d'autres obligations spécifiques mentionnées ci-après.

Alors que le plein respect de ce régime par les États Parties est obligatoire, il est clair qu'afin d'assurer le respect de certains droits consacrés dans le Statut, et pour répondre aux besoins opérationnels de la Cour, l'assistance des États devra être requise dans les domaines qui ne sont pas mentionnés spécifiquement dans le chapitre IX.

La coopération, qui ne peut être fournie en application du chapitre IX et qui sera fournie selon des accords volontaires, est d'une importance primordiale et c'est sur cela que je vais concentrer mes remarques aujourd'hui.

En effet, pour assurer l'effectivité d'un certain nombre de droits reconnus dans le Statut de Rome, nous devons rechercher des solutions au-delà des strictes obligations de coopération envisagées dans le Statut.

Parmi ces droits, il convient de rappeler le droit à la libération provisoire qui ne peut être mise en œuvre sans l'appui des Etats, même si cet appui ne relève pas nécessairement des obligations du chapitre IX.

De la même façon, l'appui des Etats peut être requis pour assurer que les droits des personnes acquittées ne sont pas bafoués. En droit international, les Etats ont en principe l'obligation d'accepter le retour de leurs ressortissants sur leur territoire, mais, dans certaines situations, il ne peut être procédé au retour dans le pays d'origine pour de nombreuses raisons, y compris des raisons de sécurité. Egalement, les peines prononcées par la Cour ne peuvent être exécutées sans la coopération des Etats disposés à accueillir les personnes condamnées. Pourtant, cela n'est pas une obligation au sens strict imposée à un Etat Partie en particulier.

Au cours de la procédure, les témoins ont droit à la protection de la Cour et cela peut nécessiter, dans certaines circonstances, la réinstallation dans un autre pays – ce que la Cour ne peut assurer sans la coopération volontaire des Etats.

Afin d'organiser les modalités de ces formes primordiales de coopération, nous invitons régulièrement les Etats à conclure volontairement des accords-cadres avec la Cour, et, afin de simplifier le processus, nous fournissons des accords-types.

Ces accords définissent généralement le cadre juridique applicable mais ne créent pas d'obligation pour un Etat d'accepter une personne donnée mais laisse plutôt l'Etat libre de décider au cas par cas.

Permettez-moi de préciser les différents types d'accords que j'ai mentionnés.

[Enforcement of sentences]

I will first discuss agreements on the enforcement of sentences, which are negotiated by the Presidency of the Court.

The enforcement regime is based on three primary principles, which define the responsibilities of both the Court and States:

1. Convicted defendants serve their sentences in the prison facilities of a State of enforcement, subject to that State's laws;
2. The State of enforcement is bound by the sentence imposed by the Court, and;
3. The Court supervises the enforcement of the sentence, the conditions of which must be consistent with widely accepted international treaty standards governing the treatment of prisoners.

The process by which a convicted person is sent to a State of enforcement involves two key steps:

1. First, a State indicates its general willingness to accept sentenced persons by entering into an Agreement on the Enforcement of Sentences with the Court.
2. Second, a State is designated to enforce a specific sentence

During the first step, agreements on the Enforcement of Sentences are vital. When a State Party informs the Presidency of the Court that it is willing to enforce sentences of the Court, that State and the Presidency negotiate a bilateral agreement which consolidates in one document all the legal provisions governing the enforcement of sentences. This is facilitated by a Model Enforcement Agreement, which brings together all relevant provisions of the Statute, Rules and Regulations of the Court, and also draws on the experience of the *ad hoc* tribunals.

The State may attach conditions to its willingness to enforce sentences, which the Presidency can accept or not, depending in particular on their compatibility with the Statute.

Once an agreement on the enforcement of sentences is concluded and enters into force, the State is added to the ICC's list of States willing to enforce our sentences.

The second step of the enforcement process occurs when a judgment against a convicted person has become final – in other words, not subject to any further appeal. At this stage, the Presidency designates the country where that person will go by selecting a specific State from those States which have indicated their general willingness. The Presidency considers many relevant factors, including the principles of equitable distribution, the views and nationality of the convicted person, and international treaty standards governing the treatment of prisoners.

No State is obliged to accept any convicted person. Rather, the State must agree to receiving the specific prisoner in question.

In sum, the system is based on “double consent”: States must declare willingness to accept prisoners in general, and then again in a specific case. This ensures that States are free to undertake enforcement responsibilities in a manner consistent with their domestic legal systems and circumstance.

To date, eight States Parties have concluded framework agreements with the ICC on the enforcement of sentences – these are Austria, the United Kingdom, Belgium, Finland, Denmark, Serbia, Colombia and, most recently, Mali. As more proceedings before the Court approach the enforcement phase, we hope that more States will soon volunteer to assist the Court. A wider list of willing States is necessary to ensure increased flexibility, and to guarantee that the responsibility for enforcement is equally distributed among states.

Some States Parties have indicated that their prison systems do not meet the standards required to enforce a sentence issued by the Court and that this is an obstacle to their capacity to enforce sentences. We have been working together with the United Nations to find ways to make cooperation possible in such circumstances.

A year ago, the Court concluded a Memorandum of Understanding with the United Nations Office on Drugs and Crime (UNODC), which is the UN body responsible for assisting States in the implementation of UN standards and norms governing the treatment of prisoners and management of prison facilities.

The Memorandum will enable the UNODC, the Court and States to cooperate closely in order to enhance State's capacities to enforce sentences.

[Witness protection]

Madam Chair,

Witnesses are crucial for the Court's trials. Due to their involvement with the Court, these individuals may be vulnerable, and the Rome Statute¹ requires the Court to take appropriate measures to protect their safety, physical and psychological well-being, dignity and privacy.

Pursuant to the Rules of Procedure and Evidence², the Court shall provide those who appear before the Court – and who are at risk on account of their testimony – with adequate protective and security measures, including long- and short-term plans for protection. The Registry's Victims and Witnesses Unit is in charge of this protection, and, as a neutral service provider, it serves equally the Prosecution and the Defence.

As the Court lacks a national territory on which to conduct witness protection programmes, we rely on the cooperation of States, through voluntary agreements, to ensure the safety of these witnesses through a number of measures, including local protective measures and, only as a last resort, relocation.

Under a relocation agreement a State may agree to host victims and witnesses on its territory. The standard approach to relocation agreements is that the Member State will both host the person at risk and assume the financial burden of the relocation, for example through access to housing and social services.

¹ Article 68(1)

² Rule 16

The Court also provides means for relocation agreements to be economically neutral for some States that do not have the required resources, with the assistance of a Special Fund for Relocations, which is funded through voluntary contributions of States Parties.

To date, the Court has concluded relocation agreements with 16 States Parties and is actively pursuing the conclusion of other agreements. Past years have seen a substantial increase in the needs for witness relocation, and the Court needs much more States to come forward in support of witnesses and their families.

[Interim release and release in case of acquittal]

Madam Chair,

Let me now turn to two forms of framework agreements that are not discussed as often as those regarding enforcement or relocation, but which are essential to upholding the rights of defendants – these concern interim release, and release in case of acquittal.

Where the Court orders an interim release, and the accused is not in a position to return to his or her own country, the Court must rely on a third State to temporarily host the accused. The Court has only recently concluded its first agreement on interim release, and we are grateful to Belgium for being the pioneer in this matter. We do need more States to follow suit. The principle of release pending trial is enshrined in article 60 of the Rome Statute, but if there is nowhere for a released person to go, these provisions will not be more than a hollow letter of the law.

State cooperation is also required in the event that a person is being released due to the discontinuation of Court proceedings, as a result of an acquittal or non-confirmation of charges. Again, in some situations, there may be obstacles to the person returning to their home country due to reasons such as personal safety. This was a problem encountered multiple times by the International Criminal Tribunal for Rwanda, which had great difficulty finding States willing to accept acquitted persons onto their territory.

The Court has prepared a framework agreement on release in case of acquittal and has shared it with States Parties; however, we have not yet been successful in concluding any such agreement.

Madame la Présidente,

J'ai traité des différentes formes de coopération qui sont d'une importance capitale pour la Cour pénale internationale : l'exécution des peines, la réinstallation de témoins, la mise en liberté provisoire de suspects ou d'accusés et la libération définitive.

Bien que nous ne puissions pas obliger directement un Etat à fournir la coopération que nous nécessitons dans ces domaines, il est certain que ce sont des fonctions inhérentes aux procédures judiciaires de la Cour.

Je tiens à exprimer ma gratitude aux Etats qui ont conclu des accords avec la Cour, mais une aide plus importante est nécessaire puisque les activités de la Cour continuent d'augmenter.

A moins que les Etats acceptent de partager cette responsabilité, nous pourrions bientôt faire face à des situations où les fonctions fondamentales de la Cour seront compromises.

J'invite chaque Etat à prendre le temps et la peine d'examiner les possibilités qui s'ouvrent à lui de nous offrir l'assistance dans les domaines que j'ai mentionnés. Comme je l'ai dit, nous pouvons proposer des accords-types pour rendre les négociations aussi simples que possible.

La mise en place d'un accord-cadre de coopération pourra considérablement accélérer les processus de réinstallation, d'exécution des peines ou de libération, puisque, le moment venu, l'Etat concerné et la Cour auront déjà convenu des dispositions légales applicables, des moyens de communication et de la répartition des responsabilités.

J'espère que vous nous contacterez prochainement.

Je vous remercie.