



Mrs Fatou Bensouda
Prosecutor of the International Criminal Court

ASP Plenary session on Cooperation

Fifth Plenary Meeting: Cooperation

20 years after Rome: Back to the major challenges of cooperation

Checked against delivery

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President of the Assembly of States Parties,
First Vice-President of the International Criminal Court,
Your Excellencies Ambassadors Philippe Lalliot & Momar Guèye,
Excellencies,
Ladies and Gentlemen,

Good morning and thank you for this opportunity.

As we all know, this year marks the 20th anniversary of the adoption of the Rome Statute.

For all of us, and for this Assembly which made the existence of the International Criminal Court (“ICC” or “Court”) possible, this is a truly important moment that deserves celebrating. Indeed, we have had several occasions to commemorate this significant milestone over the course of this past year, and to look back and take stock of our successes and challenges.

With the support of States Parties, we have spent the last 20 years working to reinforce the fight against impunity from a normative aspiration on paper to reality, and a real force of good in the world.

These have been 20 years of joint commitment and collective action; 20 years of cultivating norms in the service of the international rule of law, 20 years of dedicated efforts – however, imperfect and notwithstanding challenging inherent in the Court’s mandate – aimed at bringing justice to victims of atrocity crimes, and ensuring that those who commit the worst crimes imaginable are held accountable. Indeed, two decades of important experience and lessons learned on how we can more effectively advance the crucial goals of the Rome Statute.

Since the Court began its activities, and since I assumed my role as Prosecutor, we have built a strong and results-oriented office, dedicated to the fulfilment of our mandate, with committed staff who spare no effort to contribute to our common goal.

The investigation and prosecution of atrocity crimes come with their challenges. My Office, in the exercise of its mandate, deals with situations of large-scale criminality and mass victimisation, coupled with insecurity on the ground, and volatile political climates, all with a bearing on our work.

Our integrated teams, responsible for carrying out investigations and prosecutions, and for facilitating cooperation with our key stakeholders, work tirelessly to gather the necessary information and evidence, often with rather modest resources to do so. They continuously perform rigorous assessments with a view to determining the crimes committed in their various situations, and, ultimately, which individuals, if any, may be alleged to be responsible for the commission of these crimes.

Cooperation is key to the vitality of the Rome Statute system of international criminal justice. The various actors of the system, from the Court's organs to States Parties, international organisations, and civil society actors, we must work together in accordance with our respective mandates to ensure effective and tangible cooperation and to tackle the multiple challenges facing the Court's work.

In this context, during the last two years, the Co-facilitators for Cooperation have focused their efforts on a number of key priorities for the Court; including on financial investigations and arrests.

At this Assembly, I offer my sincere thanks again to Ambassadors Lalliot and Gueye, and their respective teams for their recognition of these priorities, and for having afforded us the opportunity to shed light on existing challenges and to brainstorm on how these can be addressed through support and tangible cooperation.

Before reflecting in more detail on one of these challenges – the arrest and surrender of suspects – allow me to take a brief moment to recognise the importance of the Assembly's consideration of financial investigations which led to the Paris declaration, adopted by the Assembly last year.

As elaborated by Ms Aurélia Devos, this initiative underlined the identification, tracing, and freezing or seizure of assets as a priority central to the Rome Statute system's effective functioning.

My Office plays its role in this regard by collecting and securing financial information on suspects and persons associated with them. We undertake this task from the very early stage of the proceedings, identifying financial flows as part of our initial investigative activities. This is also performed with the understanding that the identification of assets may later contribute to reparations for the victims of those crimes committed and should convictions be secured.

We are also sober about the limits of our mandate and the realities of the environment in which we operate.

The Court has no independent power of enforcement. The simple fact is that we rely on the cooperation of States when undertaking financial investigations and seeking to recover assets. The adoption of the Paris declaration was an important step to strengthen collaboration in these areas.

Harmonisation by States Parties of national laws with the Rome Statute is one such aspect that will allow States to cooperate with the Court in a timely and efficient manner; encourage domestic authorities to be proactive by sharing information with the Court where appropriate; and enhance informal communication and an open dialogue, allowing for early consultations, in order to maximise prospects for success.

Similar considerations also apply to the arrest and surrender of suspects, which poses another great challenge to the successful operation of the Court.

As I mentioned last month at the Cooperation seminar, we must consider the numbers:

- 87 counts of crimes against humanity;
- 116 counts of war crimes;
- Three counts of genocide;
- 13 counts of offences against the administration of justice under article 70 of the Rome Statute.

This is the list of charges cumulatively faced by the fifteen individuals for whom the judges of ICC have issued public warrants of arrest; warrants which are still pending implementation, some for more than a decade. These figures represent not only the

suffering of thousands of individuals, but a significant investment of the Court's time and resources.

There is only so much that the Court itself can do. From the moment that the Pre-Trial Chamber issues a warrant of arrest, the responsibility for its execution falls on States Parties, as the Court's executive arm, alongside any other State that may be under an obligation to enforce the warrant. Where these remain outstanding, the Court's capacity to deliver on its mandate is undermined, with not only reputational costs but also real impact for the victims and affected communities. Justice delayed can indeed amount to justice denied.

My responsibility, ultimately, is to prosecute the individuals my Office has identified as bearing responsibility on the strength of our independent investigations. We cannot prosecute *in absentia*. It is only once the arrest and surrender of an individual is complete that we can proceed to a fair and meaningful trial.

I must again reiterate our concern that the entire judicial machinery of the Court can be frustrated and held in abeyance unless persons sought by the ICC appear before it.

It is recognised, of course, that arrest and surrender of ICC suspects can be a complex matter. The challenges involved will vary from situation to situation, and case to case.

But States Parties can contribute in various ways, from the sharing of information, including for tracking purposes, to the provision of operational assistance, such as the organisation of transport following arrest.

Ultimately, what is needed is high-level political commitment and consistent diplomatic coordination between the Court, States Parties, other non-member States, and all relevant international and civil society actors.

We are committed to continuing to do our part, but we need your consistent and concrete support to ensure that the Rome Statute is as inspiring in the service of humanity in action as it is in words.

Excellencies,
Ladies and Gentlemen,

Allow me to conclude these brief remarks by referring to the recent surrender of the suspect, Mr Alfred Yekatom on 17 November to the Court. He was transferred into the custody of the Court thanks to the authorities of Central African Republic (“CAR”), and their crucial cooperation.

On the strength of our evidence, we allege that he is responsible for war crimes and crimes against humanity committed in western CAR between December 2013 and August 2014.

While he is innocent until proven guilty, he is now subject to the Court’s judicial proceedings, with the wheels of justice in motion. Earlier this year, the suspect Mr Al Hassan Ag Abdoul Aziz was surrender to the Court in the context of our Mali investigation with the cooperation of the Malian authorities.

As we reflect on the past and with hope to the future, my Office counts on the support of all States Parties to bring to justice *all* individuals against whom the judges of the Court have issued arrest warrants – whoever they are and wherever they may be.

Apart from a treaty obligation to arrest and surrender, surely there is equally a moral responsibility to stand firmly by the maxim of *Never Again*, not in aspirational terms, but through a recognition that we must act, and it is within our power to do so if we truly wish to see the Rome Statute stand as a beacon of hope for accountability and justice for atrocity crimes and a force of deterrence and prevention for the world’s gravest crimes.

The arrest and surrender of ICC suspects is in many ways a real test of our joint commitment to international criminal justice.

Together, with the Rome Statute as our guide, we can and must break the silence of impunity with the voice of justice, for this and future generations.

I thank you for your attention. | **OTP**