

Assembly of States Parties to the Rome Statute of the International Criminal Court Seventeenth session

Keynote address by the President of the Assembly of States Parties
H.E. O-Gon Kwon (Republic of Korea)

Mr. President of the Court,
Madame Prosecutor,
Mr. Registrar,
Honourable Ministers,
Distinguished representatives,
Ladies and gentlemen,

It is my singular honour to address this Assembly of States Parties for the first time as President, and I particularly welcome the fact that it is being held in the year of the twentieth anniversary of the adoption of the Rome Statute of the International Criminal Court. This is a very significant occasion for the Assembly, one which I hope will both remind us of the aspirations that impelled us to adopt the Rome Statute in 1998, and also give us a greater impetus to do everything within our power to ensure that the ICC succeeds in its mission.

Twenty years ago in Rome, the Diplomatic Conference adopted the Rome Statute in the early hours of the morning. It was a moment of overwhelming joy and a sense of accomplishment for those State and civil society representatives who had, for many years, worked assiduously towards and promoted the creation of a permanent international criminal court: a court that would ensure justice for the victims of the atrocity crimes, genocide, crimes against humanity, war crimes, and the crime of aggression; and a court that would bring an end to impunity for such grave crimes. It was an innovative institution, one that would uphold the principle of irrelevance of official capacity, that would place victims at the centre, give them a voice and allow them to participate. The court that many had envisioned swiftly became a reality, with the rapid entry into force of the Rome Statute a few short years later, on 1 July 2002. The Rome Statute created not only a permanent international criminal court, but also established a complex, innovative system of international criminal justice with complementarity and cooperation at its core: this we refer to as the Rome Statute system.

Today, as we take stock of where we stand 20 years later, we can see that there have been many successes. The Court has taken its place as a fully-fledged, leading actor in the fight against impunity and now stands as an integral part of the international legal order. But there are also many challenges, which we, as the Assembly, must face together.

Universality

Today, 123 States that amount to more than two-thirds of all Member States of the international community are Parties to the Rome Statute. This high number reinforces the message of the relevance and importance of the International Criminal Court, and of the willingness of so many States to stand on the right side of history, to stand in favour of an international rules-based system that ensures accountability for atrocity crimes, and to stand with all the victims of these crimes. Yet, major global powers have not ratified or acceded to the Statute, and are therefore out of the reach of the Court, while as many as one-third of all States do not fall under the umbrella of the Rome Statute. In addition, some regions of the world remain underrepresented.

Further, the recent withdrawals from the Statute are most unfortunate. Such developments generate regional segmentation and send the wrong signal to the international community. But this can be avoided. All States Parties have the opportunity to voice their concerns before the Assembly. It is important to engage in a frank and constructive dialogue on this matter.

It is incumbent upon us, the Assembly, what I like to think of as the Rome Statute family, to do our utmost to encourage non-member States to join the Rome Statute. We can do this by, for example, highlighting that becoming a State Party can only be beneficial to the State. Becoming a Party is a strong political statement of a State's acceptance of widely recognized international norms and standards; it sends a message of support for the victims of atrocity crimes; and is an additional voice in favour of an end to impunity for these crimes.

In our outreach in this regard, we must impress upon non-States Parties that the ICC is a court of last resort, and is not a threat to their sovereignty, as some fear. We, as the Assembly of States Parties, must consistently encourage the non-States Parties, many of whom are sister States within our very own regions, towards ratification or accession of the Statute. I have made the universality of the Rome Statute one of the main priorities of my presidency, and I intend to reach out to as many countries as possible during my tenure, across all regions, including my own region, the Asia-Pacific region, which unfortunately remains under-represented. I urge all members of the Assembly to focus on promoting universality.

Complementarity

I wish to recall that the principle of complementarity is at the heart of the jurisdictional regime of the Court. It is the State, not the Court, which has primary jurisdiction. The Court may exercise jurisdiction only when a Pre-Trial Chamber has determined that the State having jurisdiction is either unable or unwilling to investigate and prosecute the Rome Statute crimes in question. As I have just mentioned, the Court poses no threat to a State's sovereignty: it was established precisely to be complementary to national jurisdictions, as the Preamble to the Rome Statute states.

Yet, while primary jurisdiction lies with the State, only approximately half of the 123 States Parties have, to date, adopted the necessary national implementing legislation to enable them to carry out their primary responsibility, should the need arise. Many States also lack the necessary technical capacity to investigate and prosecute such complex crimes under the Courts jurisdiction. It is therefore our task to ensure that any fellow member State that lacks the necessary legislative and technical expertise to carry out its responsibility does, in fact, receive the required support. I encourage all States Parties, international and regional organizations and civil society to continue their efforts to strengthen national capacity, so that States Parties are capable of bringing to justice those responsible for the most serious international crimes. The principle of complementarity cannot operate when a State that is willing lacks the capacity to perform the role foreseen in the jurisdictional regime set out in the Rome Statute. Let us rise to the occasion and take this responsibility seriously.

Cooperation

Another area in which the Court faces challenges is cooperation. As many a speaker has stated over the past twenty years, the Court must rely on governments to execute arrest warrants and to gather the necessary evidence and witnesses. It should not be necessary for me to remind States, at this juncture in the life of the Court, that the Court does not have its own police force to execute arrest warrants and other judicial orders. Yet, as a result of inaction by some States, certain persons subject to international arrest warrants remain at large, be they Heads of State or lower-level suspects.

The failure of States to act when they have both the obligation and the opportunity to do so is being addressed by me, together with four regional focal points in the Bureau, under the rubric of non-cooperation. The Assembly has, in the past adopted the Assembly procedures relating to non-cooperation and the Tool kit on non-cooperation. I wish to note that non-cooperation negatively affects the Court's ability to carry out its mandate, as well as its credibility. I continue to attribute great importance to cooperation, and will continue to work with the regional focal points to address the problem of non-cooperation.

That being said, let me publicly acknowledge and express appreciation to those States that have, in the past, worked to ensure cooperation with the Court, particularly in the arrest and transfer of suspects to the Court. I commend them for their successful efforts in support of international justice and in enabling the ICC to fulfil its role.

Cooperation does not end with the arrest and transfer of suspects and assembling evidence and witnesses. It also includes measures such as identification, seizing and freezing of assets; voluntary cooperation agreements on relocation of victims and witnesses; enforcement of sentences; interim release; and final release. The Court, through its own initiatives, and the Assembly through The Hague Working Group, continue to raise awareness among States of the importance of concluding such agreements with the Court, and constantly encourage them to do so. I commend the Court and the Assembly for their work in these areas, and urge States to give greater and more serious consideration to concluding these agreements. I also express appreciation to those States that have been in a position to conclude such agreements with the Court.

Victims

I wish to refer now to victims. The role foreseen for victims in the Rome Statute, and the incorporation of victims' rights into the proceedings of the Court, constitute an innovation in international criminal justice. I am pleased that this seventeenth session will include a plenary panel discussion on "Achievements and challenges regarding victims' participation and legal representation 20 years after the adoption of Rome Statute", and I look forward to the discussion.

While we continue to keep in view the developing jurisprudence of the Court in relation to victims, victims' participation and reparations, we should also acknowledge the very important role of the Trust Fund for Victims. The Trust Fund seeks to ensure the rights of victims and their families through providing them physical, psychological and material support and assistance, and through the implementation of Court-ordered reparations. In February of this year, I participated in a monitoring visit of the Trust Fund for Victims' project in Northern Uganda. The visit was organized by the Embassies of Ireland in The Hague and in Kampala, with the support of the Ugandan Field Office of the Trust Fund for Victims. There I witnessed first-hand the sheer suffering of the victims, and the impact that the Trust Fund has for them. I was deeply moved by this experience. I would like to strongly urge States and other stakeholders to give serious consideration to providing adequate contributions to the Trust Fund, to enable it to have a greater effect on the lives of the victims.

Challenges

The Court continues to face internal as well as external challenges. I wish to once more highlight the key responsibility that is ours, as the members of the Rome Statute family, to ensure that the Court succeeds in the mission with which it was entrusted 20 years ago in Rome, in that plenary room full of such exuberance and hope for the future of all humankind. The Court continues to face strong criticisms. The International Criminal Court is an independent and impartial judicial institution crucial in the global fight to end impunity, and through international criminal justice, it is ensuring accountability for the gravest crimes under international law. The Court is non-political and acts strictly within the legal framework of the Rome Statute, its founding treaty. It is our Court; we are the Court; we must be the staunchest defenders of its integrity and independence.

As this year of the twentieth anniversary of the adoption of the Rome Statute draws to a close in the coming weeks, I urge all States Parties to step up to the plate, to take more concrete action to ensure that the Court succeeds in all areas of its responsibility. I would recall that it cannot achieve that lofty goal which our governments collectively set for 20 years ago without the necessary diplomatic, political and yes, financial support. What use is a series of hortatory pronouncements of noble and exalted motives without the reality of adequate funding of all aspects of the Court's work?

As a general approach, at this landmark anniversary that naturally leads us to introspection, review and reflection, we must move beyond making aspirational, grandiose statements in international fora such as this one, beyond adopting resolutions and declarations, to more concrete action. The Court is indeed moving forward, but it can successfully do so only with the support of this family, the Rome Statute family. The time for action is now.

I thank you for your attention.

* * *