

ICC Review Conference

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A. Introduction

It is an honour for me to address you at this Conference. Let me start out by thanking the Ugandan Government for their hospitality. We value your professionalism just as much as we admire the beautiful scenery here at the shores of Lake Victoria.

Our gathering today marks an important moment in the development of international criminal justice: the first Review Conference of the Rome Statute of the International Criminal Court. We were all led to this point, following the paths set out in the growing field of international criminal justice by previous international tribunals. The establishment of these ad hoc tribunals paved the way to the creation of a full-fledged International Criminal Court as well as to the closed system of law enforcement for war crimes, crimes against humanity and genocide it represents.

This Review Conference is also a moment for reflection for the Netherlands as Host State. The international system of criminal justice created by the Rome Statute has taken off in unprecedented ways. The Netherlands is proud to be the Host State of this venerable body. Quality is a race without a finish; we continuously strive to live up to the demands of The Hague as legal capital of the world.

In a similar vein, we see the Court striving to move forward as an indispensable instrument of the international legal order. How to do that? Let us look at three of the issues on the agenda of the Conference:

- 1) the stocktaking issues: complementarity and cooperation,
- 2) the execution of Court sentences and
- 3) the crime of aggression.

B. Taking stock of international criminal justice: complementarity and cooperation

The system created by the ICC is based on the principle of complementarity. As stated in the Preamble of the Rome Statute, it is the “duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” In article 1, the Statute provides that “the exercise of jurisdiction of the Court shall be complementary to national criminal jurisdictions.” This principle reminds us all that justice begins at home, at the national level.

The principle of complementarity is crucial for the effective functioning of the system we created in Rome. Complementarity however, needs cooperation, with the Court as well as between States:

- cooperation with the Court for the arrest and surrender of suspects;
- cooperation between States in investigations and prosecutions at the national level.

We call on all States to commit themselves to these principles.

As a State Party, we are not only committed to cooperation with the Court. We are also convinced of the need for States to duly ratify and properly implement the Rome Statute and put the principle of complementarity into practice.

The Netherlands is keen to bring suspects of international crimes present on Dutch territory to justice. We also give legal assistance to states that are willing and able to prosecute these suspects.

The sharing of best practices of cooperation – not only of States with the Court, but also of States amongst themselves – is sure to underpin the principle of complementarity. In this respect we are interested to explore with others how the international framework for legal assistance and extradition in cases under the jurisdiction of the Court could be improved.

Our commitment to complementarity and cooperation has also inspired us to pledge our support for the ICC Legal Tools Project and the activities of its Outsourcing Partners as well as for the Justice Rapid Response initiative. In the same spirit, the Netherlands pledges to organise a legal expert meeting in a yet-to-be-confirmed State Party in 2011, on the investigation and prosecution of international crimes in national jurisdictions. The meeting could also offer a forum to share best practices on cooperation and explore possibilities to improve the international framework for legal assistance and extradition in cases of genocide, crimes against humanity and war crimes.

Besides our efforts to bring perpetrators to justice, the Netherlands is committed to the victims of those horrible crimes. First and foremost, victims are entitled to justice. Second, victims are witnesses not only in their own cases, but also in those of others. Third, victims are citizens who are needed to turn the page and take society forward. Therefore, the Netherlands is in full support of the activities of the Trust Fund for Victims and encourages other States Parties to support the Trust Fund as well.

C. Execution of sentences

The second issue concerns the execution of sentences. The Court is undertaking efforts to form a broad coalition of States Parties willing to conclude agreements on the execution of sentences of individuals convicted by the ICC. The Netherlands undertakes its own residual responsibility for the execution of the sentences for which the Court has not found a State of execution. The Netherlands does this in the spirit of the Statute:

- building an international justice system together,
- contributing to an effective International Criminal Court together,
- fighting the culture of impunity together.

We call on the solidarity of all States Parties to share in the burden of the execution of sentences. In this context, I support the Norwegian initiative on how to share this responsibility among the whole of the international community. We trust this initiative will prompt more States to enter into agreements with the Court on the execution of sentences.

D. Crime of Aggression

The third issue is the crime of aggression. This Review Conference presents States Parties with an historic opportunity to extend the Court's jurisdiction to this crime. It is now more than 60 years after the conclusion of the Nuremberg Trials, where reference was made to aggression as "the supreme international crime". In 1998, the Rome Conference agreed to include the crime of aggression in the list of four crimes over which the Court has jurisdiction. This fundamental decision has already been taken. However, as we all know, it was also agreed that the Court would exercise jurisdiction over this crime only after agreement had been reached on the definition of this crime and the conditions for the Court to exercise jurisdiction over it.

It is now twelve years since the Rome Conference was held. It is striking how much consensus has been reached in the course of these years on nearly all parts of an overall agreement on aggression - in particular on the definition of this crime. It is also fair to say that there is no consensus yet on the conditions under which the Court may exercise jurisdiction over this crime. The Netherlands is convinced that the Review Conference should leave no stone unturned to reach consensus on these conditions. We must seize this opportunity to complete the Rome Statute. With the necessary political will and courage we can succeed.

Sometimes we may feel we are never going to reach agreement. Yet just stand back and take a look at what we have already achieved:

- There is agreement that it is first of all up to the Security Council to determine whether a State act of aggression has been committed.¹
- There is agreement that – and I quote – “a determination of an act of aggression by an organ outside the Court shall be *without prejudice* to the Court’s own findings under the Statute”.²
Unquote.

One question that remains is whether a case can be brought before the Court on a basis different from a Security Council decision. Fortunately, the options on the table are clear. The terms of the debate are therefore well established. The time has come for us to take decisions. We all prefer a solution by consensus; this can only be achieved when we are all prepared to compromise these two weeks.

E. Conclusion

The ICC has established itself as an independent institution and is coming up to speed, as the proceedings before the Court show. The prosecution of suspected criminals of international crimes has had an impact far beyond The Hague. Potential perpetrators of serious international crimes now see the risk of arrest and prosecution by the ICC as a real and immediate prospect. Together with national States, the Court will continue to make the world a place where those responsible for the most serious international crimes will find no more safe havens.

¹ Ref. para 2 of the 3rd draft amendment to the Rome Statute as contained in Annex I of CRP 1, which would add a new Article 15*bis* to the Statute.

² Ref. para 5 of the 3rd draft amendment to the Rome Statute as contained in Annex I of CRP 1, which would add a new Article 15*bis* to the Statute.