



**Cour
Pénale
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**International
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Court**

Le Bureau du Procureur
The Office of the Prosecutor



Mrs Fatou Bensouda
Prosecutor of the International Criminal Court

Working Meeting to Strengthen Cooperation with the International Criminal Court – High-Level Dialogue Session

Permanent Council of the Organization of American States
Committee on Juridical and Political Affairs

Checked against delivery

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Mr Chair, Ambassador Josué Fiallo,
Director of the OAS Department of International Law, Mr Dante Negro,
President of the Assembly of States Parties to the Rome Statute, Ms Silvia Fernández De Gurmendi,
Former Judge of the International Criminal Court, Ms Olga Herrera Carbuccion,
Member of Parliament of the Republic of Chile, Mr Tucapel Jiménez Fuentes,
Excellencies,
Ladies and Gentlemen,

- It is a pleasure to address you for the first time at this traditional technical meeting of the Committee of Juridical and Political Affairs of the Permanent Council of the Organisation of American States (“OAS”). Coincidentally, it will also be the last time in my capacity as the Prosecutor of the International Criminal Court (“ICC” or the “Court”), as my term is nearing its end in just two weeks’ time.
- I would like to thank the chair of the Committee, Ambassador Josué Fiallo for the kind invitation. I wish we could have met “live”, but alas, we are still struggling with the COVID-19 pandemic, and its consequences. For many States present here the pandemic has caused an enormous human tragedy, and I wish to express my deep condolences for the victims and those who may have lost loved ones.
- I would like to begin my remarks by thanking the States participating in this forum for the commitment, support and cooperation extended to my Office throughout my mandate.
- Indeed, we are meeting today in the context of a dedicated technical meeting seeking ways to strengthen cooperation with the ICC, a topic of crucial importance, which also is firmly rooted in the resolutions adopted by the OAS General Assembly since 2003 to promote cooperation between the OAS and the Court.
- Without cooperation, the Court could not function. Luckily, during my nine years of tenure, I have enjoyed generally a very good level of cooperation from the States parties to the ICC, including those States that are members of the OAS.
- Currently, the Americas region has 29 States Parties to the ICC. Your region has not only played a key role in the establishment of the Court, but also in its development and the evolution of international criminal justice more generally.

- Looking back to the very inception of the Court, it was indeed an OAS State member, Trinidad and Tobago, who at the United Nations General Assembly in 1989 revived the idea of establishing a court, triggering the process that eventually led to the adoption of the Rome Statute.
- My Deputy addressed this forum three years ago in 2018, and gave an outlook on our activities and discussed issues of cooperation and complementarity, as founding principles of the ICC. Today, it is an opportune timing to provide some updates regarding our recent activities but also take stock of some of our main successes over the past years, as well as highlight areas for potential increased cooperation between OAS member States and the ICC.
- Preliminary examinations are one of the core activities of my Office. Through the independent and impartial analysis we conduct, based on various sources available to us, we seek to establish the facts regarding various allegations of Rome Statute crimes my Office receives, and to see whether a criteria is met for my Office to open an investigation in a given situation.
- Last year, I concluded the preliminary examinations with respect to the situations in Iraq/UK, Nigeria and Ukraine, the latter two with the determination that the criteria for opening investigations are met. We also concluded the Palestine preliminary examination and announced the opening of an investigation, having obtained a judicial ruling on the scope of the Court's territorial competence.
- We are also progressively advancing our ongoing preliminary examinations regarding the situations in Bolivia, Colombia, Guinea, the Philippines, and Venezuela I and II.
- With regard to Colombia and Guinea, we have started to develop a benchmarking framework with an aim to guide future decision-making in the preliminary examination.
- My hope is to provide further information and clarity on the status of these dossiers as part of my end of term communication, while we are also closely engaging with my successor, Mr Karim Khan, in a series of transition talks, including regarding our ongoing activities.

- At the same time, I should add, several new situations that might merit the opening of preliminary examinations are already knocking on our door as well. This is, I fear, the reality of the Court's mandate, and the result of the current state of criminality that exists in the world as it concerns Rome Statute crimes and jurisdiction.
- We are in parallel conducting active investigations – meaning: collecting evidence in order to establish those most responsible for the commission of the crimes alleged – in nine situations, including in Libya, Georgia and Bangladesh/Myanmar, where we have advanced quite well, as well as in Mali, the Central African Republic and Darfur (Sudan), where we have managed to bring trial cases before the Chambers.
- In Afghanistan, we are currently engaged in a helpful process of consultation with the Government of Afghanistan in light of its request to the Office to defer to its efforts to address Rome Statute crimes domestically.
- You may have observed the confirmation of charges hearing, which started last week concerning the case against Mr Abd-Al-Rahman – such an important moment nearly 14 years since the Office issued a first arrest of warrant in the situation in Darfur, Sudan. In my last briefing before the Security Council next week, on 9 June, I will provide additional updates on this situation, which currently sees a lot of momentum to move ahead in a productive manner. In fact, this morning I returned from my visit to Sudan. This was my last mission to a situation country as Prosecutor and I am profoundly grateful for the opportunity it afforded me to interact with affected communities. The warm welcome I received, along with my team, was a keen reminder of the hopes of countless victims of atrocity crimes towards the ICC as their last recourse.
- During my term, the Office has achieved a number of important litigation results and landmark decisions, such as the ruling delivered in the Myanmar/Bangladesh situation confirming the Court's jurisdiction over the alleged deportation of Rohingya people, and the appellate ruling on head of State immunity in the *Al Bashir* case in the Darfur (Sudan) situation.
- We have also secured important convictions that do not only contribute to delivering justice to victims of mass atrocities, but also to the development of international criminal law jurisprudence.

- For example, in the *Ntaganda* case, emanating from our investigations in the Democratic Republic of the Congo, my Office secured the conviction of the Accused on all counts, including the crime of rape against women and men and, for the first time in the Court's history, the crime of sexual slavery. Through this case, we have contributed to emerging jurisprudence by extending the protection under international humanitarian law to also cover crimes committed by an armed group against members of their own group.
- Earlier this year we also obtained an important conviction in the *Ongwen* case, for the brutal and terrifying campaigns of attacks on the civilian population, sexual slavery, forced marriage and forced pregnancy, murder, mutilation, torture, pillaging, abduction and other atrocities by the LRA with Mr Ongwen as one of its senior leaders – rendering accountability for the horrific consequences of his actions for the civilian population in Uganda, including for women and children. In May of this year he was sentenced to 25 years of imprisonment.
- And the *Al Mahdi* case, following our investigations in the situation in Mali, sent a clear message that the intentional attacks against historic monuments and buildings dedicated to religion is a serious crime under international law.
- My Office is currently finalising a policy paper devoted to this topic, which shall be launched prior to my departure. We have received much interest and great input on the draft policy from UNESCO, States Parties, NGOs, practitioners and academics. We are equally finalising a policy on situation completion, the last in a 'trilogy' of policies, following that on preliminary examinations and on case selection and prioritisation.
- There are also the two earlier thematic policy papers on the Sexual and Gender-based Crimes (SGBC) as well as on Children, both matters which I also elevated as strategic goals when I took office in 2012. In addition to our successes in court and other achievements, I consider the promulgation of policy papers an important part of my legacy as Prosecutor. We also currently have several cases in trial and pre-trial stages, representing one of the busiest periods in the life of the Court.
- But all these achievements would not have been possible without the strong, steadfast support and cooperation of States Parties, including many States that are members of the OAS. This has manifested itself at the practical level of judicial cooperation and

support but also through the conclusion of cooperation agreements, or in the form of seminars promoting cooperation, universality or just general awareness of the Court and its functioning. All this is very important to ensure that the Rome Statute system of international criminal justice continues to be properly rooted in the domestic legal systems in the continent.

- I mentioned that in general, my Office has received a good level of cooperation from States and other stakeholders. However, this is not the full picture – we have also faced resistance and refusal to cooperate, and even frontal attacks toward our activities – usually by the mere virtue of our mandate. In these circumstances, the importance of States’ principled political support to the Court and its mandate is immense. One recent example of such support was the initiative co-led by Costa Rica in June last year, resulting in the statement of 67 ICC States Parties, underlining their unwavering support to the Court in the face of coercive measures directed to me and my staff for simply conducting our mandated activities. This expression of support, among many others, was a source of great encouragement and solidarity, and no doubt also played its part in helping to resolve the matter.
- I am pleased to note that since those events, my Office has recently embarked on a reset with the new US administration based on mutual respect and constructive dialogue.

Excellencies,

Ladies and Gentlemen,

- Given the topic of this meeting, let me conclude my remarks by highlighting few ideas for additional practical and actionable measures which States can take to further strengthen cooperation with the Court.
- States can contribute by raising awareness, enhancing understanding of the Court and ensuring support in multilateral fora such as the United Nations, as well as in your regional and sub-regional settings.
- Where possible, within our rather limited resources, the Court is always willing to consider contributing to such efforts, including by any specialised judicial or legal networks or in bilateral meetings. While the COVID-19 pandemic has limited us from

conducting our usual meetings, the virtual format has also created new possibilities to engage, in a cost-effective way.

- The Office, in the coming years, will seek to strengthen that support and expand its relations and cooperation, also taking into account the steadily increasing number of situations that have the Office's attention, including in the region.
- States can also help create political will and an environment conducive to the effective discharge of our mandate. Such efforts may also be undertaken in concert or with the assistance of civil society and other partners. In this context, consultations, and fluent and direct dialogue with the Court to inform positions and messages is key.
- Also, States can cooperate by ensuring that the Court receives the resources it needs to effectively execute its mandate. As I have often said, what has been the most significant challenge during my term has been the incompatibility of the mandate with the resources allocated to it.

Excellencies,

- During my term as the Prosecutor of the ICC, I have done everything in my power to honour the trust and the responsibility bestowed upon me by the States Parties by implementing the crucial prosecutorial mandate to the best of my ability, always in accordance with the legal confines of the Rome Statute, with integrity, independence and impartiality and the plight of victims and affected communities in mind and I will continue to do so even in these final weeks until my term runs out. I have not allowed the Office's legal work and mandate to be politicised from any source.
- I would like to express my gratitude, once more, for the strong cooperation and support I have always received from the States in this region. I trust that similar support will be extended to my successor, and the ways to promote and deepen the cooperation with the Court will be further explored with him once in the Office.
- Thank you for so patiently listening to me, I look forward to our discussions. | OTP