
*60th Meeting of the Council of Europe Committee of Legal Advisers
on Public International Law (CAHDI), on Wednesday 24 March
2021 at 4.00pm*

*Presentation by the Registrar of the International Criminal Court,
Mr Peter Lewis, on
“Developments concerning the International Criminal Court”*

Excellencies, distinguished delegates,

It is a great honour to be part of this discussion today and present you with an overview of the Court's latest developments and challenges as we move forward.

At a time when multilateralism and the rule-based international order are being challenged, increasing support for international criminal justice is a reinvigorating, and necessary move to set us all in the right track to peace, justice and cooperative relations. With that in mind, I believe this opportunity to share with you today the work of the Court is very relevant, and I thank Madam Chair, Alina Orosan, for the kind invitation.

As the ICC gets close to reaching the mark of 20 years of operations, it is inevitable to look back and appreciate how much has been achieved.

In international law we must look at the big picture. And the big picture that is emerging of the ICC, shows a mature and responsible organization. A court that takes seriously its independence. A court that goes to great lengths to ensure that the rights of suspects and accused are meticulously respected. A court that accords unprecedented attention to the interests of victims by facilitating their participation in proceedings with the help of legal aid, outreach, field presence and language support. A court that balances reparative and retributive justice by ordering reparations as well as implementing broad assistance programmes through a Trust Fund for Victims. A court whose track record demonstrates impartiality, with cases ending up in convictions as well as acquittals, depending on the strength of the evidence. A court that has been joined by 123 States Parties with a strong commitment to putting an end to impunity for these serious crimes, and many of which have also referred their own situation to the ICC Prosecutor for investigation.

All in all, I have no hesitation in stating that over the last almost two decades of operations, the ICC has amply demonstrated that it has earned its place as a critical pillar of the rules-based international order. While embracing this place, we must keep striving to improve in the performance of our mandate to effectively and efficiently deliver impartial and independent justice.

Although looking at the past is a good exercise to remind ourselves of our origins and our mission and to reflect on lessons learned, the present moment demands our utmost attention as we begin to enter a new period for the Court.

Not only it is a new period for the fact we have welcomed six new judges to the Court and a new President earlier this month, prepare to intake a new Prosecutor, or because the ASP has welcomed a new Presidency, but also because we are stepping into a new level of judicial workload.

Following a period of transition over the past three years, in which the Court dealt with the legacy of cases finishing in the courtroom, such as the Bosco Ntaganda and the Dominic Ongwen cases, and experienced a period of pause while preparing for the new set of caseload coming along, the Court now faces the prospect of having up to five trials running during the same period. One case entered into trial stage in 2020 and another case's trial started this year; in parallel, subject to the confirmation of charges phase this year, we could also have three additional trials starting at some point in the next three years. As a result, we foresee a new busy chapter for the Court's judiciary who will have to handle charges ranging from the killing of civilians to the use of child soldiers, as well as the destruction of cultural property and sexual and gender-based violence in conflict.

The expansion of our judicial work has been accompanied by a significant raise in the number of victims participating in cases before the Court. In the Lubanga case, the Court's very first case, we had only 129 victims participating. In the Bosco Ntaganda case, where a guilty verdict was reached at the trial stage in 2019, we have 2,129 victims. In the Dominic Ongwen case, the number of participating victims is 4,095. The recent CAR II cases are very big cases too and we today have a trial ongoing with two accused as well as another case with the suspect awaiting the confirmation of charges. The Darfur situation represents yet another level of victimization with an estimated 2,7 million persons displaced, and 300,000 persons killed in the conflict as a whole. This means that we are potentially looking at a high level of victim participation and engagement with the affected communities.

It is important to note that the change of power in some of our situation countries deeply affects the local and regional political dynamics, which in turn creates renewed opportunities for arrest and surrender of ICC suspects. Despite the difficult circumstances imposed by the Covid-19 pandemic, we were able to secure two arrests in 2020 and one in this year, which is an incredible feat for the organization, and demonstrates we are learning. Nevertheless, there is still work to be done as there are currently 12 suspects at large and, as investigations progress, this number may increase.

As always, we call all States Parties to cooperate with the Court on this fundamental matter. Being established without enforcement powers, the ICC heavily relies on Member States to accomplish the essential mandate entrusted to it by the founding States of the Rome Statute. At the same time, while speaking to an eminent audience such as this, I could not let the opportunity pass without inviting and encouraging third States to also cooperate with the Court in our mission to put an end to impunity for the most serious crimes of concern to the international community and bring justice for victims. This call is all the more pertinent today, in this forum, given the Court's growing activities in regions relevant to you, as members and observers to the Council of Europe. Efficient, effective and far reaching cooperation is, and will continue to be, a key factor in our capacity to deliver impartial and independent justice.

While the Court as a whole remains fully committed and engaged in handling the increase of judicial activities, which could be said to be the core of our work, we are also dealing with important new matters, all of which amidst an ongoing global pandemic. While most of them we welcome, such as the Review Process, we regret to be in the position we are now facing coercive

measures imposed on our Prosecutor and a senior official from her Office by the former US Administration through Executive Order 13928 and which continue to be in effect.

Indeed, 2020 was a year during which we faced the most extraordinary challenges, like many of you. While our response to COVID-19 would by all appearances be the most significant development to discuss, in 2020 we faced a second and, in many ways, a more profound challenge. We saw the US Executive Order, which was issued in June 2020, and the ensuing designations, as an unprecedented and extremely serious step taken by the then-US administration against the Court, its personnel, and against international justice and accountability.

As we came to understand the full impact of the US Executive Order, we realised our vulnerability as an institution and as individuals. But as we discovered, we were not alone. We have a secure home and a safe haven in the Netherlands; and we have enormous political support and practical support from our States Parties, both in public statements and quiet diplomacy.

While we hope that we are heading towards a better situation, the Order and the designations remain in force, which is why we believe the priority now is to focus on the delisting of the two individuals, and the rescinding of the Executive Order.

On another topic, and on a more positive note, the Court has also been occupied with its Review Process.

At the 2019 Assembly of States Parties, States adopted a resolution by which a group of nine independent experts were tasked with “identify[ing] ways to strengthen the International Criminal Court and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning (...)” and, to this end, making “concrete, achievable, actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole.”

The final report of the Group of Independent Experts was submitted on 30 September 2020 and it contained 384 recommendations touching upon the most varied areas of concern to the Court’s work.

When talking about the Independent Experts Review (IER), I think it’s fundamental to recall that the idea to conduct such a review was born from a discussion amongst the Court principals and States Parties, and we all shared the view that it was a good idea to embark on this exercise. The Court itself has supported this initiative from the very beginning and we continue to embrace the process in every step of way.

Just like any other institution, the Court is not perfect and, aware of how much room there is to learn and grow, it keeps striving for continuous improvement.

We are now actively and positively engaging with the IER report. At this stage, we are carefully analysing the recommendations and providing our views on these to the mechanism set up by States Parties to propose a way forward in their implementation.

Excellencies, distinguished delegates,

Alongside these more recent developments, there are three other areas which we have continuously put our efforts into, since day one. These are cooperation, universality and the adoption of national legislation implementing the main provisions of the Rome Statute on crimes and on cooperation. As hard as we work to achieve them, effective and efficient cooperation, universality of the Rome Statute system and corresponding implementing national legislation world-wide will never become a reality without serious commitment from States, parties or not. This is the reality we must strive for.

As already identified in the 2016 resolution of the Council of Europe Parliamentary Assembly, named “Co-operation with the International Criminal Court: towards a concrete and expanded commitment”¹, we have not yet reached universal jurisdiction of the Rome Statute. Although we now have 123 States Parties, having welcomed Kiribati to the Rome Statute system last year, there is still work to be done in this regard. In the Council of Europe context, the great majority of its member states are States Parties to the ICC, making this one of the most well-represented regions in the Assembly of States Parties. However, six members are not yet parties to the Rome Statute [*Armenia, Azerbaijan, Monaco, the Russian Federation, Turkey and Ukraine. In addition, one Council of Europe observer State (the United States), one State with observer status with the Assembly (Israel) and two States whose parliaments have partner for democracy status with the Assembly (Kyrgyzstan and Morocco) have not yet ratified the Rome Statute*]. The Court and my office stand ready to continue to engage with these countries in order to raise awareness about our mandate and our activities, build trust and collaborative bridges in the areas of criminal justice, victims participation, witness protection, judicial cooperation; and aim towards welcoming them as new members to the Rome Statute family in the near future.

Moreover, the 2016 resolution also called on the member States to “establish in their national legislation the mechanism to efficiently co-operate with the ICC as well as to sign the so-called “voluntary co-operation agreements” with the ICC”.

Indeed, implementing national legislation concerning the Rome Statute is a key instrument to enact effective and efficient cooperation mechanisms with the Court, thus enabling successful interventions from it. The lack of procedural predictability and legal certainty amounts to cumbersome or unclear national processes which trigger the disproportional use of precious resources, time and efforts, for both States and the Court.

Furthermore, adequate implementing legislation at the national level, which prescribes a clear legal basis for cooperation, covering all relevant aspects of potential requests, and distributes roles and responsibilities at the domestic level, will help governments ensure that they can expeditiously respond to requests for assistance and cooperation coming from the Court pertaining to crucial areas such as arrest and surrender, tracing and recovery of assets and voluntary cooperation agreements.

While the Rome Statute regulates relations between the Court and States Parties, it does not cover all contingencies. Therefore, voluntary cooperation agreements, which constitute negotiated bilateral agreements between the Court and States Parties, are an essential tool for regulating successful cooperation in all aspects of the Court’s activities, including protection of victims and

¹ Doc 14136 (22 September 2016) Co-operation with the International Criminal Court: towards a concrete and expanded commitment. Rapporteur: Mr Alain Destexhe, Belgium, Alliance of Liberals and Democrats for Europe.

witnesses, enforcement of sentences, interim release and release of persons. As the timely delivery of state cooperation has a direct effect on the efficiency of investigations and trials, the respect for due process and rights of parties and participants, and the cost of trials, States Parties have a significant legal and financial interest in establishing a domestic comprehensive legal and logistical network of support to ensure appropriate cooperation with the Court. In brief, concluding voluntary cooperation agreements is as a concrete signal of commitment to the ICC and a critical contribution to the execution of its mandate. Following a year in which no new agreements have been concluded, I am confident in 2021 the Court and States can benefit from meaningful engagement in this area.

Excellencies, distinguished delegates,

Although it is only through effective action from each state that implementing legislation and cooperation mechanisms are set up, regional and international organizations have an important role to play in incentivizing and supporting this process.

In this regard, we welcome the efforts from the Council of Europe concerning criminal justice, demonstrated for instance in the 2016 Resolution I just mentioned, Resolution 2038 (2015) and Recommendation 2063 (2015) on the promotion of witness protection, as well as in Resolution 1785 (2011)², by which the Assembly encouraged states to “continue to reform their national legislation by bringing it into line with international standards and with a view to further facilitating war crime trials, including the transfer of war trial proceedings”.

Moreover, we highly appreciate CAHDI’s support for the International Criminal Court. Since early days, the Committee has regularly underlined the key part to be played by Council of Europe member states in implementing and adopting the Statute of the International Criminal Court. As a result of this constant evaluation, some important topics have been identified³, including (i) states’ prime responsibility for implementing the Rome Statute and prosecuting the crimes covered by it; (ii) the adoption of appropriate national legislation and domestic procedures for the application of the Statute; (iii) cooperation with the Court, in particular concerning the execution of sentences, the surrender of individuals at the request of the ICC and the enforcement of the Court’s judgments and (iv) making the immunities regime under national and international law compatible with the Rome Statute.

As it turns out, all of these topics remain pertinent today and are worthy of our collective attention and joint efforts.

We are extremely grateful for the Council of Europe’s work in support of these areas and cannot stress enough how important it is for advancing the Rome Statute principles and enabling the Court’s success in ending impunity for atrocity crimes and bringing justice for victims. As organizations who share important common values, above all the promotion of the rule of law and the protection of human rights, it is my belief we can all benefit from one another’s efforts.

As the success of the ICC is directly linked to complete and prompt state cooperation, you can see why universality and implementing national legislation represent key areas of work which

² Resolution 1785 (2011) on the obligation of member and observer States of the Council of Europe to co-operate in the prosecution of war crime

³ <https://www.coe.int/en/web/cahdi/developments-concerning-the-international-criminal-court>

deserve priority status. In underlining the Council of Europe's means and legitimacy to carry on playing an active role as supporter to the Court, we hope we can continue to count on your efforts in these matters, as well as in others I had the opportunity to highlight here today.

I thank you and I look forward to hearing your views during our discussion.