Opening of the Judicial Year of the International Criminal Court
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Keynote address on changes and developments in the Netherlands in connection with the mandate of the International Criminal Court
Dineke de Groot, President of the Supreme Court of the Netherlands

Your Excellency, Judge Tomoko Akane, Mrs. President of the International Criminal Court,
Other distinguished representatives of international and regional jurisdictions, and of national jurisdictions of States Parties to the Rome Statute,
Excellencies,
Ladies and Gentlemen,

It is a pleasure and an honour to address you today on the occasion of the opening of the Judicial Year of the International Criminal Court, an institution with strong relations to the United Nations, to the international community acting against impunity of the most serious crimes of concern to the international community as a whole, to national courts, and to the people for whom the values of humanity are defended.

As the president of a national court, the Supreme Court of the Netherlands, it so happens that I have come to underline our strong institutional proximity to the ICC, while we also work in close physical proximity to one another – here in The Hague, the international city of peace and justice. For many years now, the International Court of Justice, the International Criminal Court and the Supreme Court of the Netherlands invite in turns, within the framework of 'The Hague Judicial Club', our members and members of other international tribunals in the Hague to meet one another and to reflect on common topics of administering justice by courts, with the kind support of the mayor of The Hague.

The mandate of the ICC to try persons who are accused of the most serious crimes of concern to the international community – the crime of genocide, war crimes, crimes against humanity, and the crime of aggression - is a mandate which is based on public international law.
Nowadays, people live in a global constellation with a level of armed conflict and violence the world has not seen since the Second World War. Virtual reality coexists with reality, and truth-seeking is undermined. It is as important as it has ever been that international treaties and national legislation uphold and further the rule-of-law-based democracies and protect the fundamental rights of the people.
Providing for such treaties and legislation is up to politicians, who have a primary role in preventing the repetition of the age-old story in which societies collapse onto themselves in cycles of threats, violence, exploitation, and abuse. Social collapse into those cycles brings with it a high risk that the most serious crimes of concern to the international community may occur.
Enforcing compliance with the law ultimately goes through courts.

Reducing impunity for the most serious crimes of concern to the international community as a whole – from now on, I will just refer to international crimes – is a comprehensive activity. The commitment to do so through international law, by which states, similar entities, and people are bound, is not yet so old. For instance, my Court has existed since 1838, and its predecessors date back to the time of Grotius. Nevertheless, in the Netherlands, legal development in this area until 2002 was rather limited, considering the developments from 2002 onwards, when the Rome Statute entered into force and established the ICC. Developing this form of binding international law builds on experiences with regional war crimes tribunals and on a longstanding tradition of mutual legal assistance in civil and criminal matters. The work on effectuating this binding international law is work in progress, and it is far from easy. It requires apart from legal expertise, courage, wisdom and faithfulness to humanity. But the mere existence of this body of binding international law supports the community of states to implement it, and to encourage greater acceptance of its value to people. In doing so, the use of the concept of a proper administration of justice – a familiar element of the tradition of mutual assistance in criminal matters – is clearly recognisable.

I would like to share some observations on changes and developments in the Netherlands in connection with the mandate of the ICC. In the Netherlands, the Rome Statute gave rise to more coherent legislation on jurisdiction and individual criminal responsibility in cases with an international element, and on the cooperation of national authorities with the ICC. The principle of complementarity in the Rome Statute is an incentive for further developments with regard to investigations and prosecutions, resulting in trials and sentencing. In general, we could see the complementarity principle as part of the concept of a proper administration of justice evolving into more concrete terms.

In the Netherlands, as well as in many other jurisdictions, traditionally, a humanitarian concept of a proper administration of justice underpins legislation on the cooperation between states in criminal cases with an international element. It is rather an open concept which promotes the balancing of interests in the individual case. This concept includes aspects like concentrating the prosecution at the most appropriate time and place, complying with the principle of *ne bis in idem*, and finding the most suitable places for prosecution, trial and enforcement from the perspectives of the state where an international crime took place, the detained defendant or convicted person with needs for socialisation, and victims and societies who need to be able to observe that justice is being done. The concept also entails aspects and interests like the enforcement of the law, fair trial, truth-finding, social acknowledgement, reconciliation, and restorative justice.

In the era before the Rome Statute, it was already common in the Netherlands to pay attention to the concept of a proper administration of justice when dealing with criminal cases with an international element. This was not only done by the legislature, but also by the police, the prosecution and the courts. The Rome Statute and subsequently the ICC have encouraged increased attention for this concept. They have also directed attention towards a more systematic legal approach toward international crimes. The Rome Statute and the ICC support the sharing of relevant knowledge and experience and they further legal certainty with the aim of reducing impunity of international crimes.

In creating such legislation, the Dutch legislature acknowledged that according to the principle of complementarity embedded in the Rome Statute, the primary responsibility for preventing impunity for suspects of international crimes lies with the States Parties to the Rome Statute. The Dutch legislature also expressed that, as the host country of several international tribunals and international courts in The Hague, the Netherlands has a special role and responsibility in preventing impunity for persons guilty of international crimes. In this context, domestic rules for jurisdiction and (individual) criminal responsibility[1] are aligned with those of the Rome Statute. With the so-called International Crimes Act of 2003, the possibilities for the investigation, prosecution and trial of international crimes in the Netherlands have been significantly expanded.[2] For several crimes committed before the International Crimes Act came into force, the 1952 Act on War Crimes is also worthy of note. The 1952 War Crimes Act established individual criminal responsibility for and universal jurisdiction over war crimes, taking into account obligations under the 1949 Geneva Conventions.

A special division of Dutch Public Prosecutor's Office deals with the prosecution of international crimes. The division cooperates for instance with the international crimes team of the Dutch police. Cases originate from different sources, like - for example - individuals or (non-governmental) organisations who report a criminal offence, a legal aid request from a tribunal, or immigration authorities who have serious reasons for considering that a person seeking asylum has committed a crime against peace, a war crime, or a crime against humanity.

Now I would like to provide some examples of cases that have been brought before Dutch courts, to further demonstrate changes and developments of the law in the Netherlands on reducing impunity of international crimes, related to the mandate of the ICC.

In contrast to the current approach of the Dutch International Crimes Act, which implements the Rome Statute into national law, previous Dutch legislation was treaties-oriented. An early example of this earlier approach can be found in a Dutch case concerning Desi Bouterse, former president of the Republic of Suriname, who passed away last month. In 2000, a Dutch court of appeal ordered, at the request of interested parties, that the Public Prosecutor's Office prosecute Bouterse for his involvement in the torture and subsequent murder of 15 opponents of the military regime led by Bouterse, in December 1982 in Suriname. Suriname was a Dutch colony until it gained independence in 1975. The court of appeal considered the prosecution of Bouterse in the Netherlands appropriate because his prosecution in Suriname or elsewhere in the world was not to be expected in the near future and because of the close historic ties with Suriname. A large population from Suriname lived in the Netherlands and at least one of the victims was a Dutch national.[3]

At the time of that order of the court of appeal, legislation in the Netherlands provided extraterritorial, universal jurisdiction for torture based on the Act to Implement the Torture

[1] See on the concept of (individual) criminal responsibility e.g. Sliedregt, Elies van, Individual criminal responsibility in international law, Oxford [etc.], Oxford University Press, 2012.
[2] Kamerstukken II 2001/02 28337, nr. 3; Kamerstukken II 2009/10, 32475, nr. 3, p. 1-2 (in Dutch).
[3] Judgmenet of the Appeal Court Amsterdam of 3 March 2000, ECLI:NL:GHAMS:2000:AA5014 (in Dutch).

Convention.[4] However, as the Act had only entered into force in 1989, the legal basis of the prosecution had to be, according to the court of appeal, customary international law combined with a retroactive application of this law.
The procurator-general at the Supreme Court filed a request for cassation in the interest of the law, seeking annulment of the court of appeal's decision. The Supreme Court ruled in 2001 that ,indeed, the principle of legality, which is part of the Constitution and the Criminal Code, prohibited the retroactive application of since established universal jurisdiction over torture, regardless of whether customary international law provided for universal jurisdiction, as the legislature had not explicitly provided for the retroactive application of the Act to Implement the Torture Convention.[5]
Later, Bouterse was prosecuted in Suriname. This led to an irrevocable conviction for his involvement in the so-called December killings, by the court of appeal of Suriname in 2023.

Six years after the Supreme Court judgment of 2001 in the Dutch case concerning Bouterse, the finding in that judgment that 'no retroactive application to the expansion of the jurisdiction' had been provided for by law, was followed in another case. After the Dutch Public Prosecutor's Office had initiated the prosecution of Mpambara, who resided in the Netherlands where he had requested asylum, for war crimes and torture in Rwanda in 1994, the Prosecutor of the Rwanda Tribunal requested that the suspect also be prosecuted for the crime of genocide. This part of the prosecution was later ruled inadmissible. In its judgment of 2008, the Supreme Court decided that the fact that the accused resided in the Netherlands, was not sufficient for jurisdiction, because the International Crimes Act, allowing to prosecute somebody residing in the Netherlands for genocide committed elsewhere, only came into force in 2003. This time, the Supreme Court added that neither in the International Crimes Act, nor elsewhere, retroactive effect was accorded to this jurisdiction provision, even though, had the legislature wished to do so, also in view of Article 7(2) ECHR, no rule of law would have precluded that retroactive effect.[6]

This last remark did not go unnoticed by the legislature. In 2012, a change in the International Crimes Act added universal jurisdiction for genocide committed as of 24 October 1970,[7] on which day the Act to implement the Genocide Convention came into force in the Netherlands.[8] This dialogue between the legislature and the court demonstrates the approach of the Dutch International Crimes Act, aiming to not just implement the Rome Statute in national law but also to reduce impunity of international crimes in connection with the mandate of the ICC.

The increased attention for the investigation, prosecution and trial of crimes which are included in the Rome Statute and the national International Crimes Act is visible in other

[4] Uitvoeringswet folteringverdrag, Stb. 1988, 478 (in Dutch).
[5] Judgment of the Supreme Court of the Netherlands of 18 September 2001, ECLI:NL:HR:2001:AB1471 (in Dutch).
[6] Judgment of the Supreme Court of the Netherlands of 21 October 2008, ECLI:NL:HR:2008:BD6568 (in Dutch). Mpambare was given a life sentence for war crimes by the Appeal Court The Hague 7 July 2011, ECLI:NL:GHSGR:2011:BR0686 (in Dutch). The Supreme Court rejected the appeal: HR 26 November 2013, ECLI:NL:HR:2013:1420 (in Dutch).
[7] Stb. 2011, 605 added art. 21 par. 4 (in Dutch). Kamerstukken II 2009/10, 32475, nr. 3, p. 2 (in Dutch).
[8] With the entry into force of the Uitvoeringswet genocideverdrag, Stb. 1964, 243 and Stb. 1970, 481 (both in Dutch).

court judgments which are published on the website of the judiciary of the Netherlands in open access. Generally, since 2000, there have been cases in the Netherlands on genocide, crimes against humanity, war crimes and torture. Cases concern international crimes in several countries, like Afghanistan, Ethiopia, Iraq, Liberia, Rwanda, Sri Lanka and Syria. The first irrevocable conviction based on universal jurisdiction dates from 2004 and concerns acts of torture in the Democratic Republic of Congo in 1996.[9] The Dutch court applied the definition of torture in the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as enacted in Dutch law in the Act to Implement the Torture Convention.[10] Recently, a Dutch first instance court convicted a Dutch national for enslavement, while resident in Syria. The victim was a Jezidi woman. This was qualified as a crime against humanity.[11] The court applied the International Crimes Act and the definition of crimes against humanity as stipulated in the Rome Statute.

Sometimes, cases are brought before the Supreme Court, following judgments of first instance and appeal courts. This occurred, for instance in 2017, in five cases against activities of the Liberation Army of Tamil Eelam, publicly known as "Tamil Tigers."[12] The individuals were convicted of participating in an organisation with the purpose of, in short, committing international crimes in Sri Lanka, committed as part of a widespread and/or systematic attack directed against the (Tamil) civilian population. These cases re-affirmed the principle that in a case of internal armed conflict where international humanitarian law applies, the application of national criminal law is not excluded.[13]

In more recent case law, notably in the realm of terrorist offences, we can also observe various 'hybrid' prosecutions. These are cases which combine one, or more, prosecutions based on the International Crimes Act with prosecutions based on Dutch criminal law, involving offences not considered international crimes and not included in the Rome Statute. In such a case, the Public Prosecution Service may – for example – combine charges for the crime of participating in an organisation with the intent of committing international crimes in violation of Dutch legislation following the Rome Statute, with charges for the crime of participating in an organisation with the intent of committing terrorist offences. An example can be provided by a case in which a person was convicted by the appeal court of The Hague and sentenced to seven years in prison for participation in an organisation with the aim of

[9] Judgment of the Court of Rotterdam, 7 April 2004, ECLI:NL:RBROT:2004:AO717 (in Dutch).
[10] This definition of torture has to be distinguished from the definition of torture as a crime against humanity (Art. 7 paragraph 1 (f) Rome Statute; Art. 4 paragraph 1 sub f Wet internationale misdrijven/International Crimes Act 2003) and torture as a war crime (Art. 8 paragraph 2 (a) (ii) and Art. 8 paragraph 2 (c) (1) Rome Statute; Art. 5 par. 1 sub b and Art. 6 par. 1 sub a, Wet internationale misdrijven/International Crimes Act 2003). Kamerstukken II 2002/03, nr. 6, p. 25: "Op deze wijze bleek het immers beter mogelijk, ook de verschillen tussen de beide begrippen te benadrukken, die van belang zijn bij de uiteindelijke kwalificatie als «marteling als misdrijf tegen de menselijkheid», «marteling als oorlogsmisdrijf» en het zelfstandige internationale misdrijf «foltering»."
[11] Judgment of the Court of The Hague of 11 December 2024, ECLI:NL:RBDHA:2024:20594 (in Dutch). The Netherlands has joined the Joint Investigation Team (JIT) that supports proceedings involving core international crimes committed by Foreign Terrorist Fighters against the Yezidi population in Syria and Iraq. Evidence analyzed in the context of the JIT has been used for the prosecution of this case. Kamerstukken II 2023/24, 36410-VI, nr. 106, p. 5 (in Dutch).
[12] Judgment of the Supreme Court of 4 April 2017, ECLI:NL:HR:2017:574; ECLI:NL:HR:2017:575; ECLI:NL:HR:2017:576; ECLI:NL:HR:2017:577; ECLI:NL:HR:2017:578 (in Dutch).
[13] See also: Judgment of the Supreme Court of 7 May 2004, ECLI:NL:HR:2004:AF6988 (in Dutch).

committing terrorist offences, and for violating Common Article 3 of the Geneva Conventions, consisting of assault on personal dignity, in particular degrading and humiliating treatment, in the case of a non-international armed conflict. The accused was a Dutch national who went to Syria in 2014, where he participated in a banned jihadist organisation with the aim of committing terrorist crimes. He also posed on a picture, next to a man who had been hung on a cross, and posted this picture on his Facebook page. The picture was then distributed to a large group of young people in a Dutch city. A final appeal to the Supreme Court of the Netherlands was dismissed.[14]

I would like to conclude with some words on a proper administration of justice as a main element of the cooperation between the ICC and its host state, the Netherlands. International cooperation and judicial assistance are part of the Rome Statute and as such based in international law. As the legislature of the Netherlands indicated, cooperation of national authorities with the ICC is a significant responsibility in view of the common aim of preventing impunity for persons guilty of international crimes. It is even more significant for the ICC's host state who facilitates that lawyers, suspects, witnesses, experts, and the public can come together in order to see justice being done. Earlier this morning, we were able to observe the opening of the judicial year as an occasion to pause and to reflect on the Court's activities and the Court's commitment towards its mandate for the coming year. In a way, the opening of this judicial year may also be seen as an occasion to reflect on the perspectives of solidarity, pragmatism and effectiveness which were leading in the creation of the Rome Statute and ICC's mandate. Both the ICC and national courts play a crucial role in reducing impunity for international crimes, as part of the proper administration of justice. In essence, the national courts and the ICC share common perspectives of solidarity, pragmatism and effectiveness. These three perspectives are inherent to the functioning of the Rome Statute, and they encourage us to move forward firmly, though prudently, towards legal certainty on reducing impunity. Let us keep them in mind in the coming year and stand together for the proper administration of justice.

Thank you, Mrs. President, for the invitation. Thank you all for your attention.

[14] Judgment of the Supreme Court of 5 April 2022, ECLI:NL:HR:2022:499 (in Dutch). The application of common Article 3 was not addressed in the procedure before the Supreme Court. See also the advisory opinions of the Procurator General (ECLI:NL:PHR:2024:1161; ECLI:NL:PHR:2024:1384) (both in Dutch) in cases pending before the Supreme Court.