

**Commemoration of the 20<sup>th</sup> Anniversary of the Rome Statute**  
15-16 February 2018

**Written Statement by Philippe Kirsch:**

The creation of the International Criminal Court was in some ways the culmination of a long process. In others, it was only a beginning.

Even before World War II and the Nuremberg trials, calls were made for the creation of a criminal court of general and prospective jurisdiction, not limited to past crimes. Work towards the creation of such a court began at the UN shortly after its establishment. Yet, it took many decades before the Statute of the ICC was adopted at the 1998 Rome Conference.

This development was made possible as a result of a combination of factors: the end of the Cold War, the shock created by the heinous crimes committed in the former Yugoslavia and Rwanda, and the realization that to be effective, international justice could not simply rely on the creation of a special tribunal every time major crimes were committed. Global access to information and the role of Civil Society were also determinant. The creation of the Court was a historical achievement.

At the same time, the Rome Statute and related instruments were adopted on the basis of limited experience in international justice and none in the kind of court that was contemplated. Because States were extremely cautious regarding the future court, the ICC system that was designed in Rome is overly detailed and complex and even more difficult to change. Those features are the source of many challenges, which can only be met through accumulated practice and gradual adjustments. As difficult as it may be, the Court must make every effort to improve its effectiveness while remaining strictly within the bounds of its constituting instruments.

However, effectiveness does not depend on the ICC alone. The Court also faces different – and worse - problems. Dealing as it does with the most serious crimes in the context of armed conflicts or major internal troubles, it inevitably affects powerful interests. For States and organizations involved in situations brought before the Court, justice and human rights may become less important than the defense of those interests. Hence, frequent efforts to hamper the

operations of the Court or discredit it through deliberately misleading allegations of political motivations on the part of the ICC – unfortunately made easier by regionally uneven ratifications, and even unacceptable attempts to interfere with its judicial independence, contrary to the Rome Statute itself. Similarly, state cooperation which is a fundamental pillar of the ICC system can be deliberately neglected or denied altogether.

Those problems will never entirely disappear but have not stopped the Court from developing and strengthening. Self-serving predictions of major disruptions or mass desertions have not materialized. In parallel, the growth of various types of conflicts and endless commission of associated crimes throughout the world show on a daily basis that the ICC is more necessary than ever. Calls for ICC action in such cases have multiplied. Victims have a voice and a new recourse.

The ICC is an indispensable institution in the long term. Its ability to achieve its historical mission lies in sustained support from those who genuinely believe in international justice when national systems fail to exercise their own responsibilities. Provided that support is maintained and expands, the ICC may be slowed at times but will not be stopped.

I commend the CICC for organizing this launch commemoration of the 20<sup>th</sup> anniversary of the Rome Statute and above all for the support it has consistently given to the Court in so many forms before and after its creation.

-Philippe Kirsch

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on the Establishment of the International Criminal Court  
Former Chairman of the Preparatory Commission for the International Criminal Court  
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