

Excellencies, ladies and gentlemen,

I would like to begin by thanking PGA for their kind invitation to speak here today. I feel honored to be invited to share my thoughts with you on the joint initiative for the creation of a new multilateral treaty for the domestic prosecution of the most serious international crimes, also known as the MLA initiative.

For many years, the Netherlands has been a very dedicated actor in the fight against impunity for crimes of genocide, crimes against humanity, and war crimes. The Netherlands is not only a staunch supporter of, but also the Hoststate to various international criminal courts and tribunals.

Twenty years ago a historic moment took place with the adoption of the Rome Statute. This landmark decision in the fight against impunity paved the way for the creation of the first ever permanent court dealing with core international crimes, the International Criminal Court. Moreover, the influence of the Rome Statute reaches far beyond the ICC alone. It has helped shape other institutions such as hybrid courts, and it has had a huge influence on national policies and legislation concerning core crimes.

An important role in this regard lies with one of the key principles underlying the Rome Statute, the principle of complementarity.

This principle stipulates that the ICC can only step in if States are either unwilling or unable to investigate and prosecute core international crimes. Therefore, it is not the ICC, but States that are the primary actors in the fight against impunity.

In order to ensure that States are up to this task, it is vital that the national authorities have the necessary tools at their disposal to effectively investigate and prosecute these crimes.

It is here that the MLA initiative comes into play and where my presentation will focus on.

The MLA initiative was launched in 2011 by Belgium, Slovenia and the Netherlands. We did so after a group of legal experts and practitioners from all regions of the world concluded that the existing legal framework for core crimes does not provide the national authorities with the proper tools to effectively investigate and prosecute these crimes. To a large part, this gap lies in the fact that existing treaties dealing with these crimes do not contain modern provisions for mutual legal assistance and extradition, if they contain any such provisions at all. Shortly after the launch of the initiative, Argentina joined this Core Group of States, followed more recently by Senegal and Mongolia.

To successfully investigate and prosecute core international crimes cooperation between national authorities is essential as

these crimes are not stopped by borders. Witnesses may have fled to different countries, evidence may be scattered all across the globe, and trials may be held thousands of miles away from where the crimes were perpetrated.

The Netherlands has firsthand experience with how international and complex these cases can be. A case that immediately jumps to mind is the Van Anraat case.

This case evolved around the well-known attack by Saddam Hussein's regime on the Kurdish town of Halabja in the spring of nineteen-eighty-eight.

Mustard gas and nerve agents were dropped on the civilian population, killing an estimated five-thousand people immediately.

Almost twenty years after these events occurred, the Dutch Court of Appeal sentenced the Dutch businessman Van Anraat to seventeen years imprisonment.

He was found guilty of complicity in the committing of war crimes.

Van Anraat had intentionally supplied the chemicals intended for the production of these chemical weapons.

Van Anraat and his Japanese business partner had met in Singapore.

They had delivered the chemicals from Japan to Iraq, via Italy, using an offshore company in yet another State and using a Swiss bank account.

As you might understand, the Dutch investigators travelled all around the world to find and hear witnesses and obtain and go through evidence.

Furthermore, they had to request legal assistance from numerous other States, some of which are not typical partners in more ordinary law-enforcement operations.

Luckily, Dutch authorities were in the end able to obtain the necessary cooperation in this case.

However, a modern and uniform legal framework would clearly have provided for a much better starting position and could have saved considerable time and resources.

For the Netherlands this case was a huge influence in launching the MLA initiative as it clearly indicated that the existing tools for the investigation and prosecution of crimes of genocide, crimes against humanity, and war crimes are insufficient and outdated.

More recently, the Netherlands was once again confronted with the limitation of the existing legal framework, except this time the main issue was not mutual legal assistance but extradition.

It revolved around a case in which the Dutch courts convicted a former member of the Dergue military junta to life imprisonment for arbitrary detention, torture and the killing of opponents of the 1970s revolutionary regime in Ethiopia. The perpetrator had come to the Netherlands in the early 1990's and obtained the Dutch nationality in 1998.

Dutch policy is that the investigation and prosecution of international crimes should, if possible, take place in the country where the crimes were committed. This is where most of the evidence is, where legal professionals are best acquainted with the language, culture and backgrounds of the events and usually where most victims and their relatives reside.

In this case, however, extradition would only be possible with adequate treaty provisions in place, which were lacking. Therefore, the Netherlands had to prosecute the case before the Dutch courts, even though the suspect had already been prosecuted and sentenced in absentia in Ethiopia. To make matters worse, at a certain point, the Ethiopian authorities refused further cooperation to obtain evidence. Fortunately, the public prosecutor was able to build her case with the help from witnesses from the Ethiopian diaspora in Canada and the United States, but, as you can understand, this was far from an ideal situation.

In the last year, tremendous steps have been taken towards the creation of the MLA treaty. Last year October, the Core Group organized a Preparatory Conference, during which 103 participants representing 41 Co-Sponsoring States and civil society unanimously concluded that the MLA initiative can fill the existing gap in the international legal framework. The participants provided invaluable input on what provisions the treaty should include and how to proceed.

It is with great pleasure that I can inform everyone here today that just a few days ago, on the 14th of November, the Core Group of the MLA initiative presented the first draft of the foreseen treaty, the Preliminary Draft Treaty.

With this treaty, the Core Group aims to provide a coherent approach for all States dealing with these matters that, compared to bilateral agreements, enjoys the benefit of added political pressure, making it more difficult for States to refuse requests of mutual legal assistance. Furthermore, it can prove to be a valuable tool for many smaller States that do not have the resources to conclude bilateral agreements with all relevant States.

I would like to make use of this opportunity to invite all States that do not yet support the MLA initiative to do so in order to improve interstate cooperation in fighting core international crimes and ensuring that perpetrators are held accountable.

For those of you belonging to one of the Co-Sponsoring States,
I look forward to welcoming you or your fellow countrymen to
the next Preparatory Conference which will take place next
March in the Netherlands.

I thank you for your attention.