

The International Criminal Court at Work: Challenges and Successes in the Fight against Impunity

International Conference
organised by
Amnesty International, United Nations Association of Germany (DGVN),
German Red Cross, Human Rights Watch
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Talking points
- check against delivery -

Introduction

- Thanks for invitation/thanks to Mrs Lochbihler for warm words of welcome - honour and pleasure to hold keynote speech.
- Commend organisers (German Red Cross, HRW, DGVN, AI) for convening this conference.
- Glad that Germany once again venue of an international event related to ICC, after Nuremberg Conference (25-27 June).
- Warm welcome to all guests from abroad - enjoy Berlin !
- Particular welcome to Ms Fatou Bensouda, Deputy Prosecutor, representing the ICC; will speak after me, share with us thoughts from ICC's perspective.
- Allow me to raise a few issues from perspective of a **state party**.

Renewal of German Commitment to ICC

- “From Nuremberg to the Hague” is title of an exhibition sponsored by our ministry, currently shown on various locations throughout the world;
- Indeed, tragic course of history connected Germany in a particular way to the development of modern international criminal law – would there be a Rome Statute without the IMT Nuremberg ?
- Against the background of history: Germans have come to recognise that
 - most serious crimes of concern to the international community as a whole must not go unpunished;
 - putting an end to impunity for the perpetrators contributes to the prevention of such crimes – and thus to **peace and stability** ! Nuremberg Conference: “Justice and Peace need not to be contradictory forces”.
- **Germany remains committed to Rome Statute & Int'l Criminal Court !**

Nuremberg Conference

- Nuremberg Conference organised jointly by Finland, Jordan and Germany together with a number of international NGOs, such as International Center for Transitional Justice (ICTJ) and Crisis Management Initiative;
- Conference brought together 300 practitioners from 80 countries;
- Nuremberg explored ways of “**Building a Future on Peace and Justice**”;
- during 3 days relationship between peace and justice was heavily debated – which only underlined the necessity and timeliness of this debate !
- Nuremberg offered opportunity for broader perspective on Rome Statute, allowed for first stock-taking and evaluation: Where are we 5 years after establishment of the ICC ?

- Let me summarize a few core messages from the Nuremberg Conference which I consider important for future debate:
 - (1) Analysis of the four situations clearly shows: ICC has **concrete impact** on the ground – ICC already is highly relevant key player;
 - (2) Rome Statute definitely changed the parameters of mediation and peace-building:
 - no more room for blanket amnesties where core crimes are concerned;
 - (3) Justice and peace are not in contradiction to each other – rather they are mutually reinforcing !
- Nuremberg Conference gave mandate to draft “Nuremberg Declaration on Peace and Justice” through group of experts;
 - I firmly believe that added value could be to combine in *one* reference document *various* aspects ranging from justice over peace-building to development;
 - I trust that Nuremberg Declaration will duly reflect the Rome Statute and support its mission to fight impunity for the most serious crimes.

Universality and Integrity of the Rome Statute

- Speaking of “successes and challenges” (subtitle of this conference):
 - welcome Japan’s accession (105th State Party) as great **success**; we were glad to play a positive role at last ASP in this respect; besides positive financial aspects: important to have Asian leading nation on board. Now there is a way “from Tokyo to the Hague” as well.
 - however, **universality** remains basic **challenge** to the Rome Statute; number of state parties still much too low compared with Geneva Conventions and even Additional Protocols thereto.
- Need to be realistic: though majority of UN-MS acceded to Rome Statute only roughly half of world population protected against impunity; unfortunately Asia particularly underrepresented;

- Responsibility for universality lies with both: Court *and* States Parties:
 - (1) Court must prove that it is an effective and impartial instrument of international law;
 - (2) States Parties must continue their diplomatic efforts to promote Rome Statute in third countries;
- EU has been very active in this field:
 - (1) during German EU Presidency demarches in some 20 countries;
 - (2) inclusion of ICC clauses in EU agreements with third countries;
 - (3) integrating ICC in political dialogue (e.g. summits, accession councils).
- Another challenge: to protect **integrity** of Rome Statute;
- Here again Europeans take clear stance:
‘Guiding Principles’ endorsed by European Council in 2002 clearly state that *“Entering into US agreements ... would be inconsistent with the ICC States Parties’ obligations with regard to the ICC Statute ...”*.
- Some wonder whether there is a **shift in US position** on ICC – our first panel will deal with this question.
- Indeed, there are some positive signals:
 - (1) US let pass UN SC Res. 1593 referring Darfur situation to ICC;
 - (2) US agreed to hold informal exchange of views in Brussels on ICC – upon initiative by German EU Presidency;
 - (3) US expressed readiness to consider cooperation with ICC;
 - (4) US relaxed sanctions on countries which refused to enter into BIAs.
- In short: while important differences remain - we see a much better political environment for cooperation with the US in the field of international criminal justice.

Cooperation

- Execution of arrest warrants, relocation of witnesses, providing satellite imagery – just a few examples which illustrate that Court relies on cooperation by states in order to fulfil its judicial functions.
- Consequently, Rome Statute deals with cooperation in numerous articles. Cooperation will certainly become ‘evergreen’, keep us busy in the future !
- Meanwhile States Parties are collecting first experience with cooperation. Cooperation turns out to be both – an objective and a process.
- Some time ago we received Court delegation to discuss issues of cooperation. This exercise was **learning process**, extremely helpful for both sides:
 - a number of relevant German governmental agencies for the first time received first-hand information on the Court’s needs and demands;
 - At the same time Court itself learned what Germany can do – and what not, and what the peculiarities of a federal state are.
- initially amazement on both sides about practical meaning of cooperation – but now picture much clearer. - And yet: we are only at the beginning!
- Apart from technical aspects: cooperation means also **political and diplomatic support** of the ICC. Again, we find ourselves in learning process.
- There may be attempts to abuse of the ICC, to marginalise or even ignore it. When a situation country decides to nominate on a human rights committee a high-ranking official who is wanted by an ICC arrest warrant for the most serious crimes - this is a clear contempt of the ICC, and of large parts of the world community.
- **In this context we urge the government of Sudan to comply with its obligation under SC Res. 1593 to cooperate fully with the ICC and the Prosecutor !**
- However, in some multilateral fora ICC may seem not sufficiently reflected; additional efforts necessary to mainstream ICC into foreign policy, in particular within UN.

- I acknowledge that legal advisors have special role to play here; struggle starts within our own administration, permanent awareness-raising necessary in Foreign Office itself, and in other ministries. This is even more true in the various bodies of the EU.

Victims

- Impunity, universality, cooperation are very important issues; however, in the Rome Statute the word “victims” appears much earlier, already in 2nd para of preamble; Rome Statute not only made for prosecuting criminals – it is made for protecting victims !
- We are glad to see **Victims Trust Fund** become operational and develop programme of projects to support and protect victims.
- **Germany in 2007 again will support VTF with 100.000 €.**

Outreach

- Rome Statute recognizes that
 - *“grave crimes threaten the peace, security and well-being of the world”*
 - putting an end to impunity contributes to prevention of such crimes.
- since peace and justice are inextricably interlinked: Court’s mission of justice must reach out to the communities concerned to bring about peace.
- last ASP endowed Court with additional means for “outreach” - time has come for a first evaluation.
- some contributions during this conference will deal with the issue – we are interested to hear your assessment !
- At Nuremberg Conference case of Uganda gave rise to concern:

- NGOs and researchers stated that important parts of Ugandan population were indifferent – if not hostile – towards the Court;
- only few Ugandans seem to be in support of ICC;
- Outreach is a joint effort – concerns the ICC, but not only !
Civil society has a role to play; I would like to encourage NGOs, in particular those on the ground, to actively seek cooperation with the Court on outreach.

Outlook: Review Conference

- Art. 123 Rome Statute: Review Conference 7 years after entry into force.
- So far only *informal consultations* among States Parties; however, upcoming ASP in December should decide on date and venue.
- It seems that Review Conference will be held during first half of 2010; Uganda offered to host the event, so far no other proposal on the table.
- Agenda: will probably focus on crime of aggression, possibly general stock-taking of international criminal justice.
- We would prefer “slim” agenda – not re-open Pandora boxes of the past !
Clear focus needed.

Outlook: Aggression

- Crime of Aggression is “unfinished business”; States Parties must do their homework.
- Working group on Aggression, whether meeting formally in N.Y. or informally in Princeton, has made considerable progress.
- Commend chairman Amb. Wenaweser for his outstanding efforts and skills.
- Most difficult question remains **jurisdiction**: does the Court need Security Council’s blessing for taking action on crime of aggression ?

- Our position is:
 - ICC's independence and impartiality must be respected;
 - Security Council and ICC are two independent bodies, different functions; that is also true for the relationship between SC and ICJ.
 - Rome Statute in Art. 16 clearly *limits* Security Council's role – this carefully drafted balance should not be distorted ! Need to find way to inform and involve SC in best possible manner, without harming independence and impartiality of ICC.
 - Principle of legality requires that all perpetrators are **equal before the law** – there must be no difference between those holding a permanent seat in SC and those who do not.
- We encourage civil society to play a more visible part in this debate; we need your input and support !

Conclusion

- As we have seen: it is not only “The ICC at work” – it is the **Rome Statute system** at work: comprises the Court, States Parties and civil society.
- Germany has always welcomed and appreciated the valuable contributions which NGO community has made to develop international criminal justice.
- This conference organised by NGOs, good example of your commitment. We in the government benefit a lot from your expertise, insight and experience – also from your criticism and encouragement!
- Therefore I would like to express my respect and extend my gratitude to all representatives of civil society working for the success of the ICC.
We share a common goal. Let us continue to work together !
- Thank you !