

**“The International Criminal Court:
The contribution it can make to world order,
its current status and the wider challenges it faces”**

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Part I: Introduction

- It is an honour for me to be invited here today and to accept this award from the World Federalist Movement.
- The World Federalists have contributed greatly to the development of civil society and to the International Criminal Court, and I am very pleased to have been honoured by you in this way.
- I am also grateful to have the opportunity to speak to such a distinguished body about the International Criminal Court.
- [Tonight] I should like to address:
 - _ The need for the ICC
 - _ Where the Court stands today
 - _ The challenges the Court faces; and
 - _ The role of civil society

Part II: The need for, and the benefits of, the ICC

- The recent tenth anniversary of the Rwandan genocide reminds us of why the world needs the International Criminal Court.
- An estimated 800,000 people died in that conflict.
- As the ICC begins its operations, it is worth remembering Rwanda's victims.
- Their story, like that of Pol Pot's victims and many other victims of genocide, crimes against humanity and war crimes, shows us why the ICC must succeed.
- Over time, the ICC strives to create a deterrent effect against what the Preamble to its Statute so poignantly refers to as "unimaginable atrocities that deeply shock the conscience of humanity". As the Preamble continues, these crimes "threaten the peace, security and well-being of the world".

- The ICC is a crucial part of a global trend to end impunity and replace it with a culture of accountability.
- The objectives of the Court are:
 - to punish worldwide perpetrators of crimes,
 - to deter future transgressors, and
 - to bring justice to victims.
- The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda – resulting from the two terrible conflicts within those countries – as well as other *ad hoc* tribunals showed that international criminal justice was a practical possibility, but they have limits because:
 - They are temporary.
 - They only cover specific situations, so many perpetrators are unaffected.
 - They are retroactive, so there is no deterrence factor.
 - There are also questions of delay and cost associated with establishing these tribunals. Among other drawbacks, this can lead to a loss of significant evidence.
- Only a permanent international criminal court could effectively fight impunity for international crimes more widely. It is the only means by which “the most serious crimes of concern to the international community as a whole” can be properly and effectively addressed.

Part III: The Court today

- The Court is now a reality.
- Since the entry into force of the Rome Statute, the **Office of the Prosecutor** has received other around 800 communications sent by non-governmental

organisations and individuals from about 70 different countries (40 or so States Parties).

- Most of the communications describe crimes that are **outside the Court's jurisdiction**, either because of the **subject matter** (not genocide, crimes against humanity or war crimes), the **time** at which they allegedly occurred (before 1 July 2002), or because they **do not involve the nationals or territory of any State Party**.
- It was announced at the end of January that the government of **Uganda** has referred the situation concerning the Lord's Resistance Army to the Prosecutor of the ICC.
- It was also announced last month that the President of the **Democratic Republic of Congo** has referred the situation throughout the territory of the DRC to the Prosecutor of the ICC.
- The next step will be for the Prosecutor to determine whether there is a reasonable basis for him to commence an investigation. This determination will be made on the basis of information his office may receive from States, international organisations, NGOs and other sources deemed to be appropriate.
- Other situations may merit the Prosecutor's continued attention.

- Within the **judiciary**, we are ready for the commencement of proceedings.
- The **Presidency** as well as the judges of the **Pre-Trial Division** and the Appeals Division are now present at the Court on a permanent basis. The Chambers will soon be constituted in order to be ready when a case begins.
- The **Regulations of the Court**, implementing the Statute and the Rules of Procedure and Evidence, were provisionally adopted by the judges at their last plenary meeting in March. They will be discussed once more at the next plenary in

May, then they will need to be formally approved by the Assembly of States Parties.

- Between the 20th and the 22nd of April the first meeting of the **Board of Directors** of the **Trust Fund for victims** of crimes within the jurisdiction of the Court and their families took place. The Board is composed of Her Majesty Queen Rania Al-Abdullah (Jordan); H.E. Dr. Oscar Arias Sánchez (Costa Rica); H.E. Mr. Tadeusz Mazowiecki (Poland); H.G. Archbishop Emeritus Desmond Tutu (South Africa) and Madam Minister Simone Veil (France).
- This is a reminder of the very special place that **victims** have been given in the ICC system.
- For the very first time in history, victims of the most heinous crimes known to humanity have been granted access to an international criminal court to participate directly in the proceedings and to give evidence on their own behalf.
- For the very first time in history, a possibility has been created to address the wrongs which have been committed through a claim for reparations against the individual convicted by an international criminal court. This includes an option to claim restitution, compensation and rehabilitation.
- Reparations have the purpose of relieving the suffering and affording justice to victims not only through the conviction of a perpetrator by the Court, but also by redressing, as far as possible, the consequences of the crimes that have been committed.
- The independent role of victims in the field of international criminal law is significant. True international criminal justice can only be secured if the international community hears, understands and sees a jurisprudential record created around those who have suffered so terribly.

Part IV: The challenges faced by the Court

- The Court now faces challenges on different levels, both internal and external.

A. Internal challenges

- The underlying objective for the Court is the need to establish its **credibility** in practice. This goal will be achieved by demonstrating the **fairness** and **efficiency** of its proceedings.
- The proceedings will be scrupulously **fair**. Universally accepted norms of human rights are built into the Court's Statute. The Court will respect the rights of victims, witnesses and the accused. It will be, and must be seen to be, independent and impartial in all its proceedings.
- In addition, the Court will strive for the highest levels of **efficiency** in its proceedings and in the internal workings of the organisation. In this regard, we are attempting to learn from the experience of the Tribunals for Rwanda and the former Yugoslavia.
- A practical example of this is apparent from the Court's Regulations, which are to be finally adopted later this month. In those Regulations, the Court has the power to limit the length of the proceedings, as long as this does not interfere with the rights of the participants.
- A related, broader challenge is for the Court to demonstrate, and to enable sceptics to understand, the reality that it is an **independent** judicial institution and not a political one.
- One of the objectives of States during the negotiations that led to the Rome Statute was that the Court should be a purely judicial body, with not a hair of politicization.

There are thus many safeguards built into the Rome Statute that prevent this from happening.

- Therefore we can say with confidence that the Rome Statute does not allow the Court to proceed on the basis of spurious, politicised charges.
- While this is the reality, it is an important challenge to ensure that the outside world understands this.

B. External challenges

- The two recent referrals to the Court highlight the external challenges that it will face.
- The ICC is a new institution, it must find its place in the international institutional landscape.
- We must define our relationships with the other international actors, especially the States, whether they are States Parties or not.

1) Towards States individually

- The Preamble to the ICC Statute makes it clear that it is the **duty of every State** to exercise its criminal jurisdiction over those responsible for international crimes.
- States retain the **primary role** in the punishment of the crimes under the jurisdiction of the Court, the latter will only act when States are **unwilling** or **unable** to bring transgressors to justice. This is known as the principle of **complementarity**.
- There is a **balance** between the jurisdictions of the States and of the ICC. The Court is a court of **last resort**.
- One of the **benefits** arising out of the mere existence of the ICC is that a number of States have reinforced their domestic legislation to ensure that it appropriately covers the crimes within the jurisdiction of the ICC.

- A greater determination to investigate and prosecute such serious crimes at the national level is an essential element of the overall goal of ending impunity.
- Once the Court is exercising its jurisdiction, the need for the **cooperation of States** is particularly important because the Court does not have enforcement mechanisms of its own.
- It will therefore require the cooperation of individual States and other international actors in order effectively to carry out its functions.
- In particular, throughout the investigative process, the Prosecutor will require the cooperation of States in the gathering of evidence and the arrest of suspects.
- In the case of States Parties, the obligation to cooperate fully with the Court in its investigations and prosecutions is enshrined in its Statute.
- In the case of non States Parties, it will be important for the Court to obtain equivalent levels of cooperation when it comes to, for example, interviewing witnesses, gathering documents and searching for suspects.

2) Towards States collectively

- The Court is **Treaty based**. It cannot therefore automatically count on the assistance of the international community as a whole.
- By demonstrating that it is **credible**, the Court will help to **build the confidence**, and thereby **obtain the support** of the wider international community which is so essential to its ultimate success.
- The **Assembly of States Parties** is a very important organ for the Court. It is composed of all States that have ratified the Court's Statute. It acts as its **legislative**

body, elects the judges and the Prosecutor. One of its functions is to set the **budget** for the Court.

- Maintaining the confidence of the ASP is therefore a practical necessity.
- Developing and maintaining good relations with non States Parties is also important with a view to **encouraging further ratifications** of the Statute.
- 94 ratifications to date demonstrates the strong basis of international support which the Court already enjoys.
- However, further ratifications are essential for the Court to be able to meet the expectations of the international community which has created it.
- Universality is not merely an idealistic goal, but also a practical one, partly because of the restrictions inherent to its jurisdictional system. Attaining universality is essential for the Court to be a truly global institution.
- For similar reasons to those referred to in relation to States, another challenge for the Court is **to secure and maintain the support of the United Nations** as a whole.
- The United Nations has the personnel, the institutions and the experience to assist the Court in its investigations and operations.
- The Court was “established as an independent permanent institution in relationship with the United Nations system”. It is in the process of concluding a **Relationship Agreement with the United Nations**.
- The furtherance of a healthy relationship with the United Nations is important for the Court’s success.
- This is particularly true when considering the role of the Security Council, which can itself refer a situation to the Court.

- With the additional tools that it has at its disposal, it is to be hoped that the Security Council will support and use its referral powers to the Court in the future.
- The ICC also has to develop strong relationships with other actors in post-conflict situations, such as **NGOs** and **intergovernmental organisations**.
- The more that the Court can create international confidence in itself as an institution in its early history, the more likely it is that it will be effective in the long term.

Part V: The role of civil society

- I turn, finally and crucially, to the important role that civil society can continue to play.
- In the years leading up to the establishment of the Court, NGOs provided significant assistance by lobbying governments, encouraging ratifications and contributing to the drafting of the Court's basic documents.
- This role continues to be very important, but in addition these same organisations, as well as local media, academics and other members of civil society, can play a vital role in carrying the Court's work to local populations.
- In particular, this role is crucial to ensure that the local population in a situation in which the Court is investigating understands the purpose of the Court.
- This will be necessary to achieve the essential cooperation of the people in the field itself.
- More generally, the more that people understand about the Court, the less reservations they have about it.
- Therefore, the more civil society increases awareness, the better.
- There is only a limited amount that the Court itself can do. It of course gives me great pleasure to be invited to events such as [tonight]'s. But, more generally, the Court is

a judicial body. It neither has the function, nor the resources, to be a body of self-promotion.

- Civil society is broader. It has already demonstrated the power and extent of its advocacy and its educational and practical abilities.
- It has, and will continue, to demonstrate to the wider world that international justice is worthwhile. In so doing it can play a significant role in helping the Court to meet the challenges to which I have referred.
- In addition, it can provide useful feedback, criticism, reactions and resources.
- The Court is grateful for the support it receives from civil society. It is aware of the need for it to continue to act in partnership with the wider international public.
- Indeed, without the wider international public, the Court would not be the reality that it is today.

Part VI: Conclusion

- World Federalists have been seeking the establishment of an effective international criminal court since the late 1940s. It has been a major programme priority of yours since 1996.
- You do not need me to remind you of the slow and difficult history that led to the creation of the ICC.
- To say that it took fifty years is a conservative estimate. That is why we must now make it work. There will not be a second chance.
- Let us therefore ensure that, together, we take significant steps towards achieving our common goal of a secure world in which accountability, rather than impunity, is the norm.