



* CHECK AGAINST DELIVERY *

10th Anniversary of the Rome Statute of the International Criminal Court July 3, The Hague

I would like to thank the governments of The Netherlands and of France for hosting this event and for inviting me here to speak.

I want to frame my remarks with the observation that the completion of the treaty creating the International Criminal Court (ICC) was an extraordinary step in extending the reach of law to those responsible for the mass slaughter of civilians and for the use of rape as a weapon of war. As a nongovernmental organization (NGO) observer in Rome, it was clear to nearly all the participants that we had witnessed an historic moment. We sensed that we were at a high water mark of international commitment to limiting the impunity associated with genocide, crimes against humanity, and war crimes. The commission of these crimes had scarred the last decades of the twentieth century in Guatemala, Iraq, Afghanistan, and Democratic Republic of Congo, to name only a few.

The topic of this session is cooperation, and I will begin by saying that this court cannot succeed without active engagement by states parties in pushing forward and facilitating achievement of its objectives. The kind of cooperation and support that the court requires falls into two main areas.

First, the court needs judicial cooperation and logistical support, which require the adoption of implementing legislation and the ratification of the privileges and immunities agreement. It also involves states parties' establishing a domestic framework to facilitate a timely response to requests from the court for cooperation, for example with focal points and inter-agency task forces. It also means states parties signing framework agreements for enforcement of sentences.

Second, states parties must provide strong diplomatic and political assistance for the court. This includes mainstreaming support for the court in diplomatic and political discussions, particularly in relation to the situation countries under ICC investigation. I will focus on some reflections of this second aspect.

Given the challenges that the ICC faces, the need for vigorous diplomatic and political support by states parties cannot be overstated. As the Assembly of States Parties (ASP) Bureau's report on cooperation points out, "[c]onsistent, strong and long-term political support of states parties is of vital importance for the Court to be able to carry out its functions." Diplomatic and political support is key to creating a climate that is generally conducive to facilitating the court's work and to achieving particular needs, such as arrest and surrender of suspects.

Compelling arrest and surrender by a recalcitrant government poses the "hard case" of cooperation. By pitting the writ of the court against the prerogatives of national sovereignty, arrest is the "Achilles' heel" of enforcement that highlights the broader limitations of a still fledgling system of international justice, but, of course, there can be no trials without arrests. Unfortunately, the situation that the court currently faces with respect to arrest and surrender is troubling. To date, most ICC arrest warrants have not been executed, and several of the arrest warrants have been outstanding for a few years.

On this tenth anniversary event, I want to focus on a point that many of us did not grasp in Rome as we left the FAO building in the early morning hours of July 18, 1998. What was not clear at those heady moments was the difficulty that this new court would have obtaining support from states and the United Nations (UN) to make arrests. Like the International Criminal Tribunal for the former Yugoslavia (ICTY), the ICC would have no police unit to execute its warrants and, thus, would be totally dependent on the assistance of governments, sometimes regimes responsible for the very crimes at issue, to apprehend their own. But *unlike* the earlier tribunal which for the most part focused on wars that had ended, the ICC was mandated to investigate crimes committed in ongoing armed conflicts.

This is a distinction with consequences that have undercut the ICC's effectiveness, and it risks real damage. The court's "real time" mandate means that it investigates crimes as other important diplomatic objectives like peace negotiations or peacekeeping deployment are at play. Some in the diplomatic community are

wrongly seeing justice as posing an obstacle to achieving peace. This ill-conceived perception has diminished the robust diplomatic and political support that the ICC needs to succeed.

This tendency was all too apparent when the Security Council traveled to Khartoum in June 2007 for meetings with the Sudanese leadership. Despite having referred the situation in Darfur to the court, the Council failed to include Khartoum's blatant obstruction of the ICC's arrest warrants in its own terms of reference. This subordination of justice was based on the hope of placating Sudanese opposition to the much needed deployment of UN peacekeeping forces in Darfur. The Sudanese leadership interpreted the silence and responded with emboldened resistance not just to the ICC warrants (Khartoum gave one of the accused more responsibilities and released the other from custody) but also to the rapid deployment of peacekeeping forces and the unfettered delivery of humanitarian assistance.

To its credit, on its mission to Sudan last month, the Council did raise Khartoum's repeated obstruction of justice as one of several pressing items, and on June 9 the Security Council adopted a presidential statement calling on Sudan to cooperate with the court. This is likely to be a long-term fight.

The tendency to jettison justice has not been limited to diplomatic dealings with governments. There has been a similar impulse towards Joseph Kony, leader of the Lord's Resistance Army (LRA), an insurgent group that has ravaged the people of northern Uganda for twenty years. The LRA's trademark practice has been kidnapping thousands of children and turning the boys into child soldiers and the girls into sex slaves. Prodded in part by arrest warrants issued by the ICC for him and his senior commanders, Kony began peace talks two years ago. He insisted that lifting the ICC warrants was a condition to obtain his signature on a peace accord and has tried to make the court the scapegoat for any failure. In an effort to accommodate Kony's demand, to limit impunity, and to hasten a peace agreement, Ugandan lawyers worked hard to craft provisions for criminal trials before a special national court. The Security Council was expected to allow itself to be held hostage by the LRA demands through suspending the court warrants once Kony had signed. He has not yet done so. In the meantime, it appears that the LRA used the talks as a screen to re-enforce its ranks and to extend its reign of terror across three African countries to abduct more children.

These examples heighten the real danger that not only will the court fail to receive the support that it needs but that the ICC and the broader conception of international justice will be seen a tool to be wielded, for example, to achieve progress in political objectives, and will then be discarded back into the tool box. For reasons of principle, justice is not a stick to wave about for political goals, no matter how important those goals may be. Justice is an essential end in itself. On a purely pragmatic basis, it does not require much farsightedness to grasp how undermining such instrumentalization will be harmful to the court and how quickly even the instrumental value will be seen as an empty threat.

These examples and the related tough questions are, of course, a subset of the larger peace-justice interface which requires careful, objective examination and the intellectual honesty to break with conventional wisdom. I will not try to address that general question here, but I will say that while there are undoubtedly many factors that influence the resolution of conflicts, and we do not assert that impunity is the sole relevant factor, Human Rights Watch's field research in numerous conflicts over the past twenty years shows that rather than being contradictory objectives, peace and justice are complementary. In fact, impunity often contributes to renewed cycles of violence; accountability, on the other hand, may yield positive benefits for long-term stability and for development of rule of law.

In regard to the court, some diplomats and officials at the United Nations Secretariat tasked with negotiating peace agreements have argued that the existence of the ICC has made their work more difficult. Some claim that justice is an impediment to peace because those with the greatest responsibility have no interest in laying down their arms unless they are guaranteed amnesty. Indeed, the argument goes, suspects will not even come to the negotiating table if they fear arrest and, therefore, arrest warrants prolong conflict. They argue that while justice is important, it should always be "sequenced" to a peace agreement. We believe that those making these claims and advocating a subordinate role for justice need to address facts on the ground which largely contradict these oft-repeated notions.

Given the transfer of Slobodan Milosevic to the ICTY in June 2001 and the arrest and trial of former Liberian President Charles Taylor, it is past time for states and the UN Secretariat to draw the lesson learned. This is all the more true since international justice with its imperfections has become a reality in the last 15 years.

Human Rights Watch recognizes that states parties manage a range of interests vis-à-vis ICC situation countries. But silence, ambivalence, or muted support regarding the court's involvement in these situations sends an untenable signal about the ICC achieving its mandate. States parties should give clear, consistent backing to the International Criminal Court in these circumstances, stressing the role of justice in promoting peace and the need for outcomes that include both objectives.

For those of us gathering here in The Hague and at the United Nations to mark this anniversary, we need to do more than pat ourselves on the back for having done a great thing in Rome. The international community needs to grasp the mettle and to align its work in peace negotiations and peacekeeping with the commitment to justice codified in Rome. For those of us here and for those meeting in New York and South Africa in two weeks time, the question needs to be asked and answered as to better managing the short term tensions that can occur in pursuing peace negotiations and justice without denigrating either of them. Pitting one against the other is far out of line with the values codified in Rome.

Let me give some sense of what this might mean.

1. Building greater diplomatic and political support for the court across the board to create a favorable environment for supporting the ICC.

There are many important opportunities that states parties need to seize to provide needed diplomatic and political support. Several of these occur annually—the General Debate of the General Assembly, the ICC president's briefing to the General Assembly, and negotiations over the ICC resolution by the General Assembly's sixth committee. The Bureau report characterizes this as part of building the general environment of support for the court.

2. Regarding the hard case of cooperation, arrest, and surrender, despite the difficulties, experience from the 15 years of international criminal tribunal practice shows that efforts by states to wield their combined political, diplomatic, and economic clout can be decisive for arrest and surrender. At the International Criminal Tribunal for the former Yugoslavia, for example, Serbia's surrender of 20 indicted persons in 2005 and of two other accused in 2007 was directly related to diplomatic pressure around negotiations over its accession to the European Union. In 2006, increasing diplomatic pressure by states, including the United Kingdom and the

United States, helped lead to the surrender of former Liberian president Charles Taylor for trial at the Special Court for Sierra Leone. Despite his indictment on war crimes and crimes against humanity, Taylor had been enjoying safe haven in Nigeria. I am not suggesting that the particulars here are the same or even similar, but these examples underscore the value of principled and active use of diplomacy.

To this end, states parties should regularly raise arrest and surrender in bilateral contacts with non-cooperative states, in interaction with influential third-party states, in meetings at regional and international intergovernmental organizations, and at ASP sessions. States parties should also be creative in identifying and utilizing relevant political and economic leverage as appropriate, such as sanctions. Such efforts will not likely lead to immediate action, but they are crucial to stigmatization and, ultimately, surrender.

In situations where the UN peacekeeping or peace negotiations are clear, it is essential that states parties make clear that justice and accountability generally and the ICC investigations particularly are part of the larger package of international response. This means not immediately jumping to the conclusion that the political obstacles can be solved by jettisoning justice. This is a reason why it is so important for states parties at the UN to raise with Secretariat officials the importance that their governments attach to justice.

This will, of course, depend in part on the perception of the court assuming more legitimacy and credibility among institutions on the international stage. It is imperative for this institution and its organs to act in the highest manner.

This will take time, but for the victims of mass slaughter of civilians or of rape as a weapon of war there is no time to lose. There is no better time to deepen the commitment than a tenth anniversary.

Thank you.