

COJUR-ICC address*

Brussels, 25 September 2013

Honorable delegates, on behalf of the International Bar Association (IBA), I am grateful for this opportunity to address you and to share views on ways to strengthen the work of the International Criminal Court (ICC). Based in The Hague, the IBA's ICC Programme works to ensure that fair and efficient justice is delivered at the Court. We do this by monitoring the Court's application of international fair trial standards in its proceedings and policies.

The IBA commends the European Union for its continued leadership as a consistent and staunch partner of the ICC, providing technical, financial and political support to the Court.

Today, I will address two issues – one macro issue and one important micro issue – both of which concern the ICC's fairness and efficiency. While these issues may not at first glance appear connected, they both concern the ICC's credibility as the eminent institution charged with delivering international criminal justice. They both relate directly to the preservation of the integrity of the Rome Statute.

The macro issue concerns cooperation. This has been identified by the EU as a cornerstone of its ICC-related policy. On this issue, I will briefly address the ICC's Libya situation, and touch upon Cote d'Ivoire, Kenya and the African Union.

The second issue concerns the proposed amendment to Rule 68 of the ICC's Rules of Procedure and Evidence, tabled for adoption during the Assembly of States Parties in November, 2013. The proposed amendment aims to enhance the efficiency of the ICC's proceedings by providing for certain circumstances under which the Court might admit the evidence of a witness in written form including when a witness is unavailable for cross-examination. On this issue, while indicating the IBA's support for the proposal, I will underscore some fair trial implications of the provision.

Turning to the macro issue – cooperation.

The IBA fully supports the foundation of the ICC system on the principle of complementarity that the ICC is a court of last resort, in deference to functioning national judicial systems.

Nonetheless, as States transition to post-conflict, or post-dictatorial societies, their governance and judicial systems often struggle to find stability. Often in such contexts, it cannot be expected that domestic courts will be able to deliver fair trials, particularly as a society emerges from conflict. On questions of admissibility of cases before the ICC, these challenges are regularly highlighted.

Earlier this week, the IBA released a statement concerning reports about the commencement of domestic criminal proceedings against Saif Al-Islam Gaddafi in Libya, in spite of on-going proceedings before the ICC, and an unexecuted order for his immediate surrender to The Hague. The IBA is urging the Libyan authorities to facilitate Saif Al-Islam Gaddafi's surrender as soon as possible.

The IBA welcomes all steps taken thus far by the EU on this issue, including its support for the Libyan people's transition towards democracy and respect for the rule of law. The IBA

also welcomes the recent comments of the High Representative, Catherine Ashton, calling on Libya to fully cooperate with the ICC. The IBA urges the EU to continue to use all means at its disposal to persuade Libya to cooperate with the ICC.

Situating Libya in a wider context of pressing cooperation issues for the Court, the IBA is also concerned about the steps taken by the Kenyan government – domestically – to withdraw from the Rome Statute. The IBA is concerned about the knock-on effect of these actions within the wider African community, and how this bodes for the preservation of the integrity of the Statute and the global fight against impunity. Indeed, there are reports that Cote d'Ivoire may also now be refusing to execute an ICC arrest warrant against Simone Gbagbo. The IBA urges the EU to use all of its good offices—in particular ahead of the African Union summit in October during which the ICC is to be discussed—to ensure continued and renewed commitment of all States Parties to the Rome Statute to accountability for international crimes, and to guarantees of due process for all, irrespective of the gravity of the allegations against them.

Honourable delegates, turning now to the micro issue - the proposed amendment to Rule 68 of the ICC's Rules of Procedure and Evidence.

Generally speaking, the IBA welcomes the proposed amendment. It takes into account lessons learned from the practice of the *ad hoc* tribunals. The IBA supports the initiative the Court takes—in collaboration with States Parties—to enhance the efficiency of proceedings. The IBA welcomes the particular language in the proposed text which highlights the paramount nature of fair trial rights in consideration of the Rule's application.

Nonetheless, the IBA wishes to highlight the exceptional nature of this provision. Any provision which might facilitate the admission of evidence against an individual in the absence of affording that person an opportunity to test the evidence, should be applied with the utmost caution. This is not only important in terms of fair trial and due process rights, but for the preservation of the integrity of the trial record.

The IBA simply asks that honourable EU delegates remain alive to the fair trial implications of Rule 68 during discussions at the ASP. While the IBA is not proposing any alterations to the text of the proposal, it may be appropriate to highlight some of these concerns in the explanatory memorandum accompanying the text.

Conclusion

Honourable delegates, the EU has pledged to preserve the integrity of the Rome Statute, a pledge the EU has repeatedly supported with real action. The IBA urges the EU to use all available mechanisms to facilitate greater cooperation between States and the ICC, and to ensure that caution is exercised in the admission of written evidence which has not been subjected to cross-examination.

I thank you for your time.

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