

## COJUR-ICC address\*

*The Hague, 12 October 2015*

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 ICC/ ICL Programme of the IBA 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's work includes thematic legal analysis of proceedings, and *ad hoc* evaluations of legal, administrative and institutional issues which could potentially affect the impartiality of proceedings and the development of international justice. The Programme also acts as the interface between the Court and the global legal community.

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, both of which concern the ICC's fairness, efficiency, and credibility as the eminent institution charged with delivering international criminal justice.

The first issue concerns voluntary cooperation and framework agreements.

The second issue concerns the representation of Counsel before the ICC.

### **On the issue of voluntary cooperation**

The cooperation needs of the ICC have grown considerably in the past few years in part because of the increased activities of the Court. As the Court fully relies on State Parties for most aspects of that cooperation at all stages of the Court's activities, voluntary cooperation has been identified by the Court as a key priority. I would notably point to the 66 Recommendations and the Court's flyer entitled "Recommendations on States' Cooperation With the International Criminal Court".

EU Member States have truly led the way in signing voluntary framework agreements, notably in relation to accused persons. For instance five of the eight<sup>1</sup> existing agreements on the enforcement of sentences are with EU Member States and the only existing agreement on interim release is with an EU Member State.<sup>2</sup>

Nevertheless a lot more needs to be achieved, and on the edge of the upcoming Assembly of State Parties, I would like to state again the current state of affairs:

No new agreement on the enforcement of sentences has been signed since 2012<sup>3</sup>; no agreement on the relocation of persons released by the Court has been signed despite the fact

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<sup>1</sup> Austria, UK, Belgium, Denmark, Finland, Serbia, Mali and Columbia (Mali and Columbia not yet in force).

<sup>2</sup> Belgium.

<sup>3</sup> See [2015 Cooperation Report](#), para. 42.

that a draft agreement was finalized last year; and only one agreement for interim release stands.

The support of States for agreements on interim release, acquittals, enforcement of sentences and witness relocation is essential to ensure that the rights of victims and accused persons enshrined in the Statute are fully respected.

The Court aims at avoiding and should avoid the difficulties encountered by the International Criminal Tribunal for Rwanda (ICTR), which could not find enough States willing to accept acquitted or released persons.

The EU and EU Member States could play an important role in this endeavor. Different ways forward include:

- signing agreements;
- finalising negotiations with the Court to find other practical arrangements to cooperate fully with the Court on those issues;
- encouraging other States including non-States Parties with functioning witness protection programmes willing to sign MOUs with the Court on witness relocation;
- developing more leadership and support to the ASP's Hague Working Group on cooperation on this issue specifically, notably by appointing a Special Rapporteur on voluntary cooperation.

The array of potential initiatives is wide and with the closure of the ICTR and its unfortunate legacy in that area, the IBA encourages the EU and its Member States to push forward voluntary agreements for the cooperation with the Court in the months to come.

### **An independent Association of Counsel before the ICC**

Effective representation of accused persons is an essential part of fair trial rights and in turn the credibility and legitimacy of the Court.

Effective representation is multi-faceted, with one of the most crucial facets being the independence of the legal profession in the conduct of its duties.

With 1/ the opening of the first article 70 case involving members of the defence team of Jean Pierre Bemba and 2/ the reorganisation of the Registry (so called "ReVision project") at the ICC as far as it deals with counsel matters, the issue of the role of international criminal lawyers representing both victims and accused and the place of an ICC bar is at a peak.

The IBA is pleased that the EU's action plan on ICC calls for the EU and its Member States to support the establishment of an independent representative body of Counsel before the ICC.

Last month, the President, the Registrar and the Prosecutor have acknowledged the importance of such an independent representative body.

In the course of the upcoming months and Assembly of State parties, this issue will need to be further explored, and the IBA would encourage the EU and its Member States to pledge their support for the establishment of an independent representative body of Counsel before the Court but also to engage in the discussion.

The ICC is permanent, so the significance of establishing an association of Counsel and how it will function should not be overlooked. What role will the association have and how will it

fit into the ICC's existing framework? The IBA supports an independent association that would supplement and complement the work of an internal independent office, like the OPCD, not replace it, and there are a number of defence-related activities an association could and should take on for the equality of arms and interests of justice.

### **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 voluntary cooperation between States and the ICC, and to continue to support effective legal representation and the independence of Counsel before the ICC.

I thank you for your time.

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