

COJUR-ICC address*

Brussels, 4 June 2013

Ladies and Gentlemen, on behalf of the International Bar Association (IBA), the largest network of individual lawyers, bar associations and law societies worldwide, I am grateful for this opportunity to address you and share views on ways to strengthen the work of the International Criminal Court (ICC). The IBA's ICC Programme, based in The Hague, 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.

Honourable delegates, 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. However, despite these remarkable efforts, more needs to be done by states - as well as the Court - to improve cooperation. Today I ask that you consider the impact of non-cooperation on the overall fairness and efficiency of the Court. In this regard, I wish to raise two recommendations: 1) increasing the numbers of framework agreements and ensuring their aims are fully realised; and 2) improving cooperation to defence for investigations and the protection and support of witnesses.

1. Framework agreements

EU member States have truly led the way in signing framework agreements on the enforcement of sentences. Five of the eight¹ existing agreements are with EU member states. Nevertheless, some significant gaps remain which negatively impact the Court's ability to conduct investigations, as well as protect and support its witnesses.

Remarkably on defence issues, there are only agreements in place on enforcement – this means that states have only agreed thus far to receive persons who are convicted, but have not concluded any agreements for persons released on interim release, acquitted or whose charges are not confirmed. The IBA urges the finalisation of the draft agreement on interim release, and for consultations to begin on drafting an acquittal agreement.

This is urgent because we already see real examples of how these gaps are negatively impacting fairness and efficiency. ICC accused Jean Pierre Bemba was released on interim release in 2009 but this was reversed on appeal a few months later in part because there was no state willing to receive Mr Bemba.² Without a state willing to receive a defendant, this due process right cannot be realised. Then recently in December 2012, the Court acquitted and ordered the release of another ICC accused, Mr Ngudjolo, but he found himself in Dutch custody for 4 ½ months partly because no state had agreed to receive him either. Finally, just yesterday the Pre-Trial Chamber delayed confirming charges against former Ivory Coast President Laurent Gbagbo. If the charges are not confirmed down the line where will Mr Gbagbo go as he currently faces EU and

¹ Austria, Belgium, Denmark, Finland and the United Kingdom *and Mali, Colombia and Serbia*

² *The Prosecutor v. Jean Pierre Bemba Gombo*, on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba..." 2 December 2009, AC, at paras 106-108, <http://www.icc-cpi.int/iccdocs/doc/doc787666.pdf>

UN travel bans, and even if these are lifted he may have legitimate fear of returning to the Ivory Coast.

Turning to witnesses, there are 300 witnesses being protected in the Court's protection programme, but there are simply not enough relocation agreements in place – only 10 have been signed to date. The Registry has indicated this is unsustainable as the cases and numbers of protected witnesses grow. This may compromise the security of witnesses and ultimately delay proceedings, adding further costs to the trials.

So, what are the steps that need to be taken? First, more States Parties need to enter into meaningful framework agreements. However this is only a first step as these agreements are voluntary. A state can sign a witness relocation agreement without ever receiving a witness into their territory. In addition to framework agreements, other practical and creative solutions should be explored such as facilitating the temporary movement of witnesses at risk. There may also be non-States Parties with functioning witness protection programmes willing to sign MOUs with the Court on witness relocation.

2. Improving cooperation to defence for investigations and the protection and support of witnesses.

Cooperation must be consistently provided to the prosecution and to the defence. Cooperation is critical for the arrest and surrender of suspects to the Court. It is equally important to fulfil judicial requests of the defence for investigations and the protection and support of witnesses. Just last month, Mr Bemba's counsel reduced the number of witnesses they intended to call to testify from 63 to 50 as they were unable to secure their appearance, allegedly due to uncooperative authorities in three unnamed countries. The lawyers claim that "cooperation with these requests has been painfully slow or non-existent." If substantiated such non-cooperation with the defence may undermine the rule of law and even the Court's credibility.

After all, the ultimate benefactors of these requests are defendants who are innocent until proven guilty, and the witnesses who often risk their own security to voluntarily share their evidence with the Court.

Ladies and gentlemen, the big picture is that we all strive for the ICC to deliver fair and efficient justice. State cooperation is utterly paramount to this goal. Limited or non-existent framework agreements and inconsistent cooperation can ultimately result in delayed trial proceedings, protracted pre-trial detention for defendants, added costs, and the denial of justice to victims in affected communities.

There are encouraging signs that some of these issues will be addressed by the ASP's Hague Working Group on cooperation. In this year's agenda, the facilitator has included the review and implementation of the 66 recommendations on cooperation issued by the Bureau of the ASP in 2007. The IBA strongly endorses the recommendation of appointing national focal points to coordinate cooperation requests from the Court to the relevant domestic authorities, as a way to streamline and expedite requests. The facilitator is also organising an event this month in Dakar on witness protection and

relocation agreements, bringing together key stakeholders to discuss the way forward. Indeed our organisation, IBA ICC Programme is also hosting a major event on ICC witnesses on July 15th in The Hague. We will be raising many of these issues with the principals of the Court, the diplomatic community and other key experts. We welcome your participation. Such consultations should be encouraged at all levels as there is urgent need for the sharing of best practises and exchange of ideas on these issues.

Honourable delegates, the IBA reiterates its endorsement of EU initiatives, resolutions and statements on the ICC. The concerted action of the EU, and individual member states, is essential to ensuring that state cooperation with the ICC remains a top priority, and that the Court delivers fair and efficient justice.

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