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Outcomes from the Conference on “20th anniversary of No Peace Without Justice: Challenges and Opportunities of the International Criminal Court”

Rome, 13 November 2014

Two general points and three specific areas of recommendations emerged from the Conference, which was attended by representatives of States, the International Criminal Court, practitioners, members of the legal profession, members of Parliament and others.

In general, the Conference considered the following to be crucial underlying points in respect of complementarity and cooperation:

- Cooperation and complementarity should be considered together, as they are in many ways two sides of the same coin. This is particularly important when considering implementation of the Rome Statute in domestic law and in carrying out work relating to international justice and the ICC.
- Outreach by the ICC is fundamental to making complementarity and cooperation work: engaging people on these issues is important to promote understanding and to have various stakeholders engaged in the process.

Specifically, the Conference made the following recommendations:

1. Encourage stronger support for the ICC from the United Nations Security Council, especially in respect of referred situations (both current and future)
 - a. Support for the French-Mexican initiative on adopting a voluntary code of conduct to refrain from using the veto power when the UNSC is considering responses to situations involving mass atrocities.
 - b. The UNSC should adopt stronger language on cooperation and funding when referring a situation to the ICC.
 - c. There is a need for better follow-up mechanisms, such as a focal point of the UNSC for the ICC, to ensure that when a situation is referred, it has the sustained support it needs from the UNSC, particularly in respect of non-States Parties.



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2. Encourage the development of mechanisms and processes to support States in fulfilling their legal obligation to cooperate with the ICC, whether as States Parties or vis a vis situations referred by the UN Security Council, primarily by other States (including the Assembly of States Parties)
 - a. First and foremost, it must be remembered that cooperation is a legal obligation for States Parties and (with proper language) in the event of a UNSC referral. It is not for States to decide whether to cooperate or not, they must do so, in accordance with the Rome Statute and/or the terms of any UNSC referral.
 - b. There is a need for more decisive action in respect of cooperation, in particular by the ASP. The ASP should consider incentives for cooperation and disincentives for non-cooperation, particularly at a State-to-State level.
 - c. There is a need for more systematic follow-up on cooperation, such as through focal points, support for the Coordinating Mechanism of National Authorities dealing with Cooperation as proposed by Belgium, guidelines on non-essential contacts and so on.

3. Encourage support for States in fulfilling their legal obligations to investigate and prosecute crimes at the national level from various actors including the ICC, States, civil society and others
 - a. Support for complementarity being part of the Court's working methodology at all levels, including in relation to its completion strategy, noting that while complementarity is generally considered in respect of investigations and prosecutions, it also covers a range of other issues such as court management, witness protection, funding, technology, outreach and others.
 - b. Support for finding ways for the Court to draw on the talent within its staff in all organs (Chambers, Office of the Prosecutor and Registry) to support implementation of the principle of complementarity, in a non-prescriptive way and without overstepping its mandate. Participants made examples of a possible ICC Judicial Institute as a mechanism for ICC Judges to share their experiences and expertise with their national counterparts, and of the work done by the Office of the Prosecutor on sexual and gender-based violence.
 - c. Support for promoting the role of various actors in relation to complementarity, including States, inter- and non-governmental actors, the legal profession and so on, including in particular those actors who are working on complementarity without necessarily calling it that, such as aid agencies and other humanitarian actors.