



Human Rights Watch Statement for the General Debate of the Eighth Session of the International Criminal Court Assembly of States Parties

November 19, 2009

Overview

Seven years after the Rome Statute's entry into force, the International Criminal Court (ICC) has made progress toward the realization of its founders' aspirations. This is not to say that this progress has always been even. In grappling with the enormous challenges of setting up an unprecedented judicial institution, it is not surprising that ICC officials have at times made mistakes. While additional efforts are required across the court's range of operations, there has been a marked increase in the court's activities over the past year.

The court's first trial began, and its second trial is scheduled to start next week. Pre-trial proceedings have been completed in two other cases. The court's first defendant to appear voluntarily, Bahr Idriss Abu Garda—who is charged with war crimes in connection with an attack on African Union (AU) peacekeepers in Darfur—made two trips to The Hague, first for an initial appearance and subsequently for a confirmation hearing that will determine whether the case is sent to trial.

The prosecutor has indicated that his office is monitoring several other country situations from around the globe, including Colombia, Georgia, Cote d'Ivoire, Afghanistan, and Guinea, and recently stated that he will shortly seek authorization from an ICC pre-trial chamber to open an investigation in Kenya. The Palestinian National Authority has petitioned the ICC prosecutor to accept jurisdiction over crimes committed in Gaza.

Meeting these expectations and consolidating and expanding on the court's achievements would be no small task under any circumstances, but efforts by court officials and staff have been made more difficult by a perceptible softening of support for the ICC.

The critical importance of the court's mission and mandate to end impunity for the crimes of most concern to the international community remains unchanged since Rome. In popular perception and through the stocktaking exercise, the review conference will take the measure of the ICC and international justice. States parties thus should make every effort between now and then to commit to strengthening international justice and to shore up their investment in the ICC as the keystone.

Indeed, with the review conference just months away, states parties will need to take a number of steps at this Assembly of States Parties (ASP) session toward this end.

Confronting the Court's Critics and Increasing Cooperation

As ICC officials and staff make some progress toward addressing the many remaining internal challenges to building a credible and effective institution, the court faces an increasingly challenging external environment. The arrest warrant issued by the ICC in March 2009 for President al-Bashir on charges of crimes against humanity and war crimes fuelled and intensified efforts by ICC opponents to undermine not only that specific warrant, but the court itself. The ICC finds its legitimacy in the sights of a small, but powerful minority.

The campaign waged by allies of President al-Bashir demands a full-throated response by the court, its states parties, and other ICC supporters. While some key gains have been made over these past months, this response has yet to fully materialize.

States parties should continue to seek every opportunity to express vigorous support for the ICC's mission and its independence. While a show of such support is always of importance, it is needed now more than ever to refute any sense of waning support for the court's mandate.

The work of the court is undercut by the present unevenness of the landscape on which international justice unfolds. Steps need to be taken to reduce that unevenness. However, the fact that justice has not been possible for people in Gaza cannot be a reason to deny it to victims in Darfur. Steps need to be taken through efforts to secure wider ratification of the Rome Statute and also through efforts to ensure accountability regardless of where serious crimes are committed. This uneven reach of international justice and commit to extending its reach including through promoting wider ratification of the Rome Statute.

Establishing a Working Group on Cooperation

Human Rights Watch has repeatedly called attention to the excellent report on cooperation endorsed by the ASP Bureau in 2007. The report provides invaluable guidance by identifying a range of steps states parties should take to improve cooperation with and support for the ICC. We also welcome the efforts over the past two years of the ASP-appointed focal point, Ambassador Yves Haesendonck, on cooperation.

As Ambassador Hasendonck's mandate comes to end, we urge the Assembly to put in place a permanent, intersession working group on cooperation.

An intersessional working group would offer significant advantages. Given the scope of the court's cooperation requirements and states parties' cooperation obligations, a working group is more appropriately suited to take this work forward than a single focal point acting on his or her own. A working group could also be composed of a number of states parties representatives based in key cities, including The Hague, New York, Brussels, and Addis Ababa. The geographic reach of such a working group would enable it to work closely with institutions providing cooperation to the court, including the UN, the European Union, and the African Union.

The working group could meet intersessionally and prepare a report for discussion and debate during sessions at the annual Assembly meeting, reflecting the activities of the working group over the previous year and proposing an action plan for the coming year. The working group could take up specific, targeted initiatives each year, drawing on the recommendations

detailed in the Bureau report on cooperation. These initiatives could be identified in consultation with the Bureau, and could include initiatives similar to those pursued by the current cooperation focal point but with enhanced capacity to see additional progress toward implementing the recommendations of the Bureau's report on cooperation. The working group session at the Assembly would also provide an ideal opportunity for presentation of an annual court report on cooperation. Given the importance to enhancing cooperation of the court's clear identification of its needs, we would urge that such a report be prepared and presented annually.

A permanent working group on cooperation would secure this key issue a standing place on the agenda of the Assembly of States Parties, providing cooperation with the profile and attention it deserves from states parties.

Preparing for the Review Conference

While mandated by the Rome Statute to consider any amendments to the treaty, the upcoming review conference also offers an unparalleled opportunity to enhance support for international criminal justice and the ICC as the keystone.

Making the most of the review conference, however, will require adequate preparation.

Delivering on the promise of stocktaking

"Stocktaking"—a critical evaluation of the performance to date of international criminal justice as it relates to the system established by the Rome Statute—will form an essential component of the review conference. It should feature prominently as a formal part of the conference's agenda on equal footing with consideration of amendments to the statute.

Discussions during stocktaking could focus on assessing the achievements of the ICC and international criminal justice to date and identifying objectives for strengthening the court and international criminal justice. Substantive discussion could be organized around the following four topics:

- (1) impact of justice on victims and affected communities;

- (2) state cooperation with the ICC;
- (3) complementarity, universality of the Rome Statute, and the impunity gap;
- (4) impact of international justice on peace processes and peace building.

Realizing the full value of stocktaking will require adequate preparation. The shape of the stocktaking exercise should be adapted to each topic and is likely to be quite distinct from an ordinary Assembly session. Careful, advance thinking is required in the design of stocktaking for each topic as well as a commitment to its execution. Leaving preparation of the stocktaking exercise to the last minute or to an underresourced facilitation is likely to result in little more than a glorified general debate at the review conference.

To this end, at this session, the Assembly should identify the topics of the stocktaking exercise.

This taskforce could include a set of co-facilitators, one for each topic agreed as part of the stocktaking exercise. Each stocktaking co-facilitator would be responsible for designing the structure of stocktaking for his or her topic. This could include determining the amount of time required in the review conference agenda and in side events, inviting the preparation of expert papers, and recruiting the participation of speakers and participants. In so doing, the co-facilitators would be supported by consultations with other states parties, ICC officials and staff from all of its organs, representatives of affected communities, civil society, and international justice experts, in addition to the detailed recommendations already developed by the CICC.

Defining a strong role for the court at the review conference

While the review conference is convened by the UN secretary-general and not the ICC itself, Human Rights Watch believes the court should play a strong role during the review conference and in its preparations.

ICC officials and staff—many of whom have also served in other international criminal tribunals—would bring a wealth of experience to the stocktaking exercise. This would include assessing the court's achievements to date and

identifying particular gaps in support or areas for future progress under each of the stocktaking topics proposed above.

Perhaps even more importantly, the review conference will provide an opportunity for court officials and staff to project outwards the work of the court to a broad audience. As indicated above, increased public information efforts are key to enhancing support for the ICC and countering misperceptions spread by some critics. With the attendance of the UN secretary-general and high-level delegations expected, the review conference is likely to attract substantial press coverage in Africa, including in media outlets that do not ordinarily cover the ICC's activities. In addition, the review conference's venue in Kampala provides a particular opportunity to reach communities affected by crimes within the court's jurisdiction, including in Uganda as a situation country.

The court should be encouraged to prepare public information plans specific to the review conference in order to make the most of these opportunities. This strategy could focus on the ICC's most innovative aspects, including its progress in securing the right of victim participation and the delivery of assistance and ultimately reparations through the Trust Fund for Victims, and could feature a variety of court officials, including ICC judges and officials from the region.