

**Statement of the Convenor of the Coalition for the ICC, Mr. William Pace at:****Panel Discussion on the Future of Cooperation  
at the 16th Session of the Assembly of States Parties  
of the Rome Statute of the International Criminal Court**

Monday, 11 December 2017  
United Nations Headquarters, NY

***Check against delivery*****Mr. Vice-President, President-Elect Kwon, Distinguished Delegates, Colleagues,**

The first president of the International Criminal Tribunal for the Former Yugoslavia, Judge Antonio Cassese, is quoted in the opening of the chapter on cooperation in Otto Triffterer's Commentary on the Rome Statute as stating that the ICTY was a body without arms and legs – these appendages are the cooperation of states. The Tribunal got its legs because, over time, the United Nations Security Council (UNSC), States, and the European Union (EU) have provided the kind of cooperation for the ICTY that succeeded in more than 150 arrests.

I congratulate the previous panelists on their interventions today and appreciate very much being able to raise a few issues briefly. Thus, let me first encourage the Assembly of States Parties (ASP) to look for the joint statement of 12+ NGO members of the Coalition for the International Criminal Court (Coalition) (ICC), presented at this meeting, and the African-based Institute for Strategic Studies (ISS) side event on cooperation. Additionally, I ask the Assembly to review the Coalition's recommendations on cooperation in our ASP 16 paper. We call for cooperation within the wider Rome Statute system utilizing the 20<sup>th</sup> anniversary of the Rome Statute as an incentive; we call for governments to ratify the Agreement on Privileges and Immunities of the International Criminal Court (APIC) and to execute "voluntary" cooperation agreements with the Court. We strongly urge the ASP President, Bureau and the Assembly to more fully address and implement procedures on "non-cooperation" referrals by the Court. Of course, most of the delays over the first 13 years are due to lack of arrests and transfers of the accused to the Court.

Since the issues of ICC budget and costs are subjects of intense discussion at Assemblies, we suggest the Assembly consider the costs of **non-arrests**, the costs of the absence of agreements on the protection of witnesses and **the costs of non-cooperation**, of governments not assisting with the provision of evidence.

Excellencies, Colleagues, there are two major "elephants in the room": the UN Security Council and the ASP on cooperation. The biggest cooperation challenge faced by the Court was the Darfur referral by the Council, which it failed to enforce. When the Security Council is referring situations to the ICC, the ICC must be able to rely on the Security Council to support full cooperation with the Court.

As we mentioned in our General Debate statement, we cannot ignore the devastating paralysis of the UNSC in horrific situations where terrible violations of ICC crimes are occurring. The impact of this paralysis on victims, on the regions, on the Court, on allowing impunity instead of maintaining peace and security and accountability cannot be overstated. The lack of cooperation by the SC on their referrals and on their failures to refer situations to the ICC is disastrous.

Again, as I stated in the General Debate, the SC veto power divisions are not likely to end any time soon, so the international community must find other organs and processes. The ASP is a primary alternative organ for this crisis. One cannot help noting that the failures of the Council relating to Rome Statute crimes are resulting in peace-keeping, humanitarian and related costs in the tens and hundreds of billions of euros and dollars per year, not to mention human costs!

Delegates, these plenaries are valuable, but very limited in time and depth. Should not the ASP ask State Parties and others to come back to appropriate ASP fora to report on how they are progressing at the national and other levels on adopting cooperation laws, agreements, policies, and institutions? This might look like a Universal Periodic Review on cooperation. This would require the ASP to devote much more time and attention to the issue of cooperation. I must restate the incongruity of the pre- and post-entry into force processes. For the first four years of General Assembly (GA) preparatory meetings and the treaty conference adopting the Rome Statute, and for the four years of the GA preparatory commission for the treaty and Court, the governments met formally four to eight weeks a year. Since entry into force, the governments have met only four to ten days per year to address your responsibilities in establishing the Court, providing oversight, elections, funding, amendments, resources, and discussing challenges of cooperation and non-cooperation.

How can we continue to justify not fundamentally strengthening and deepening the structures and working methods of this Assembly?

Again, the organ of the Rome Statute system that is facing the greatest challenges is this Assembly. There can be no exaggeration of the cost-benefit of the ASP assuming full responsibility for addressing how the Statute, the Court, and the Rome Statute system can address the catastrophic failures of other international organs in maintaining international peace and security, and enforcing the UN Charter.

Thank you very much.