

Mr. Bill Pace*

Throughout the world the Coalition and governments are hosting celebrations of the 10th anniversary of the Rome Statute of the International Criminal Court. Earlier today, in South Africa, Judge Navi Pillay, Deputy Prosecutor Fatou Bensuda, Archbishop Desmond Tutu are among the keynote speakers; but other celebrations are being held in Iran, Benin, Indonesia, Guatemala, Moldova, India, Ukraine, Nigeria; last week at the Peace Palace. Most of us who were in Rome on Friday evening July 17, 1998 for the UNGA International Criminal Court treaty conference will, I believe, never experience another moment like that in our lives. I have never seen such an outbreak of emotion and celebration in any intergovernmental conference. We knew the moment the treaty was adopted that we were simultaneously making and challenging history.

Nothing in the last ten years has clouded this judgment. I believe today it was as important and historic an achievement as on that extraordinary tension-filled day. In fact, if anything, it seems more of a miracle now than it did then. The dreadful geopolitical developments of the last 8 years mean so many things, but also that had the Statute not been adopted in Rome, there would still be no treaty, no International Criminal Court.

I believe history will greatly honor the gift to peace bestowed by the extraordinary assemblage of world lawmakers – from governments, international organizations and civil society. This was equal to ten thousand “Agincourts” or “world cups” and we must not shy from the achievement... or the responsibility.

I am honored to speak on behalf of the NGO Coalition for the International Criminal Court (CICC) which has proven to be one of the most successful civil society networks and campaigns in the world. The Coalition has worked closely through its then 800, now more than 2500 worldwide NGO member organizations, and with like-minded governments, international and regional organizations, the United Nations system, parliamentarians and the media at every stage of the process to secure the treaty and establish the International Criminal Court.

In my spoken and written statement, at the end of this morning’s celebration, I will comment on the extraordinary achievement the Rome Statute represents, and on future issues and challenges. In my brief talk I can only address a few issues, thus I would like to mention the considerable and crucial unfinished business of the Assembly of States Parties, foremost among which, in my mind, are complementarity and cooperation, with special note of the cooperation issues between the International Criminal Court and the United Nations; also the continuing need to press for universality in ratification and in national implementation laws; and finally to take note of the interdependence of the Rome Statute, the International Criminal Court and other peace tools and initiatives.

Rome Statute, human security, international democracy, unique intergovernmental initiative. Like other ‘human security’ initiatives since the end of the Cold War, the Rome Statute was an achievement of a powerful new geopolitical manifestation– small and middle power democracies from all regions and legal systems working in an informal partnership with global civil society organizations from the South and North to create new international laws and organizations which have the authority and resources to address root-cause global challenges. The vision is to establish new laws that have a chance of succeeding, and then convincing the big powers, authoritarian and others resistant governments to join. The Rome

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Statute and the International Criminal Court are a preeminent example of this new, more democratic approach to global governance.

Unfinished business. The astounding success of adopting the Rome Statute at the conclusion of the 1998 five-week conference and securing 60 ratifications in less than four years – at least a decade faster than expected - resulted in the entry into force of the Rome Statute before the governments had completed their preparatory work. This ‘omission’ should be understood, however, in the context that had the treaty not been adopted and ratified when it was, almost no one believes we would be here today, that is, there would still not be a treaty or International Criminal Court. Unfortunately, the new Assembly for State Parties reduced the 6-8 weeks of preparatory meetings to one week beginning in 2003 – now up to two weeks. But, I believe, two to four years of work were left unfinished.

Cooperation, mainstreaming, complementarity, promoting universality. The list of unfinished business of the Assembly of States Parties is very long, but I would like to emphasize four aspects as crucial future challenges: cooperation, mainstreaming, complementarity, promoting universality.

Cooperation. The International Criminal Court cannot succeed without crucial cooperation by States and international organizations. Since an earlier panel, including my colleague Richard Dicker from Human Rights Watch, addressed directly this issue I will just reiterate that from the excellent Report on Cooperation adopted by the last Assembly of States Parties, there are 31 recommendations from seven clusters relating to cooperation between State Parties and the Court, and 35 recommendations relating to cooperation between the International Criminal Court and the United Nations and State Parties in the United Nations context that need to be implemented.¹ These will require years of Assembly of States Parties, United Nations, bilateral, and multilateral negotiations and efforts. Years!

Mainstreaming. The International Criminal Court has been overly restricted to the legal offices of foreign ministries and must be mainstreamed throughout governments. It is therefore important to establish networks that allow for sharing of information and knowledge and that would generate the capacity to respond to concrete needs, for instance, in terms of requests for cooperation. In this regard, the Assembly of States Parties has recommended that States Parties establish some form of coordinating structure tasked with resolving conflicts between different national entities stemming from incongruent priorities and interests. The Belgium government recently described their ‘task force’ approach allowing the rapid response to a recent arrest warrant by the International Criminal Court. Similarly, mainstreaming the Rome Statute within State party political goals for their work in regional and international organizations will dramatically improve support for the Rome Statute system and the International Criminal Court.

Complementarity. Complementarity is the fundamental basis of the new system of international criminal justice instituted by the Rome Statute. It is built upon the principle that the most serious crimes must not go unpunished and that the investigation and prosecution of such crimes is a duty, in the first place, of all States through their national legal systems, and, if they fail or are unable to do so, the international community and International Criminal Court must assume responsibility. The full implementation of this principle is the most important challenge of the Rome Statute system. Much, much more work remains to be done by governments and others to fully define and operationalise complementarity. In a very significant development, while the Rome Statute establishes individual accountability for war

¹ Report of the Bureau on cooperation, (ICC-ASP/6/21), dated 19 October 2007.

crimes, genocide and crimes against humanity, the heads of governments in the 2005 United Nations reform summit, all agreed to a new doctrine of state and international community responsibility for the same crimes, called Responsibility to Protect.

Even in the cases where the Court is active, it only targets in its investigations and prosecutions those individuals who bear the gravest responsibility for the crimes committed in a situation. Therefore, unless due action is taken by the national judiciary systems, a major impunity gap of the middle and lower ranking perpetrators will not be closed.

Further, the responsibility does not only fall on the national judiciary; implementing the principle of complementarity is an ambitious task that requires resources and mechanisms often not available to those states suffering from wars and conflicts. The international community thus has an important challenge in ensuring that other efforts that compliment the Rome Statute system are put in place: trials, transitional justice mechanisms, justice rapid response, universal jurisdiction, etc.

Universality and Implementation. The Assembly of States Parties recognized that universal ratification and full implementation of the Rome Statute of the International Criminal Court are imperative if we are to achieve justice and to be successful in the fight against impunity. The record of ratification has been phenomenal, 100 States ratifying and 40 more signing the Rome Statute in seven years, but there is still a lot to do in promoting universal adherence to the Rome Statute and its full implementation by States Parties. The full scale ‘war’ waged against the Rome Statute and International Criminal Court by one major power has failed, and the prospects for a formal and constructive change in policy by that government during the next two years are very positive. However, achieving ratification by resisting major powers and many undemocratic and oppressive governments will require years of coordinated efforts by States and the CICC.

Interdependence of Peace Tools. A further challenge I wish to raise relates to the interdependence of the so-called peace toolbox, especially those major advances occurring since the end of the Cold War. In the last two years much has been written and spoken about an alleged conflict between peace-making and justice, which the last two Secretary-Generals and others have accurately described as a false dichotomy. Since 1991, major advances and improvements have occurred in peacekeeping, in peace enforcement, in good offices, quiet diplomacy, peace-making, in more humane and effective sanctions, in regional organization peace initiatives and capacity, in peacebuilding, in many, many areas, including of course, in international justice. I, as you might guess, believe international justice is a preminent achievement as it offers ‘root-cause’ relief across the entire peace and security spectrum – prevention, deterrence, cessation of conflict, peace-building and reconciliation.

Incidentally, three weeks ago, Costa Rica demonstrated another crucial aspect of the reforms in applying the Rome Statute, in this case, in advancing the working methods of the Security Council.

Pitting different peace tools against each other is precisely the opposite way governments and international organization officials should proceed. As with the Rome Statute cooperation spectrum, it will take years to learn how to best coordinate and orchestrate the application of these enhanced tools for peace. Also, presuming (as many United Nations officials believe) the proponents of different tools, like the International Criminal Court, do not understand the full context is inaccurate and insulting. It is not the “tools” that must coordinate, but the Security Council, Secretariat and other relevant actors that must coordinate the tools. Will mistakes in coordination and application occur? Of course; but, we are in a very different world today than even 20 years ago.

Let me conclude with three points:

First, the Review Conference of the Rome Statute to be held in 2010 is the framework in which many of these issues should be raised and in which processes for addressing these challenges should be adopted. Advancing, if not concluding negotiations on the definition and jurisdiction of the crime of aggression is illustrative of the seriousness of the framework of the Rome Statute and this upcoming conference.

There is a way forward; all these challenges can be addressed, a good opportunity for doing so is the upcoming Review Conference of the Rome Statute to take place during the first semester of 2010.

The Review Conference should serve as an opportunity to reconfirm the principles enshrined by the Rome Statute. Thus in addition to discussions on broadly-supported amendments to the Statute, the Review Conference should allow for reflection on the performance to date of the system as established by the Rome Statute. States Parties should take the Conference as an opportunity to evaluate not only the work of the Court but also how States Parties, other States, international organizations and, as appropriate, other actors are implementing their obligations and/or commitments vis-à-vis the Statute and find solutions to improve the Rome Statute System.

In this regard, the Review Conference should include a high-level segment which can set the tone of the Conference by having a political debate on the impact of the Rome Statute System.

Furthermore, adequate stocktaking and benchmarking mechanisms should be established at the Review Conference in order for States Parties to discuss and make commitments on issues such as cooperation, implementing legislation, complementarity and impunity gap. Also, the impact that international criminal justice has had on national prosecutions and the affected communities, including peace processes and peace building (perception, deterrent effect), among other areas, could be considered.

Second, the Assembly of States Parties is controlled by the small and middle power democracies. As the European Union, African Union, CANZ, and South American and similar processes demonstrate, the potential to impact and promote regional and democratic global governance and law by these nations is immense...immense! The seven or eight year "pause" due to September 11 must end!

Essentially, the Rome Statute is ten years old, but the Court is only six and really four years old. The capacity of the democratic 'like-minded' countries to continue to shape this historic new system of international criminal justice, this new international legal order, is unprecedented. It is the advancement of a dream, I truly believe, of the Einsteins' and Gandhis' whose aspirations for humanity, and a world beyond war, that should not be underestimated. The Rome Statute and the International Criminal Court are arguably the biggest steps taken by governments to achieve the United Nations Charter's first preambular goal since 1945.

Third, the International Criminal Court and globalization: Globalization is almost always framed in terms of economics and finance, and information. But, in truth, there has been a globalization of democracy, human rights, the rule and law, and justice in this last century. I would argue that these aspects of globalization are also foundations for the other forms. That heads of governments endorsed by consensus the principle of a United Nations of three pillars: peace and security, development, and human rights at the 2005 summit. Mr. Ban, in his tribute to Kofi Annan, stressed the indissoluble links uniting security, development

and human rights as the three pillars of the United Nations, without any one of which world peace will not be achieved.

Our fate, the fate of peace and justice and human rights are not written in the stars. The major powers and other governments squandered much of the great potential of the end of the Cold War. July 17 1998 however, is one of the great dates in the history of international law and peace.

Mr. Secretary-General, colleagues, Excellencies, this room, the Trusteeship Council, is the right room for this convocation – we are all “trustees” of the promise of the United Nations Charter Preamble and of the Rome Statute of the International Criminal Court. We must succeed!

Might some future Bard recite:
From this day to the ending of the world,
But we in it shall be remember'd;
We few, we happy few, we band of ...lawmakers.²

² Adapted from Shakespeare's Henry V.