

**Ambassador Beth Van Schaack**

**Plenary Session on Cooperation**

**December 9, 2022, 10:00 a.m.**

Madame Vice-President, distinguished colleagues and guests, I want to thank Ambassador Alabrune from France and Ambassador Guèye from Senegal for inviting me to take the floor alongside friends and experts from civil society, the ICC, and the other committed delegates here to participate in this important discussion on witness protection and cooperation with the Court.

Witnesses—be they victims, experts, or insiders—are the backbone of the Court’s work and the most vital part of any effective international investigation and prosecution. Recognizing the need to protect witnesses, the Rome Statute also goes to great lengths to establish comprehensive, wide-ranging, and innovative systems for protecting witnesses, including specific rules and regulations concerning victims of sexual and gender-based crimes.

However, because like other international courts and investigative mechanisms, the ICC has no police force or protection service, the ICC relies on the cooperation of States to help protect witnesses and their families.

I have made the protection of witnesses one my priorities as Ambassador, and we have been actively engaging with the ICC Registry, other States, and civil society to identify areas where there are gaps, discuss potential solutions, and consider ways the United States might be able to help. In particular, we are keenly aware of the challenges that the ICC and other international justice mechanisms face when it becomes necessary—as a measure of last resort—to relocate witnesses, whether they are victims or insiders.

In recognition of these challenges, my office is participating in a global conversation about the imperative of witness protection and witness relocation, the importance of which is only growing with enhanced threats in both national and international prosecutions and with a rise in transnational repression. In this context, solutions may require contributions and cooperation from a number of stakeholders—including states that might be willing to accept witnesses who may be difficult to place, so long as they have the resources needed to ensure their successful resettlement, states that might be able to provide those resources, even if

they are not in a position to relocate particular witnesses, and civil society organizations that can help to ensure that any relocation is successful, from the perspective of the witness him- or herself but also their family members who may be joining a society that is very different from their own.

On Tuesday, for example, we joined with Argentina, Sweden, and the ICC Registry to co-host a side-event that brought together experts and professionals from domestic and international systems to exchange ideas and best practices on these difficult issues.

The conversation provided an important and practical forum for exploring the issue in concrete terms, and it also highlighted opportunities for finding synergies between states and international justice mechanisms on this challenging issue. For example: Dr. Ana Oberlin, a deputy prosecutor from Argentina, shared nine lessons about witness protection drawn from Argentina's experience prosecuting cases involving gross human rights violations during the dictatorship. For example, she noted that each witness is unique and requires a tailored approach to assistance and protection; personnel working with witnesses will need appropriate and specialized training, often across different disciplines, to address trauma and other resettlement challenges; and assistance and protection may be needed throughout the duration of the justice process and potentially well beyond depending on the nature of any threats.

Carl Magnus Nesser, Sweden's Director General for Legal Affairs, shared Sweden's experience resettling ICC witnesses under a voluntary cooperation agreement with the Court, including some of the challenges that can arise with "insider witnesses," who may implicate the exclusion clause of the Refugee Convention or national security carveouts under Swedish law.

Ken Fechter, a deputy chief in the U.S. Marshals Service, described international training and capacity building work that the United States does with foreign authorities, and some of the common challenges that witness personnel face around the world, including relating to the rise of biometrics and the impact of social media, which can make it easy to trace witnesses who may have assumed new identities. We are interested in exploring whether there could be synergies between that work and ongoing international justice efforts.

We also heard compelling appeals from both the ICC Registry and the IIMM, including the need to facilitate the creation of identity and travel documents, the

importance of moving quickly when risks materialize, and the costs associated with lengthy delays in relocation processes.

As Ambassador Oryarzabal of Argentina observed in his closing remarks, the challenges are not insurmountable if stakeholders can work together and exchange knowledge, experience and good practices—which ultimately can improve the capacity of both the Court and national systems. We would like to do what we can to facilitate more of these conversations among policy makers and technical experts that will advance this effort.

We acknowledge that the Court has already received substantial cooperation and contributions from many States in this room. Indeed, I would like to take this opportunity to congratulate the Registry and the Czech Republic on their important agreement last Friday regarding witness relocation. I echo the remarks made by Ambassador Sequensová when signing that agreement on behalf of the Czech Republic that “Without witnesses, there will be no trials, no justice for the victims.”

As I stated during my intervention during the General Debate earlier this week, the United States is actively looking to enhance our practical cooperation with this Court and put our relationship on a more durable path. The seriousness of this effort is underscored by the extent of senior level U.S. engagement with Court leadership over the past year, including a bipartisan delegation of U.S. senators to the Court just last month.

As we continue to enhance U.S. cooperation, we look forward to the opportunity to exchange views with States Parties on practical elements of cooperation and practices that have been instrumental to the Court’s efforts in many cases thus far.

In particular, I look forward to continuing this conversation during the Quito high-level seminar that Ecuador announced it will be hosting with the ICC for the Americas in June.

Thank you again for inviting the United States to participate in his timely conversation. More importantly, I thank you for your contributions to international justice, peace and security.

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