

Remarks by Mr. Richard Dicker

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Plenary on Efficiency and effectiveness of Court proceedings

November 24, 2015

Introduction

Your Excellencies, Madame President, Madame Prosecutor

I want to thank the Governments of Japan and Chile as Chairs of the Study Group on Governance and Peru and New Zealand for convening this very important session and inviting civil society to participate.

In my remarks I will:

- Offer a context for consideration on efficiency and effectiveness of court proceedings
- Take note briefly of some areas where changes are underway and a few areas where further changes are needed
- Highlight the self-defeating consequences of short term thinking and false economy
- Urge this Assembly to hold a plenary session at the next ASP, building on this session, to consider the context in which the court is operating and its implications.

Part 1: Context/Perspective

Any discussion of improving efficiency and effectiveness in court proceedings must situate the ICC in the context of the international terrain on which the court works. My thesis is that we need to step back and locate the ICC within a changing international landscape.

I'd like to recall a moment immediately following the conclusion of the Rome Diplomatic Conference. Following the negotiations completing the statute, two questions were on the minds of the exhausted, but elated delegates: 1) would it take 10 or 15 years for the requisite 60 ratifications for the treaty to enter into force? and 2) would this court have any cases before it or would it prove to be a grand institution with nothing to do? As outlandish as those questions seem today, it's worth recalling that the treaty was drafted in the afterglow of the end of the Cold War, in a seemingly unipolar world, where, according to some western political scientists, we had reached the end of history.

Yet, as we approach 2016, everyone in this hall is aware of the proliferating number of intractable armed conflicts characterized by the horrific slaughter of civilians. The reality is that today the ICC is needed more than we would ever have conceived 17 years ago.

Back in 1998, no one would have forecast that the court would be conducting investigations in nine situations. No one would have predicted that the court would be considering seven country situations under preliminary examination. And these are just those that have already obtained some sort of status, if you will, before the ICC, not any that are beyond the court's current jurisdictional reach.

While the ICC is not a panacea and we have to adjust the expectations we and others have placed on it, it is the leading vehicle of criminal justice in a much more turbulent world than the one it was created for.

We also have to note the economic and financial changes since 1998. For the last years there has been an ongoing downturn in or slow return to economic prosperity. It's been, as many of you have stated, a time of austerity measures in your countries.

Exactly because of those changed circumstances, all the court's stakeholders -- states parties, civil society, accused, victims, the communities most affected by the crimes -- have a common interest in the proceedings being as efficient and effective as possible. That common interest is undermined by lengthy proceedings that drag on and on.

We see an urgent need for court officials and states parties to adapt to the new reality. It is time to begin to think outside of the box and revise our conception of the court and the resources it needs to be effective. In short, the court's mandate is too important to let it fail, but we are concerned that if it is too small, it will not succeed.

Part 2

The terms "efficiency and effectiveness" need to be measured against the aims and objective of the court. States need to be asking and getting answers for whether the court is meeting its objectives as efficiently and effectively as possible. The court can and should do more to be efficient. An efficient and high-performing court is the only one that will attract the sustained political support necessary to be effective. This is where all stake holders of the court have a common interest in advancing both efficiency and effectiveness as crucial to the fight against impunity.

For us as a civil society organization documenting human rights violations on the ground in so many of the countries where the court is engaged, efficiency and effectiveness are integrally tied to the court's proceedings having meaningful impact in the communities most affected by the crimes. But, however one values deepening the rule of law in the communities looking to the ICC for justice, detached from the mission of the ICC, efficiency is not a goal in itself. And

efficiency as a code word for cost savings, in a world where the demands on this court are increasing, is a self-defeating prescription.

We see some positive changes underway regarding efficiency--in terms of the ICC's goals--of the Court's proceedings. We have heard reference to a number of those mentioned by the President and Prosecutor this afternoon and I will not repeat their comments. I will focus on a few areas that need further improvement:

Cooperation

There are a myriad of cooperation factors that affect the efficiency of the proceedings. The rapidity of response to cooperation requests has profound effects. This is true across the broad range of cooperation needs of the court, including witness relocation agreements, requests for documents, and arrest. Lack of arrest is a key factor in inefficiency and lack of effectiveness. More must be done to accelerate the arrest of suspects to be brought before the court. Dominic Ongwen's surrender after an extended period puts the Office of the Prosecutor in the difficult position of corroborating evidence gathered a decade ago. This consumes time and resources. States must step up their cooperation across the board.

Victim Participation

The participation of victims in proceedings is a unique feature of the ICC. Civil society's Victims Working Group has labored hard and constructively to make this operational. Victim participation is an essential part of making the court effective by bridging the gap between the court and the affected communities. Meaningful participation through legal representation reinforces the court's legitimacy by bringing local engagement into the process. Greater clarity is

needed on the application process, possibly with deadlines that could enable significant legal engagement in the proceedings.

Chambers and Election of Judges

We see a link between having judges on the bench who possess substantial practical experience in criminal trials and the efficiency of those proceedings. This experience provides the background to meet the many demands associated with adjudicating complex and time-intensive cases. We urge states parties to take this aspect of efficiency into account when electing judges to the ICC bench.

Part 4: Penny Wise, Pound Foolish

One tempting, but short-sighted approach is to pursue false economies by not adequately resourcing the court. States parties should demand the highest degree of efficiency in the court's utilization of resources. But it is a policy of being penny wise and pound foolish to pursue efficiency for the sake of efficiency *per se*.

A lack of resources leads to inefficiency, where trials are slowed because of a lack of staff to provide the necessary logistical support to proceedings.

Where inadequate outreach leaves a vacuum to be filled by misinformation, which only leads to the need for more effort.

Let me be concrete with specific examples that come to my mind:

- What will be the effect of staggering recruitment of the positions in the Registry aimed at bolstering the court's field's presence? Registry staffing levels are lower now than they were last year. Yet, we are going into a year with more trials getting underway than ever

before. Due to the staggered recruitment arrangement which will not allow the Registrar to address urgent needs that come up, it is a formula ripe with failure.

- Restricting the Office of the Prosecutor to conducting 4-5 investigations in 2016 falls far short of the demands and expectations of the court. Compelling the Prosecutor to scale back her Cote D'Ivoire investigation into alleged crimes by the current government forces in the conflict only creates further misunderstanding about the ICC, ramps up the need for more outreach, and undercuts the court's impact.

Part 5: Conclusion

The current thinking and arrangements regarding the court's role and resource needs are not sufficiently attuned to the world as it is today. The annual budget-setting process is not the vehicle for this kind of discussion. We propose that at ASP 15 you convene a plenary session on the role of the ICC in a changed world and the implications for court resources.

In sum, in thinking about efficiency and effectiveness, we believe that it is time to begin a fundamental shift in the conception of and practice regarding this court's role in the world and its resulting resource needs. Not that this can or should happen overnight. It will be a process, but with a changed leadership that has shown itself committed to improving performance, the time to begin this shift is now.

Thank you.