

Note: Following is the draft of CICC remarks at a reception in honor of the ICC judges, held in The Hague on May 25, 2004. The speech was modified during delivery, and the conclusion included a toast to the judges. The regulations referred to were adopted within days of the event, including a regulation creating a mechanism (reg.4) within which relevant consultations could be conducted with NGOs and other experts.

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William R. Pace, CICC Convenor
Remarks at the Reception in Honor of the Judges of the ICC Celebrating the
Anniversary of their Inauguration
May 25, 2004
The Hague, The Netherlands

Welcome to the judges, ICC representatives, representatives of the Ministry of Foreign Affairs of the Netherlands, NGO colleagues, friends.

We had hoped to host this reception closer to the anniversary of your inauguration, but due to your schedule of work in March we were asked to postpone this gathering to this plenary.

We have much to be thankful for and to be quietly hopeful for one year after the inauguration. The ICC has progressed steadily.

However, growing challenges and dangers are ominous. Reaction to these has not been adequate. To meet these challenges we must not abandon, but reinforce the processes of independent, but mutual commitment that have been so essential to this historical achievement.

Judges, distinguished colleagues, we are inundated with reports of increased conflicts, the spread of terrorism, war, rising religious intolerance and conflict, disastrous violations of the Geneva Conventions, renewed 'ethnic cleansing', war crimes and other crimes against humanity.

All these ruptures in peace and human security underscore the historic importance of the establishment of a fundamentally strengthened, if not new, system of international justice and the ICC.

One small silver lining in the growing chaos of violence are reports from international human rights organizations, UN officials and others that, despite all, the existence of the Rome Statute and the ICC are already deterring perpetrators and crimes in some situations. Even the actions of major powers reflect new and heightened commitment to avoiding the indiscriminate projection of military power. Still, major powers – mostly but not only one government – are still trying to cripple or strangle the ICC in its infancy.

These challenges of war and peace, life and death are paramount, but we must acknowledge other challenges. There is general awareness – at least among the ICC community –

- that serious disagreements and rifts exist within and between the organs of the new court
- that the ICC community itself has been substantially weakened during the last two years
- that implementing and institutionalizing the Rome Statute and the ICC will be as daunting and difficult as achieving the treaty and sixty ratifications. (But, there is real danger that the timing today is much worse than in the 1995-2002 period.)
- that the governments' precipitous reduction and disengagement went too far in 2002
- that the constitutional deficiencies regarding key planning for the ICC by the UN Treaty Conference, the Preparatory Commission, the UN and governments can no longer be ignored
- that these require revitalization of the governments and more formal mechanisms of engagement.

The role of civil society and in particular the CICC has been mostly a service and consultative role. Like you, we have what seem to be even greater challenges going forward than those we confronted during the last ten to fourteen years.

Ours is not a negotiating role, but it is critical and vital. There would not have been anti-slavery movements, independence and freedom and international human rights movements without the NGOs. There would not be a vital international justice movement or an ICC without NGOs.

Now our work increases, like yours, exponentially. Our focus, like yours, moves from one center, the UN, to many – our resources and personnel are thus decentralized and spread thinner.

The success of the ICC is not guaranteed; we – but mostly the governments – have set a formal 'review' date for only sixty months from now. We know opponents will try to 'correct' the vote in 1998; and may try to kill the ICC. We know the opponents of international law, of international justice—penny-wise and pound-foolish pundits (inside and outside the ICC)—who claim international tribunals are too expensive and wasteful, will use the Review conference to undo this great project.

My point is that it is essential we continue to fight together for the ICC. We got here because of a vision of a new international legal order, a new diplomacy that emerged in the mid-nineties after the Cold War. We got here because of an extraordinary informal partnership between seventy like-minded governments and several hundred NGOs, plus a very few international organizations or their representatives, like the United Nations Secretary General. We got here because we pulled together, not apart.

This occurred because of a commitment to openness and consultation and even informal partnership. The European Union and other powers in the North treated the developing countries and the South with dignity and respect. Big international NGOs in the North treated smaller NGOs and those from the regions with respect.

The permanent five members of the Security Council and foreign policy elites were certain that legal and political leaders from the world's different legal and political systems could never agree to an ICC. They were certain that to agree on common principles of international law and procedure by the civil and common, adversarial and inquisitorial systems was impossible. They thought they could use this failure to secure a permanent ad hoc ICC subordinated to the Security Council.

The independent ICC only happened because of the commitment of judicial, legal and political leaders to overcome their differences. For this and many, many reasons, you have heard me often say that the achievement in Rome was both historic and a miracle.

The enormous differences between the civil and common and other legal systems could not have been overcome without the openness, transparency, and commitment to consultation that dominated the process from 1994-2002. (Much of this went on in informal government meetings without NGOs, but always there were consultations.)

The NGOs and international civil society generally should be the strongest defenders of the ICC. It is not only the ICC employees, but 'we the people' that will lose the most if the ICC fails. We have carefully negotiated and established consultative procedures over the last seven years; and over the last two years. It is crucial these be honored. If the NGOs cannot perform their work on the issues and substance because they are denied access or consultative processes, then the NGOs must suspend being supporters and become critics of the process.

My colleagues are extremely worried that the Court is moving to adopt Regulations and the ICC officials are submitting a 2005 budget and that neither process has honored agreements and commitments made to us. Internal court consultations are not the only ones that must be held. Expert NGOs and governments are also vital 'stakeholders' in the ICC and Rome Statute. Twice the President assured us in writing that there would be consultations on the Regulations before the final adoption of these important instruments. I appeal to you to honor this promise – to honor the process that has been so important for seven years.

The Regulations of the Court are not exclusively a judicial matter. These regulations are quasi-legislative – with real impacts on the organs of the ICC, the Office of the Prosecutor, and on legal counsel, defense, those assisting witnesses, victims, and governments. This is one reason that an oversight role for the ASP was adopted.

The budget issue I leave for another forum, but I hope that the Judges will find a way to consult on the Regulations that honors the previous commitments and processes.

As I said at the beginning – the world needs the ICC more today than ever before. We cannot fail those who will suffer most. We can only succeed if we find ways to all keep pulling this great initiative forward together.

Thank you very much.