

AMICC MEMBER STATEMENT IN RESPONSE TO SEPTEMBER 11 ATTACKS

The September 11 attacks on the United States provide a horrific reminder to each of us of the importance of our efforts to build a strong International Criminal Court with United States support. As systematic attempts to murder scores of civilians, the attacks were unquestionably a crime against humanity squarely within the jurisdiction of the ICC. These atrocities have strongly affected people everywhere—both in the United States and around the world. Because they were serious crimes of concern to the international community as a whole, they are, as defined in Rome Statute itself, the type of situation for which the ICC was created.

Although many people in the United States at first desired swift and unilateral retribution, this vicious crime has created an unprecedented opportunity and need for the United States to respond through coordinated action with other states. As it did after the first World Trade Center bombing and the attacks on the United States embassies in Kenya and Tanzania, the United States of necessity began looking to other countries to provide military and intelligence assistance, and to investigate and obtain custody over suspected perpetrators. Many countries, including Pakistan, made it clear that they had an increased willingness to assist the United States because of the international call to action by the General Assembly.

The broad multilateral action and commitment that developed out of this cooperation shows the need, and thus has encouraged support, for the ICC as a vehicle for international coordination against atrocious crimes. Likewise, increased multilateral cooperation will strengthen the Court as it begins by demonstrating that its existence will be critical to our future ability to ensure that such crimes cannot be carried out with impunity against any state.

For example, the coming days will most likely show that governments reluctant to surrender suspects to a foreign nation may be willing to turn them over to an independent international body. Similarly, many governments that would allow international investigators to enter their territory to obtain evidence would not allow representatives from another country to do this.

Thus, if the ICC were in existence today, it would greatly support and promote the U.S. efforts to capture and try those it suspects of participating in this crime. We must seize this opportunity to make the United States understand the significance of international organizations, and specifically the ICC, for effective multilateral action in the long future effort against terrorist atrocities.

Crimes Against Humanity and the ICC

Under the ICC Statute, crimes against humanity include murder and “other inhumane acts of a similar nature intentionally causing great suffering, or serious injury to body or mental or physical health...committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” (Article 7[1], [a], [k].) Such attacks must be committed pursuant to a policy of a state or organization. (Article 7[2][a].) To meet the threshold for ICC jurisdiction, the attacks must be “the most serious crimes of international concern.” (Article 1.)

First, the attacks against the World Trade Center were highly coordinated actions committed with the intent of killing as many civilians as possible. They were clearly the acts of a sophisticated and far-reaching organization. Moreover, the evidence so far suggests that the attacks had been planned for a very long period of time. Second, the

use of passenger airliners to carry out these attacks, the enormous number of casualties, and the wanton disregard for the potential number of victims makes this crime one of the most heinous ever carried out, and a threat to the entire world as well as the United States.

When viewed as part of the plan as a whole, the attack against the Pentagon and the downing of the fourth aircraft in Pennsylvania also meet the criteria for crimes against humanity. The Pentagon is a military installation and therefore an attack against it is not against the civilian population—even if civilians are killed as a result. However, this attack, as well as the destruction of the fourth aircraft, should be considered part of the same common plan or scheme as the World Trade Center attacks and therefore as integral parts of a crime against humanity. This conclusion is buttressed by the fact that the killing of civilian air passengers was the means by which all the attacks were carried out.

Benefits to the United States if the ICC Were in Existence

As an independent international body the Court, if it existed now, might well be acceptable to and have credibility with nations unwilling to turn over suspects or support trials in another country. Moreover, as an international judicial institution, it would provide powerful investigative tools. Under the ICC Statute, the Prosecutor may, among other responsibilities, conduct investigations on the territory of a State Party, collect and examine evidence, request the presence of and question persons being investigated as well as witnesses, and seek the cooperation of any State or intergovernmental organization. (Article 54.) These powers are balanced by extensive due process protections for individuals investigated by the Court, which also serve to ease the political concerns of states confronted with an investigation of their nationals or allies. In addition, ICC Statute creates mandatory duties for State Parties, such as the obligation to arrest and surrender to the Court persons within their jurisdiction (Article 59), which on its own the United States would be unable to require.

The ICC needs United States participation to fulfill its potential as quickly as possible. Now it is now more apparent than ever that the United States equally needs a strong, effective and respected ICC.

John L. Washburn
Convener
Anne Heindel
Deputy Convener
AMICC