

September 14, 2004

Subject: America and the ICC: Convener's Report on the Third Session of the ICC's Assembly of State Parties

Dear AMICC Members, Supporters and Friends:

Your Convener is just back from September 3-11 in The Hague at this session. I had hesitated about attending since AMICC's primary work is not international and the strong euro makes Europe very expensive now. My doubts were resolved by receiving a well-timed grant which was clearly appropriate for such a trip and because this event promised to test and give us information about some fundamentals of our advocacy. As it turned out, the meeting both fulfilled this promise and offered us a further opportunity to serve our cause. We participated in the meeting through the International NGO Coalition for the ICC (CICC). Most of you know it well as the brilliantly organized coalition which has made international civil society worldwide extraordinarily effective in the negotiations for and the establishment of the ICC.

AMICC's objectives at this session were to support our advocacy by comparing the charges against the ICC of our more responsible opponents with the current realities of the Court and the Assembly (ASP): Can the ASP really make the secretariat of the Court, especially the Prosecutor, accountable to it? Will the Court be fair to defense counsel in access, case procedures and in providing physical facilities? Is the Court choosing clearly appropriate cases without political bias? Will the Court be up to dealing with those cases effectively? We also wanted to work with CICC in making sure that NGOs and governments had accurate information about US government actions and policies.

This was the first meeting of the Assembly in The Hague. It offered answers and information about our questions because it was also the first ASP session since the Court formally began its first cases, the first to test the Court's full budget process and organization and the first effort of the ASP to organize itself for the full range of its responsibilities and purposes.

It also marked the completed and successful beginning of an important new international organization despite the hostility and the complete absence of the U.S. government. This had several consequences. The U.S. presence at the meeting was entirely through American NGOs, especially those like AMICC and our sister organization, the Washington Working Group on the International Criminal Court, whose mandate is entirely domestic. Governments and NGOs from other countries especially talked with us about U.S. motives and plans for the bilateral immunity agreements (BIAs) campaign and their own experiences with it. They were curious about possible future U.S. actions in the Security Council and about what would happen for the ICC in a second Bush or a Kerry administration.

Many countries and NGOs said that the United States often makes clear to governments that a main purpose of the BIA campaign is to discourage further ratification of the Rome Statute. It hopes that the BIAs themselves will have that effect, but also threatens countries that have signed a BIA with loss of aid or other benefits if they ratify. These threats have deepened the anger and alienation other countries feel about the United States because of the BIA campaign. Although we have always assumed that preventing ratifications was part of the BIA effort, we were struck by the vigor and extent of the US anti-ratification effort our colleagues reported. In the United States, the US government does not admit to opposing ratifications, since the announced policy declares that the

US respects the support of other countries for the ICC, and asks that in return they respect US concerns about the Court.

Apart from these informal conversations, the United States almost never came up in the proceedings of the ASP. The one exception was the welcoming speech by Dutch foreign minister Bernard Bot. After regretting that the U.S. can not commit itself to the Court, he said, "We must and shall continue the dialogue with the United States to promote better understanding of our respective positions... At the same time we will defend the integrity and the independence of the ICC in accordance with our legal obligations, if necessary in a critical dialogue with the United States, our ally and friend."

Israel, China, Russia, and Japan and other countries participated in the meeting as observers. All of these except Israel had substantial delegations and spoke in the sessions. Japan was particularly vocal, especially on budget issues. The head of the Japanese delegation is a strong supporter of the Court and apparently anxious to show that the Court would be financially responsible with the large assessment Japan would pay if it ratified. At least 78 of the 94 States Parties attended the meeting.

At five days of which three were full working ones, the meeting was clearly too short. Many important subjects were deferred, and others treated much too superficially. However, we fared quite well on AMICC's issues. A good examination of the ASP's structure began. It included the question of subordinate bodies for oversight and accountability, and the leadership role for the Court as a whole of the ASP's officers (collectively called the "bureau"). On financial accountability, both the ICC secretariat and governments in the Assembly agreed that there was much room for improvement in the budget process. It will be both longer and more detailed in the next round, including more time allotted to the work of the ASP's Committee on Budget and Finance.

Defense rights and facilities got encouraging attention with ASP acceptance of a judges' regulation which will strengthen ICC support to the defense. The Assembly also sent to the Bureau for further consultations and rewriting a draft Code of Conduct for Counsel about which American lawyers among others have complained. It also appears that the ground may have been laid at this session for a resolution at the next meeting giving recognition to the International Criminal Bar in which AMICC members have leadership roles.

On AMICC's behalf, I called on presiding judge Phillipe Kirsch and assistant prosecutor Christine Chung. From these conversations as well as from presentations in the Assembly, it is evident that the Court is well prepared for its first cases – Uganda and the Congo - and that Prosecutor Moreno Ocampo is handling these prudently and with political as well as legal skill.

This Assembly meeting, although it shows that much remains to be done in making the ASP an effective governing body, nonetheless demonstrated that the Court has reached readiness and advanced completion in a remarkably short time. We can be proud of it and of our cause. Please ask me about that or any other aspect of the session, including its actions on your particular interests.

All best,

John Washburn
Convener