

**Closing remarks to the conference
and outlook on the ICC**

Statement by Judge Hans-Peter Kaul

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Challenges and Successes in the Fight against Impunity**

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Now, look at the sun outside in Berlin on this late Saturday afternoon – and you are still here. In more than ten years, in which I regularly have taken part in ICC conferences in many countries, I do not recall to have witnessed such a steadfast audience!

Quite spontaneously, let me mention two points in reaction to comments that were made earlier: Yes, the Court is not yet even a teenager, the Court is now only five years old, like children of this age also young institutions may have a right to some teething problems and growing pains...Second point: I myself was not elected only for three years, let me recall that I was reelected in January 2006 for a further period of nine years. So we may have the chance to meet again at ICC conferences for a good while to come...!

Today is again one of the special occasions where I have been given the task, not so easy task, to make some concluding remarks.

A minute ago we have heard a good summary of this important conference by Robert Heinsch and Leonie von Braun. On my side, as a judge, I also feel the temptation to provide some judgment. Let me simply say: what an outstanding meeting, what a thoughtful and enriching conference, with so many stimulating contributions we have had here in Berlin! Indeed, Berlin, this fascinating city, in good and in bad, seems to be a good place for the ICC...

On a personal note, this brings me to a first point, a personal remark: Berlin, this city, where terrible mass crimes were planned, this city, reborn from the ashes of war and tyranny to be a place of hope and freedom, this Berlin would also have been a good seat for the International Criminal Court. In hindsight, it seems a pity that before the Rome Conference nobody in Berlin had the idea to put forward the candidacy of Berlin as the seat of the new world court.

Our thanks, our profound gratitude belong to all who made this remarkable event here in Berlin possible!

In my remarks I will touch upon three points:

First: a sober acknowledgement: the idea of the International Criminal Court, this great idea, is – as such – no guarantee for success.

Second: what are some of the main challenges, what are some of the main dangers of today's "Realpolitik"?

And then lastly, the eternal, the obvious question: what needs to be done? How can we secure more international justice, how can we secure the success of the ICC?

In 1872 – many of you know this – Swiss citizen Gustave Moynier, then President of the International Committee of the Red Cross, had a new idea. Christopher Hall, who is with us today, has published an important article about Moynier. Shocked by the atrocities and crimes committed in the Franco-Prussian war of 1870/71, Moynier was the first to develop the concept of an International Criminal Court. At that time this was certainly utopian, nevertheless a great idea. It is a common feature of such great ideas that they respond to fundamental human aspirations. This was true in 1872, it is true ever since then and it will also be true in the time to come. Ordinary men and women in all countries, on all continents, are united in the desire for peace and justice. Even if this is often overlooked, yes, there continues to be a strong desire, a great hunger for more justice.

We know that many great ideas are often discredited, are often written off as naive for a long time. It is always easy to dismiss those who try to realize them as “hopeless idealists”. And yes, too often the skeptics are proved right. Who really believed in 1997 that the Rome conference would be successful? And then the unexpected happens! The successful adoption of the Rome Statute on 17 July 1998 confirms the famous word of Victor Hugo, so graciously recalled this morning by Ms. Birken : “Nichts ist stärker als eine Idee, deren Zeit gekommen ist”.

And now, 9 years after Rome, where do we stand today? During this remarkable conference, we have carefully reviewed all what has been achieved since then. But we have seen also ongoing deficits, challenges and problems. The way forward after Rome has often been stony, with so many obstacles. Looking back at the past years I would like to share with you an experience which also others have made time and again – Amnesty International, Human Rights Watch, other Court supporters. I believe that we all had to recognize: the idea of an International Criminal Court, the successful conference in Rome and the Rome Statute itself are, as such, no guarantee for progress, let alone success. Everything remains difficult, nothing falls into place by itself. If one obstacle has been overcome, the next obstacle turns up. Every inch of progress needs hard work, will need the sustained efforts of all those who have brought the ICC so far. This is an experience which I feel will remain relevant also in the future. There will be no easy travel.

History, our experiences, our memories confirm that even today, we continue to witness an ongoing, apparently eternal struggle between, on the one side, the great Kantian idea of the rule of law, on the other side, brute force and power politics of all kind. In this situation, the International Criminal Court intervenes as a critical attempt to strengthen the rule of law and the protection of human rights. We

therefore should be realistic enough to assume that the interests of certain States and related “Realpolitik” will also in the future be serious obstacles for the ICC – just look at the case of Sudan and Darfur to understand what we are talking about...

Now, what are some of the risks and dangers posed by so-called “modern Realpolitik”? In contrast to the “Realpolitik” of former days, for example before the First World War or the time between the world wars, “modern Realpolitik” often comes along in somewhat softer or less blatant forms, often also disguised by the language of contemporary “political correctness”. With regard to the ICC, some examples may illustrate this phenomenon:

- There may be principled statements of support for the ICC, but no will to act accordingly.
- While lip service is paid to the cause of international justice, quite often budgetary, procedural or bureaucratic arguments are used when it comes to requests for effective cooperation or concrete support for the Court.
- Another example of this attitude which has not yet been mentioned during this conference:

On the one side, there are solemn statements that the ICC needs permanent premises which fully reflect the dignity and authority of the Court, with a global recognition effect, like the Peace Palace in The Hague for the International Court of Justice, permanent premises which provide the best working conditions for the Court and its staff.

On the other side, there are, behind the scenes, ongoing bureaucratic attempts, petty-minded attempts, to make the future permanent premises of the ICC as small and cheap as possible, just another new office complex, like thousands others, regardless of the needs of the Court.

A further example, in the political sphere:

- The Security Council refers the Darfur situation to the ICC – and then no further political support is granted. Furthermore, ICC states parties alone are forced to pay for the investigations...
- With regard to the crucial issue of arrests and surrenders to the ICC, for example with regard to the enforcement of the five arrest warrants against the Ugandan suspects, one can currently sense an attitude along the lines of “we have given you the money for the first budgets – now see for yourselves how you get the perpetrators before your court ...”.

This will not work. One must hope that this is clear to all concerned. In the former Yugoslavia NATO and coalition forces have made most arrests for the International Criminal Tribunal for the former Yugoslavia. With regard to Rwanda most arrests have been made by neighboring states. Likewise states parties and Security Council members must now find ways and means of supporting the ICC with regard to the decisive questions of arrests and transfers to The Hague.

It is quite astonishing: until now, Security Council Members do not seem to recognize that the current attitude of Khartoum with regard to the arrest warrants against the two Sudanese suspects is not only a challenge to the ICC, but also to Security Council Members and to the Security Council itself which has adopted SC resolution 1593.

After this inspiring, this wonderful conference it is obviously not my aim to end with pessimism or to discourage ourselves. However, a proper reality check, a sober assessment of our situation are always useful. Only then can we ask in a meaningful way:

What needs to be done? How can we secure the full success of the ICC system?

During this conference, many answers have already been given to this decisive question. My own answer is

- First: We simply have to continue our long march on all fronts, well aware that further setbacks seem possible.
- Second: We should know that our readiness to weather future difficulties and crises with determination and steadfastness may again be severely tested.
- Third: As highlighted several times, we need sustained efforts for more State parties. In particular, the forthcoming review conference also should be used for a special effort, a special campaign to win more States parties. New York is the only venue in the world where all UN member States, large and small, are always present on a political level, with high-ranking and influential ambassadors. Also for this reason I personally believe that New York is the best venue for the review conference.
- Fourth: With regard to the future prospects of the Court, we should for a good while, be quite sober and realistic, maybe even modest. In particular, we should avoid exaggerated expectations – which will only backfire on the ICC if they cannot be fulfilled.

- We need patience. We must give the Court the time to consolidate itself into a fully functioning and reliable international organization. We must give the Court the time to prove that it can, after efficient and fair trials, provide judgments which set and strengthen important international standards.

We have come a long way. 10 years ago an International Criminal Court seemed to be some kind of utopia, a dream. Today the Court is a functioning reality, with a powerful message:

All men are equal before the law. Nobody is above the law. More men and women all over the world are united by the conviction that genocide, crimes against humanity and war crimes cannot go unpunished – regardless of the nationality and rank of the perpetrators. Even if our pace seems to be slow and the steps forward are often difficult, we are indeed advancing on our road towards more justice and rule of law in international relations. In 2007 it is very clear and it is confirmed by this conference here in Berlin:

The clock cannot be turned back. The day will come when the International Criminal Court and its principles are respected throughout this world.

In the spirit of this Berlin conference, let us continue to work together for this objective and this day.

Thank you very much.