

**WELCOME ADDRESS:
SYMPOSIUM ON DEVELOPMENTS IN INTERNATIONAL CRIMINAL JUSTICE
IN AFRICA, GORDON'S BAY, SOUTH AFRICA, 19-20 MARCH 2008**

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Excellencies, distinguished guests, fellow participants, ladies and gentlemen,

Good evening.

It is my honour and privilege to welcome you to the Symposium on "Developments in International Criminal Justice in Africa." I thank the Institute for Security Studies for inviting me to the Symposium and for asking me to deliver this welcome address.

I am informed that at its previous symposium in August 2006, the Institute undertook to coordinate annual symposia to review Africa's progress in relation to the ICC in general and the prosecution of international crimes in particular. It is gratifying to see African scholars and practitioners, working through an African-based organization such as the Institute, hold such annual symposia. These symposia are of inestimable value. They enable us as African scholars and practitioners to come together and to sharpen our theoretical perspectives on international criminal justice and to reflect on how to improve the ongoing efforts aimed at ending impunity. It is only by reflecting on the progress made so far in the preceding year, that one can focus more clearly on the hard work ahead of doing justice to the victims of the world's worst crimes.

The establishment of the ICC was a response of the family of nations to the ever-increasing incidence of gross human rights violations – violations of such magnitude and barbarity as deeply shock the human conscience. It also represents their firm resolve to ensure that these violations do not go unpunished. The ICC symbolises the principle of individual criminal liability for

those responsible for these violations. It serves as a permanent notice or reminder to the perpetrators and would-be perpetrators alike that they can no longer commit these atrocities and go scot-free. The arm of international criminal justice is increasingly getting long enough to reach any such perpetrator in any part of the world. Besides the moral condemnation of these crimes at the international level, and the knock-on deterrent effect the Court may have, the ICC serves a second, and vital, purpose. That purpose is to uphold the rule of law. Following in the footsteps of the ad hoc international criminal tribunals, the ICC will sooner or later and in a concrete way remind the apparently powerful and untouchable perpetrators of the old saying that “be you so high, but the law is above you.” These perpetrators can and will be held accountable for their criminal conduct.

Thus from the standpoint of the rule of law and justice, the ICC is one of the greatest achievements of the twentieth century. It is a Court that deserves to be taken seriously by African States. On paper, that has been done - as matters currently stand, 30 African states have ratified the Rome Statute. This is a remarkable feat. However, we must not lose sight of the fact that ten years since the adoption of the Rome Statute, impunity and non-adherence to the rule of law continue to be the order of the day in various parts of our continent. Gross violations of human rights continue to be committed in what appears to be repeating cycles.¹ It is telling that all of the situations and cases currently before the ICC arise from Africa. It is precisely for this reason that the African Union has such a central and critical responsibility to remind African States of the Union’s Constitutive Act’s commitment to stamping out impunity. Indeed, the work of the ICC is entirely dependent on the support of international, regional and domestic institutions and actors. Only once there is synchronisation of objectives and goals of the respective institutions and actors will substantive justice be realised. For it goes without saying that without justice, there can be no lasting peace; and

¹ Max du Plessis “Africa and the International Criminal Court” CSVr Conference on Criminal Justice, accessible at <<http://www.csvr.org.za/wits/confpaps/duplessis.htm>>.

peace, ladies and gentlemen, is the one commodity that is so sorely lacking on our continent.

Increasingly, images of war crimes, genocide and crimes against humanity even in obscure corners of the world are vividly transmitted to living rooms all around the world.² These images have contributed to a heightened international awareness and concern over such atrocities and given rise to expectations for states to comply with some generally accepted standards of conduct. It is encouraging to witness that the ICC has intervened with respect to four 'situations' in Africa, namely the Democratic Republic of the Congo; Uganda; Sudan and the Central African Republic. The ICC's stance can be interpreted as a denunciation of impunity and a commitment to the idea that even the most senior government officials are liable to be prosecuted for war crimes, crimes against humanity and genocide. Aside from the ICC, there are other international criminal justice developments taking place in Africa, such as the cases currently involving Hissène Habré, Colonel Mengistu Haile Mariam and Charles Taylor. Africa is thus a continent where international criminal justice is gaining strides, and we should welcome that development, not fear it.

The international community and the States Parties to the Rome Statute have a legitimate desire to see the ICC develop as a meaningful and effective institution. The more we see the Prosecutor put persons suspected of committing crimes under the Rome Statute in the dock before independent judges the more we are satisfied that the world's aspirations of preventing and punishing flagrant violations of human rights are finally getting realized. In addition – and possibly of as much importance – the Rome Statute is distinctive because of its provisions on the participation of victims in the proceedings and on the award of reparations to them. The award of reparations is an integral component of achieving justice for the victims and also of assisting them to rebuild their lives.

² Dr Tony Tan Keng Yam, Deputy Prime Minister & Minister For Defence, Singapore, 4th International Law Seminar, 2 September 2000, accessible at <http://www.mindef.gov.sg/imindef/resources/speeches/2000/02sep00_speech.html>.

The fulfillment of the aims and objectives of the ICC on the African continent is dependent on the support of African States and, the AU and other relevant regional organizations, the legal profession, and civil society. Meeting this desideratum requires commitment to a collaborative relationship between these stakeholders and the ICC. It is also important to remember that questions of responsibility for the prosecution of core international crimes in Africa (and for raising awareness of these issues) are broader than the ICC alone. Other structures such as the Commission on Human and Peoples' Rights, the African Court of Justice and Human Rights, and other pan-African institutions can play a meaningful role in this regard and should be encouraged.

Of particular interest is the work of the African Commission on Human and Peoples' Rights. For instance, in its 2005 Resolution on ending impunity in Africa and on the domestication and implementation of the Rome Statute of the ICC, the Commission called on civil society organizations in Africa to work collaboratively to develop partnerships to further respect for the rule of law internationally and strengthen the Rome Statute. That African structures such as the Commission should be at the forefront of awareness-raising is significant, not least of all because of the perception present within certain African states that international criminal justice and the ICC is an 'outside' or 'Western' priority and relatively less important than other political, social and developmental goals. To my mind, this perception is both odd and unfortunate. After all, we should not forget that it is not the UN, the ICC, or Western States that drafted the aims of the African Union. It is African states that drafted the African Union's Constitutive Act and under articles 4(m), 3(h) and 4(0) thereof reiterated the Union's commitment to ensuring respect for the rule of law and human rights, and to condemning and rejecting impunity.

I also believe that international criminal justice initiatives need the support of home-grown organizations like the Institute for Security Studies that are working hard to ensure that the Court is better understood and that African States are better equipped domestically to comply with their obligations under the Rome Statute. I believe that these are exciting times and that Africa is poised to make a difference. I am sure that this symposium and the discussions that we are engaged in here will be part of that difference. It is in this context that I congratulate the Institute for Security Studies (ISS) on its recently launched International Crimes in Africa Programme. I already look forward to next year's symposium, and to reflecting on important and uplifting developments in respect of international criminal justice in Africa.

Thank you.